

ORDINANCE NO. 2009-31

**AN ORDINANCE ADDING CHAPTER 15 "FAIRVIEW CEMETERY" TO THE
CODE OF ORDINANCES OF THE CITY OF BASTROP, TEXAS;
ESTABLISHING FINES FOR THE VIOLATION OF THE CODE;
ESTABLISHING ENFORCEMENT AUTHORITY, REPEALING ANY
INCONSISTENT PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the City of Bastrop, Texas is a Home Rule municipality incorporated and operating under the Laws of the State of Texas; and

WHEREAS, the City of Bastrop has determined that it is in the best interest of the health, safety and welfare of its citizens to accept full ownership and operation of the Fairview Cemetery; and

WHEREAS, the City of Bastrop now elects to become the permanent trustee for the perpetual care and upkeep of lots and graves in the Fairview Cemetery and to adopt rules and regulations governing operations of the cemetery, pursuant to its municipal authority granted by the State of Texas.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF BASTROP TEXAS:

PART 1: That Chapter 15, "Fairview Cemetery" is hereby added to the City of Bastrop Code of Ordinances to read as follows:

CHAPTER 15. FAIRVIEW CEMETERY

Sec. 15.1. Definitions. In this chapter:

"Burial site" means a space of ground that is in a cemetery and that is used or intended to be used for interment in the ground

"Cemetery" means a place that is used or intended to be used for interment, and includes a graveyard, burial park, or mausoleum.

"Cremated remains" means the bone fragments remaining after the cremation process, which may include the residue of any foreign materials that were cremated with the human remains.

“Funeral establishment” means a place of business used in the care and preparation for interment or transportation of human remains, or any place where one or more persons, either as sole owner, in co-partnership, or through corporate status, are engaged or represent themselves to be in the business of embalming or funeral directing.

“Grave” means a space of ground that is in a burial park and that is used or intended to be used for interment in the ground.

“Interment” means the permanent disposition of remains by entombment, burial, or placement in a niche.

“Perpetual care” means the maintenance, repair, and care of all places in the cemetery.

“Perpetual care cemetery” means a cemetery for the benefit of which a perpetual care trust fund is established.

“Plot” means a space in a cemetery owned by an individual or organization that is used or intended to be used for interment, including a grave or adjoining graves.

Sec. 15.2 City as Permanent Trustee for Perpetual Care and Creation of Cemetery Advisory Board

- a. The City as owner and operator of Fairview Cemetery is hereby authorized to act as a permanent trustee for the perpetual care and upkeep of plots and graves in the cemetery and shall accept such trust as provided in this Ordinance.
- b. There is hereby created a City of Bastrop Cemetery Advisory Board which shall consist of five (5) members appointed by the City Council. The role of the Advisory Board shall be to:
 - i. Recommend rules to the City Council, as are necessary, concerning the use, care, control, management, restriction, and protection of the Fairview Cemetery;
 - ii. Advise the City Council regarding the management of the Fairview Cemetery; and
 - iii. Advise the City Council on any other issue the Advisory Board determines is necessary to the proper conduct of cemetery business and for the protection of the principles, plans, and ideals by which the Fairview Cemetery is to be operated.

Any matter relating to the Fairview Cemetery shall be referred to the Bastrop Cemetery Advisory Board for their consideration and recommendation before the action is taken by the City Council, however, the Advisory Board’s role shall be advisory only, with no formal action taken.

Sec. 15.3. Adoption and Enforcement of Rules and Regulations to Establish Perpetual Care Cemetery and Protect and Care for Graves.

- a. The City shall adopt and provide for the enforcement of such reasonable rules and regulations as may be necessary to establish, maintain, and oversee the Fairview Cemetery as a perpetual care cemetery, to protect the graves of those who are interred in the cemetery, and to maintain the beautification of the cemetery under uniform conditions. Perpetual care shall herein mean a cemetery for the benefit of which is created a perpetual care trust fund established pursuant to state law for the maintenance, repair and care of all plots and graves in the cemetery including, but not limited to road maintenance, mowing, edging, pruning, landscape construction, pest control, security, and all other maintenance activities that are deemed necessary to the care, protection, and preservation of the cemetery.
- b. The City is hereby empowered to enforce all rules and regulations, to exclude from cemetery property any violator and shall have charge and supervision of the grounds, buildings, persons on cemetery property, funerals, traffic, employees, plot owners and invitees.

Sec. 15.4. Purpose; applicability; force and effect.

For the mutual benefit and protection of plot purchasers in the Fairview Cemetery, the rules and regulations in this Ordinance are hereby adopted, approved and enacted by the City Council. These rules and regulations, as may from time to time be amended, shall be applicable to all plot owners, visitors, tradesmen, contractors, employees, and agents of the same. Reference to these rules and regulations in any letter, memorandum, contract, deed, certificate of ownership, or other instrument shall have the same force and effect as if fully set forth therein.

Sec. 15.5. Renunciation of Trust by City; Successor.

If the City shall hereafter renounce the trust it accepts pursuant to this Ordinance or if the City fails or refuses to act as a permanent trustee for the cemetery, then the county judge shall appoint a suitable successor to the City which shall faithfully execute the trust as provided herein.

Sec. 15.6. Funds Accepted in Trust for Care and Upkeep.

The City will not accept funds in trust for the care of individual plots or graves, other than as a portion of the total cost of a plot which shall be used by the City for the general care and maintenance of all graves in the cemetery. The City will accept donations, gifts, or grants for the upkeep or enhancement of the entire Fairview Cemetery.

Sec. 15.7. Power and Authority to Invest Funds.

The City is hereby invested with the power, authority, and duty to invest and reinvest all funds advanced to or otherwise provided to it for the purposes set forth in this article in interest bearing bonds and securities and other institutions as are authorized under the laws of the State of Texas.

Sec. 15.8. Management.

- a. The City Manager shall be responsible for overseeing and supervising the maintenance, care and operation of the Fairview Cemetery as a perpetual care cemetery, but may in his discretion, appoint or hire employees or contractors or agents to carry out the duties mandated herein.
- b. The Finance Director or Assistant Finance Director, or their designee, shall be responsible for the day-to-day operation of the Fairview Cemetery, including the sale of plots, the filing of deeds in the County Clerk's Office, providing notification and permits for interment, and for all record-keeping associated therewith.
- c. Cemetery care, oversight and supervision by the City does not include the purchase, erection, repair, leveling or replacement of monuments, headstones, markers or any other item on a grave site.
- d. The City shall take reasonable care to protect the burial rights of plot owners, but specifically disclaims any and all responsibility for loss or damage caused by third party's or other events, including but not limited to vandals, unavoidable accidents, malicious mischief, and acts of nature, and the failure of a party to satisfy contractual obligations regardless of whether the loss or damage is direct or collateral or to person or property.
- e. All funerals within the Fairview Cemetery property shall be under the charge and supervision of an officer of the City designated by the City Manager.

Sec. 15.9. Hours of Operation.

Visitation at the Fairview Cemetery is permitted from sunrise to sunset seven (7) days a week. Burials, on receipt of an interment permit, shall be permitted from 9:00 a.m. to 4:00 p.m. Monday – Friday, except in the case of special circumstances and on a case-by-case basis the City Manager may permit interment at other times. No interment is permitted on State, Federal or City holidays. In the event the City Manager permits a burial to occur outside of the cemetery's regular hours, the individual requesting the burial shall be responsible for paying any and all associated costs, including but not limited to the payment of overtime costs of City employees. All construction, maintenance or digging of a grave shall cease during a funeral service in the area where the service is occurring.

Sec. 15.10. Record-keeping.

- a. The City shall maintain a permanent, cemetery record book, which shall be the official record regarding the purchase and ownership of deeds in the Fairview Cemetery. The record book shall contain:
1. The name and address of each person purchasing a grave site.
 2. The purchased burial site identified by lot and block.
 3. Notification, in writing, of the individual who is to be buried in the plot, if different from the purchaser.
 4. Proof of receipt of a copy of this Ordinance by the purchaser.
 5. Evidence of deed transfers between individuals, when applicable.
- b. It shall be the responsibility of every purchaser of a plot in the Fairview Cemetery to keep the City fully informed of his/her current mailing address. Notice required pursuant to the provisions of this Ordinance shall be deemed sufficient if sent to the most recent mailing address in the City's records.
- c. It shall be the responsibility of every purchaser of a plot in the Fairview Cemetery to immediately inform the City, in writing, if the individual to be interred in the grave site changes from the initial designation or if there is a transfer in ownership of the grave site.

Sec. 15.11. Previously Purchased Cemetery Plots in the Fairview Cemetery.

The City will honor all prior sales of cemetery plots in the Fairview Cemetery by the Fairview Cemetery Association or Bastrop Cemetery Association upon proof of prior purchase and payment in full. If proof of purchase is not available, the City will accept an affidavit of ownership which shall be signed and notarized.

Sec. 15.12. Sale of Cemetery Plots; Generally.

- a. *No Discrimination.* The City shall not discriminate in the sale, location or availability of cemetery lots which shall be available on a "first come, first serve" basis. The City, however, reserves the right to sell lots in the sections of the cemetery that are currently open and available for purchase.
- b. *Warranty Deed/ Payment in Full.* Grave sites in the Fairview Cemetery shall be conveyed to a purchaser by warranty deed, identified by block and lot, for the purpose of the burial of human remains only. Every purchaser of a lot shall be required to complete an application and pay the City for the cost of the grave site and the recordation of the deed in the County Clerk's Office. Deeds may be delivered to a purchaser only upon full payment of the purchase price, which must be paid prior to interment.

- c. *Cost.* The cost of a cemetery plot shall be as set forth in the fee schedule in Appendix "A" of the Bastrop Code of Ordinances. The purchaser shall also be required to pay the cost to the City for filing the deed and certificate of ownership with the County Clerk's Office. The City and the County Clerk's Office reserve the right to change the above referenced fees at any time at its discretion.
- d. *Maximum Number of Cemetery Plots.* A maximum of eight (8) cemetery plots shall be available for purchase at any one time by the same individual. However, the maximum number of plots for purchase may be increased above eight (8) at the discretion of the City Manager, should specific circumstances indicate that additional plots are required.
- e. *Receipt of Ordinance.* Every person who purchases a cemetery plot shall acknowledge in writing, which writing shall be maintained by the City, that they have received a copy of this cemetery Ordinance and they (and any heirs, assigns, or successors) will abide by the provisions established herein.
- f. *Sale to Individuals Only.* Cemetery plots in the Fairview Cemetery may be purchased by individuals only and not by a business or entity for the purpose of resale, except in the case of an entity involved specifically in the business of burial services, as a representative of an individual to be buried, or the deceased's family.
- g. *Remains.* One (1) cemetery plot is approximately 5' x 11', unless otherwise designated. Interment allowed in a single grave shall be:
 - 1. one person's bodily remains;
 - 2. two people's bodily remains stacked vertically only if lower coffin is equipped with a concrete liner;
 - 3. one persons bodily remains and one persons' cremated remains;
 - 4. two people's cremated remains; or
 - 5. at the discretion of the City Manager.

The remains of a cremated animal may be buried within the same container as the human remains at the time of the interment, and only in any of the above listed circumstances. The remains of non-cremated animals may not be buried in the Fairview Cemetery.

- h. *Correction of errors.* The City shall have the right to correct errors in interment, disinterment, removal or in the description, transfer or conveyance of interment property, either by cancellation and conveyance of interment property of equal value and location selected by the City, or in the sole discretion of the City, by refunding all sums paid on account of the purchase. If an error involves the interment of remains, the City shall have the right to remove the remains to another site of equal value and similar location as may be practicable and shall convey ownership to the new site.

- i. *Delay due to protest.* The City shall not be liable for a delay in interment when a protest to interment has been made or when the rules and regulations of the City have not been met. The City reserves the right under such circumstances to delay the burial or refuse to permit the burial until the protest is resolved. The City shall have no duty to recognize any protest of interment unless filed with the City in writing or upon order of a court of competent jurisdiction.

- j. *Pauper gravesites.* Pauper gravesites for indigents shall be available by permit only at the sole discretion of the City Manager. Confirmation of the indigent status of the individual must be proven along with the indigent's last known address. Burial sites for indigents who resided in the City limits of the City of Bastrop will be provided at no cost and a marker identifying the indigent's gravesite shall be installed. The interment of indigents who resided outside the City limits of Bastrop shall be at the City's discretion and, if allowed, shall be buried at the expense of the party requesting the burial, which includes purchase of the plot, a filing fee, a marker, permit fee, and a grave preparation fee

Sec. 15.13. Opening or Reopening of Graves; Interment Permit Required.

- a. *Permit Required.* New graves in the Fairview Cemetery shall be opened only under the direct supervision of the City, upon receipt of an interment permit. A permit for interment will be issued only if proper certificates, as required by state law, have been provided, along with the name of the deceased, the name and address of the purchaser, the exact location of the plot, burial details, and payment information. Whenever possible, a person seeking a permit for interment shall provide the City with a copy of an Official Report of Death, Certificate of Death, or original death record for the State of Texas. The City shall use their best efforts to promptly issue requests for interment permits and shall when possible process issue permits within 24 hours of receiving all necessary information. A person or entity desiring to dig a grave in the Fairview Cemetery shall file with the Finance Director a corporate surety bond, payable to the City of Bastrop in the amount of five thousand dollars (\$5,000) which sum may be used to pay for any damages occurring to person or property in the process of digging the grave. The bond may be held by the City for application to future burials, or if for a single interment only, shall be returned after burial and inspection to assure the City that no damage has occurred.

- b. *Reopening of Graves.* Reopening a grave for the purpose of burying a second decedent, whether the decedent is cremated or intact, shall require an interment permit from the City under the same regulations set forth in 15.3(a), the payment of a corporate surety bond, payable to the City of Bastrop in the amount of five thousand dollars (\$5,000) which sum may be used to pay for any damages occurring to person or property in the process of reopening the grave, and the payment of a "Reopening Fee."

- c. *Payment in Full.* No permit will be issued for the opening or reopening of a grave until payment for the lot is received in full.
- d. *Twenty-Four Hour Notice.* The City shall require a minimum of twenty-four (24) hours notice prior to interment to issue the interment permit and identify the grave site for excavation and burial by a licensed or approved contractor. This requirement may be waived by the City Manager in the event of a hardship or special circumstances.
- e. *Information and Location of Plot.* The City shall not be liable for the information provided by a permit applicant and listed on the interment permit, including the identity of the person for whom interment is sought or errors in the location of a burial site.
- f. *Grave Depth.* The body of a decedent may not be buried in a manner so that the outside top surface of the container of the body is less than three feet below the surface of the ground. This regulation regarding grave depth applies even if two decedents are buried vertically in a grave. Accordingly, if more than one decedent is buried in a grave, the surface of the container for the decedent that is closer to the surface cannot be less than three feet below the ground.
- g. *Grave Backfilling.* All graves shall be backfilled and force settled by hydraulics or mechanical means to the satisfaction of the City staff overseeing the burial.
- h. *Grade Level.* All graves shall be maintained at the same level as the surface of the ground surrounding the plot. Under no circumstances, shall a grave mound be permitted to remain after a grave has settled.
- i. *Hand Digging.* The hand/shovel excavation of a grave is prohibited in the Fairview Cemetery, except for cremation sites with an interment permit. This prohibition may be waived at the sole discretion the City Manager should extenuating circumstances arise.

Sec. 15.14. Right of First Refusal.

No sale, transfer or assignment of title of any plot in the Fairview Cemetery shall be valid without the written consent of the City. All cemetery deeds for plots sold by the City in the cemetery shall provide the City with the "right of first refusal" which permits the City to repurchase the plot in the event the owner of a burial site wishes to divest his/her interest. The plot may be repurchased by the City in the amount the plot was originally sold to the owner. If no records exist to evident the original price paid, the city may repurchase the plot for the percent to be determined of the current existing plot price.

Sec. 15.15. Prohibited Activities.

- a. Construction or reconstruction, including, but not limited to fencing, trellises, coping, or other enclosures, whether of vegetation or other matter, is prohibited around any plot within the Fairview Cemetery, except, however, as of the effective date of this Ordinance, nonconforming, permanently installed fencing, coping, trellises or enclosures of any kind may remain 'as is.' In the event the nonconforming improvement is removed or damaged, the improvement will be removed without a replacement permitted. This section shall not apply to fencing or other improvement that, at the discretion of the City Council, is historical in nature and replacement or repairs can be made safe and in a manner that preserves the original historical design or integrity of the grave site.
- b. As of the date of this ordinance, curbing is permitted in all areas of the Fairview Cemetery where lots are available for purchase after the obtainment of the required construction permit from the City through an application to the Finance Director, and shall comply with all City and cemetery construction rules, specifications and requirements. Curbing shall not be permitted, however, in any area of the Cemetery not currently open for sale. This includes Block 8, as well as any additional blocks established after the effective date of this ordinance.
- c. No party shall enlarge, reduce, replat or change the boundaries or grade of the cemetery or the location of any roads, drives, walks parkways, or gardens, which shall be the exclusive right of the City. All grading, landscaping, planting, trimming, and cutting of trees and other vegetation shall be the sole responsibility of the City.
- d. No maintenance, decoration or preparation of any kind shall be permitted on a burial site until the City has received payment in full for the plot.
- e. No granite, brick, stone, wood, concrete, cornerstones or any kind of artificial walkways or walks are permitted on or adjoining plots in the Fairview Cemetery, except those existing prior to the passing of this Ordinance or installed by the City.
- f. No graves in the Fairview Cemetery shall be covered with a concrete slab or other type of slab or covering.
- g. Digging for the placement of potted plants, baskets or other items is strictly prohibited.
- h. Digging for the purpose of burying cremated remains is strictly prohibited without an interment permit from the city.
- i. The Fairview Cemetery is for the interment of human remains only, except as provided in section 15.12(g).

- j. The drinking of alcoholic beverages in the Fairview Cemetery is strictly prohibited.
- k. No dogs are permitted in the Fairview Cemetery, with the exception of service dogs providing assistance to individuals with physical disabilities.

Sec. 15.16. Monument, Memorial or Tombstones; Construction Permit Required.

- a. *Permit Required.* Any person desiring to erect a monument, memorial, tombstone or other marker in the Fairview Cemetery shall obtain a written construction permit from the City through an application to the Finance Director, and shall comply with all City and cemetery construction rules, specifications, and requirements.
- b. *Bond.* Prior to the issuance of a construction permit by the City for the purposes of building a monument, tombstone or other marker or memorial in the Fairview Cemetery, the applicant shall file with the Finance Director a corporate surety bond payable to the City in the amount of five-thousand dollars (\$5,000). The City, on notice to the applicant, shall be permitted to use the bond amount for the repair or replacement of cemetery property, if necessary, caused by a contractor, which repair and replacement shall be the sole responsibility of the individual performing the work.
- c. *Performance.* Concrete or other material used on a cemetery plot to build a monument, marker, memorial or tombstone shall be mixed and prepared in the streets of the Fairview Cemetery only and not on grass, dirt or other areas. The person performing such work shall, upon completion, immediately remove all sand, gravel, tools and other equipment from the cemetery and shall leave the cemetery property in the same or better condition as it was prior to performance of the work, including removing all trash or other litter.
- d. *Standards.* Permanent bronze, granite or marble monuments, markers, memorials or tombstones may be constructed at a grave site, however, the City shall have the right to refuse the placing of any item at a grave site if it is found that the memorial is not in compliance with this chapter or that the workmanship or foundation does not satisfy generally accepted standards in this area.
- e. *Height Restrictions.* Monuments, markers, memorials, or tombstones in the Fairview Cemetery shall be four (4) feet in height or less, unless otherwise approved by the City Manager.
- f. Mausoleum and Crypts are not permitted in the Fairview Cemetery.

Sec. 15.17. Placement of Objects in the Fairview Cemetery.

- a. No objects of any kind may be placed or planted on grave sites or other cemetery property, except as specifically provided herein. No advertising of any type is permitted in the Fairview Cemetery, including the posting of signs advertising the sale of private burial spaces, funeral homes, or grave digging services.
- b. Interested individuals shall have the right to place flowers, potted plants, wreaths, baskets, floral pieces, funeral designs, decorations, and sentimental objects on a grave.
- c. The City shall have the right to remove and dispose, in its sole discretion any item placed on a grave site that has become withered, unsightly or an obstruction to maintenance. Persons desiring to retain these objects must remove them within ninety-six (96) hours of placement. In no event shall the City be responsible for locating and returning items to the original owner.
- d. Holiday decorations on grave sites are permitted on a temporary basis only and may be placed no sooner than five (5) days prior to a City, State, or National holiday calendar date and must be removed from the site within ten (10) days of expiration of the holiday.
- e. Flags smaller than twelve (12) inches are permitted on graves sites, but may be removed by the City if they become weathered, unsightly, or pose maintenance problems.
- f. As of the date of this ordinance, benches, chairs, and settees are permitted in all areas of the Fairview Cemetery where lots are currently available for purchase. Benches, chairs, and settees are not permitted, however, in any area of the Cemetery not open for sale as of the date of this ordinance. This includes Block 8, as well as any additional blocks established after the effective date of this ordinance. Any bench, chair, or settee placed in the Fairview Cemetery must be aligned with the headstone if space is available on the plot or at the foot of the grave parallel to the headstone. The City shall not be responsible for the upkeep or protection of such items in the cemetery and may remove the items if they interfere with City maintenance or upkeep.
- g.. Up to two (2) flower vases twelve (12) inches in height or smaller may be placed on a headstone or monument. No glass or metal vases are permitted in the cemetery.

Sec. 15.18. Planting in the Fairview Cemetery.

- a. The planting of trees, shrubs, grass, flowers or other vegetation on graves other than by the City is strictly prohibited.

- b. Trees, shrubs, grass, flowers or other vegetation planted prior to the passing of this Ordinance shall be permitted to remain, unless the planting and/or roots becomes dangerous to adjacent plots, walkways or streets or becomes unsightly or inconvenient for other visitors. In such event, the City may remove the planting in its sole discretion.
- c. Any diseased or infected trees or shrubbery in the cemetery may be immediately removed by the City.

Sec. 15.19. Gravesite beautification by relations of deceased.

None of the rights, powers and duties provided for in this article shall deprive any person having any interest in a grave or plot from beautifying or caring for the grave or plot, individually, at his own expense, under the rules and regulations stated herein. Any person having an interest in a grave or plot that provides beautification, shall insure proper disposal of shrubs, bushes, weeds, trees, tree limbs, decorations, or any other objects removed from the site. If beautification is such that it includes landscape improvements of any kind, concrete work, fencing, or structure change, a permit from the City is required.

Sec. 15.20. Property Rights of Plot Owners.

- a. *Interment rights.* Interment rights of plot owners shall be as follows:
 - 1. A plot in which the exclusive right of burial is conveyed is presumed to be the separate property of the person named as grantee in the instrument of conveyance filed with the County Clerk's Office.
 - 2. The spouse of a person to whom the exclusive right of burial in a plot is conveyed has a vested right of interment in the plot while the spouse is married to the plot owner.
 - 3. A spouse's vested right of interment survives and is not divested by an attempted conveyance of the grave site without the joinder or written, attached consent of the spouse.
- b. *Termination of Vested Right.* A spouse's vested right of interment is terminated:
 - 1. On the final decree of divorce between the plot owner and the owner's spouse unless the divorce decree provides otherwise; or
 - 2. When the remains of the person having the vested right are interred elsewhere.

- c. *Other Burial Rights.* Unless a deceased plot owner has made a specific disposition of a plot by express reference in the owner's will or by a written declaration filed with the City, a grave shall be reserved for the surviving spouse of the plot owner first, and then plot owner's children, in order of need.
- d. *Waiver.* A surviving spouse or child of a deceased plot owner may waive, in writing, his/her right of interment in a grave site in favor of a relative up to the third degree of sanguinity of the owner or the owner's spouse. The person in whose favor the waiver is made may be interred in the plot.
- e. *Conveyance.* No sale, transfer or assignment of title of any plot in the Fairview Cemetery is valid without the written consent of the City endorsed upon the instrument of transfer or assignment and recorded in the records of the City and the County Clerk's office, which filing fee shall be paid by the grantee or grantor at the time of the conveyance. All conveyances are subject to the City's right of first refusal.
- f. *Multiple owners.* Two or more owners of a plot may designate a person to represent the plot and file with the City written notice of the designation. If notice is not filed, the City may inter or permit an interment in the plot at the request or direction of a registered co-owner of the plot.
- g. *Right of ingress and egress.* The City reserves to itself and to lawful invitees, a perpetual right of ingress and egress over plots for the passage to and from other plots.
- h. *Subdivision.* Individuals may not subdivide a plot without the consent of the City and the burial of the remains of any person not having an interest in the burial site shall be strictly prohibited without the written consent of all interested parties according to the records of the City and approved by the City.
- i. *Consent required for opening of caskets.* A casket containing human remains shall not be opened within the confines of the cemetery by a funeral director or his agent or employee without notice to the City twenty-four (24) hours in advance and without the consent of a legal representative of the deceased or by order of a court of competent jurisdiction.
- j. *Location of interment site.* When the instructions regarding the location of a plot cannot be obtained, are indefinite, or for any reason the grave cannot be opened where specified, the City may, in its discretion, order a plot opened in an alternative location within the cemetery as deemed best and proper and without delaying the funeral service. The City shall not be liable for the selection of the gravesite.

Sec. 15.21. Disinterment.

Disinterment and removal shall be conducted by qualified funeral homes or contractors only with a minimum of twenty-four (24) hours notice to the City, in writing, and at the sole cost of the requestor. The City shall provide assistance in coordinating the necessary procedures and records required with the qualified funeral home or contractor pursuant to the following regulations:

- a. *To a more desirable lot.* A body may be removed from its original plot to a larger or more desirable plot when there has been an exchange or purchase for that purpose and proper consent is obtained.
- b. *Care in removal.* The City shall provide assistance in coordinating with qualified funeral homes or contractors to ensure that the utmost care in making a removal is taken, but shall not be liable for damage to a casket, burial case or urn sustained in the removal.
- c. *Removal for profit.* Removal of remains for the purpose of resale of the plot for profit, or removal contrary to the expressed or implied desire to the original plot owner, is repugnant to the ordinary sense of decency and is forbidden.
- d. *Removal for autopsy.* Remains may be removed for autopsy only upon written consent as prescribed in subsection (e) of this section or by order of a court of competent jurisdiction.
- e. *Consent.* Remains interred in the cemetery may be removed from the cemetery with the written consent of the City, the state or local health department or County Court, and one of following individuals in the priority listed:
 1. The decedent's surviving spouse;
 2. The decedent's surviving children;
 3. The decedent's surviving parents; or
 4. The decedent's siblings.
- f. *Consent of court.* If the consent required by subsection (e) of this section cannot be obtained, the remains may be removed by consent of the County Court. Before the date of application to the court for consent to remove remains under this rule, written notice shall be given by the applicant to:
 1. The City;
 2. Each person whose consent is required for removal under subsection (e) of this section who refuses to provide consent to the removal; and
 3. Any other person that the Court states must be served.
- g. *Supervision of removals.* The City shall supervise the removal of remains from the cemetery.

Sec. 15.22. Miscellaneous Provisions.

- a. *Notarization of signatures.* The City reserves the right to require any or all signatures to be notarized.
- b. *Final decision.* In the event of a misunderstanding or dispute as to the meaning of any of these rules or regulations, the decision of the City Council shall be final and is not appealable.
- c. *Materials and equipment.* No material, machinery or other implements for the construction of memorials or other permitted structures may be placed in the cemeteries until required for immediate use. No such material, machinery or implement shall be placed upon an adjoining lot without the express permission of the City.

Sec. 15.23. Sole Agreement.

The purchase contract, deed, trust agreement, and these rules and regulations and all amendments thereto, shall constitute the sole and entire agreement between the City and a plot owner, and no other statement or promise by any officer, employee or sales agent shall be binding on the City.

Sec. 15.24. Modification and Amendment by the City.

- a. *Exceptions and modifications.* Special cases may arise in which the literal enforcement of a rule under this ordinance may impose unnecessary hardship, in which such case the City may without notice make an exception, suspension or modification when deemed advisable. However, such exemption, suspension or modification shall not constitute a waiver affecting the general application of such rule.
- b. *Amendment.* The City may adopt new rules or amend, alter and/or repeal any rule or regulation set forth within this Ordinance.

Sec. 15.25. Penalty and Fine.

Persons violating this ordinance are punishable by a penalty up to \$5000, plus damages and replacement costs, if applicable, and each day a violation occurs shall constitute a separate offense.

PART 2. The City Manager and City Secretary are hereby authorized and directed to make the necessary changes to all records of the City of Bastrop to reflect this amendment.

PART 3. All ordinances and resolutions, or parts of ordinances and resolutions, in conflict with this Ordinance are hereby repealed, and are no longer of any force and effect. If any provision of this Ordinance or application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the other provisions, or application thereof, of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are hereby declared to be severable.

PART 4. This Ordinance shall become effective in accordance with the City Charter and the laws of the State of Texas.

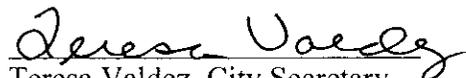
READ and ACKNOWLEDGED on First Reading on the 13th day of October 2009.

READ and ADOPTED on Second Reading on the 27th day of October 2009.

APPROVED:


Terry Orr, Mayor

ATTEST:


Teresa Valdez, City Secretary

APPROVED AS TO FORM:

Jo-Christy Brown
City Attorney

**FAIRVIEW CEMETERY ORDINANCE
EXHIBIT "A"
FEE APPENDIX**

Cost to Purchase one (1) Cemetery Plot	\$650.00*
Cost to File Warranty Deed with Bastrop County Clerk's Office	\$20.00*
Permit Fee	\$0.00*

*The City of Bastrop and Bastrop County Clerk's Office reserve the right to change the above referenced fees at any time at its discretion.