

ORDINANCE NO. 42-1994

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, PROVIDING FOR THE AUTHORIZATION OF THE LOCATION AND USE OF A CEMETERY LOCATED INSIDE THE BOUNDARIES OF THE CITY OF ABILENE.**

**WHEREAS**, Section 711.08 (k) of the Texas Health and Safety Code states that the governing body by ordinance may authorize the establishment or use of a cemetery located inside the boundaries of a municipality with the same population characteristics of Abilene if written application is filed with the governing body not later than September 1, 1994, and the municipality determines and states in the ordinance that the establishment or use of the cemetery does not adversely affect public health, safety, and welfare; and,

**WHEREAS**, The Abilene City Council adopted Ordinance 35-1994 establishing the application for the location and use of a cemetery inside the boundary of the City of Abilene; and,

**WHEREAS**, an application has been filed with the City Council not later than September 1, 1994, requesting that the Council authorize the location and use of a cemetery located inside the boundaries of the City of Abilene; and,

**WHEREAS**, the applicant has affirmed in the application that the establishment or use of the cemetery within the boundaries of the City of Abilene is in compliance with the City of Abilene Zoning Ordinance, will be in accordance with all applicable state and local laws and regulations, and will not adversely affect the public health, safety or welfare;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS:**

**Part 1:** That the described land provided in the "Application to establish or use a cemetery within Abilene City Limits" set out in Exhibit "A," attached hereto and made a part of this ordinance for all purposes, is hereby authorized for the establishment and use of a cemetery subject to all

applicable state and local laws and regulations, and that the same application is hereby approved.

**Part 2:** That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.


**Part 3:** That any person, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than Two Thousand Dollars (\$2,000.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.

PASSED AND APPROVED on the FIRST reading of this the 8 day of September, A.D., 1994. A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage, was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, said publication being on the 4 day of September, A.D., 1994, the same being more than fifteen (15) days prior to a public hearing to be held in the Council Chamber of the City Hall in Abilene, Texas, at 9:00 a.m., on the 22 day of September, A.D., 1994, to permit the public to be heard prior to final consideration of this ordinance. Said ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

FINALLY PASSED AND APPROVED on the SECOND reading on this the 22 day of September, A.D., 1994.

ATTEST:

  
CITY SECRETARY

  
MAYOR

APPROVED:

  
CITY ATTORNEY

EXHIBIT "A"

APPLICATION TO ESTABLISH OR USE A CEMETERY  
WITHIN ABILENE CITY LIMITS



Elliott-Hamil Funeral Home, Inc. 915-677-4355  
NAME OF APPLICANT TELEPHONE NO.

542 Hickory, Abilene, Texas 79601  
ADDRESS

Robert Hamil 915-677-4355  
AUTHORIZED AGENT OF APPLICANT TELEPHONE NO.

Same as above  
ADDRESS (IF DIFFERENT FROM ABOVE)

\*\*\*\*\*  
STREET ADDRESS OF PROPOSED CEMETERY, IF ANY 5701 Highway 277 South  
Abilene, Texas 79605

LEGAL DESCRIPTION OF PROPOSED CEMETERY:  
See Exhibit A attached hereto.

Applicant, as a condition of granting this application, shall protect, indemnify, and hold harmless the City, its officers and employees against all claims, suits, causes of action in any way arising out of the granting of this application, directly or indirectly. This provision is not intended to create and shall not create liability for the benefit of third parties, but is solely for the benefit of the City, its officers and employees.

Upon commencement of any suit or proceeding at law or in equity against the City, its officers and employees related to the application granted herein, the City shall give applicant reasonable notice of such suit or proceeding, whereupon the applicant shall provide a defense to such suit or suits, including any and all appellate proceedings brought in connection therewith, and pay any judgment or costs that may be rendered against the City, its officers and employees by reason of said suit.

Upon failure of applicant to comply with the defense of the suit, after reasonable notice to applicant by the City, the City shall have the right to defend the same and in addition to being reimbursed for any such judgment that may be rendered against the City, its officers and employees, together with all court costs incurred therein, the applicant shall reimburse the City for attorney's fees, including any attorneys employed by the City in such case or cases, as well as all expenses, fees, or costs incurred by the City by reason of undertaking the defense of such suit or suits, whether such suit or suits are successfully defended, settled, compromised, or fully adjudicated against the City, its officers and employees. In the event the City is compelled to undertake the defense of any suit by reason of the applicant's failure to perform as provided herein, the City shall have the full right and authority to make or enter into any settlement or compromise of such adjudication as the governing body shall deem is in the best interest of the City, including the cancellation of applicant's approved application for cemetery, without prior approval or consent of the applicant. Such right of cancellation shall terminate upon the first interment at a cemetery where an application has been granted pursuant to this ordinance.

In defense of any litigation, the City shall require the applicant to present on the City's, its officers' and employees' behalf, and in the City's name, any and all defenses that are available, including but not limited to sovereign and qualified immunity.

I swear or affirm that the establishment or use of a cemetery within the boundaries of the City of Abilene as proposed in this Application will be in compliance with the City of Abilene Zoning Ordinance, will be in accordance with all applicable state and local laws and regulations, and will not adversely affect the public health, safety or welfare. In addition, I affirm that (1) above ground crypts shall be floodproofed and restrained in such a manner as to resist flotation and lateral movement; (2) upright headstones shall be restrained in such a manner to resist lateral movement produced by floodwaters; and (3) below ground vaults shall be secured in such a manner to prevent flotation from ground water pressure. Vault lids shall be attached in such a manner to prevent separation.

*Robert S. Hannell*

Applicant or Authorized Agent

Title: Authorized Agent

SUBSCRIBED AND SWORN TO before me this 18 day of August A.D. 19 94, to certify which witness my hand and seal of office.

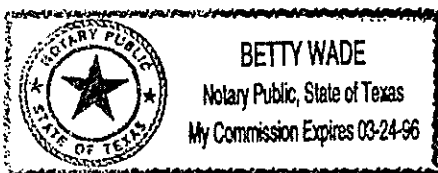
*Betty Wade*

NOTARY PUBLIC, STATE OF TEXAS

My Commission Expires: 3-24-96

*Betty Wade*

Printed/Stamped Name of Notary



APPROVED BY CITY COUNCIL September 22, 19 94

COJER ENGINEERING AND SURVEYING, INC.

1165 Lytle Way • Suite B

Abilene, Texas 79602

(915) 673-3704

EXHIBIT "A"

Being 43.2590 acres out of a 46.87 acre tract as recorded in Volume 893, Page 463, Deed Records, Taylor County, Texas out of a 92.635 acre tract recorded in Volume 1202, Page 630, Deed Records, all out of the William Bishop Survey 43, Taylor County, Texas and said 43.2590 acre tract being more particularly described as follows:

Beginning at a set 1/2" metal rebar on the East R.O.W. line of U.S. Highway 277 for the Northwest corner of said 46.87 acre tract, being the Southwest corner of Southern Sands Addition, Section 1, recorded in Plat Cabinet 2, Slide 89-D, Plat Records of Taylor County, and the Northwest corner of said 92.635 acre tract, for the Northwest corner of this tract, from which the Southwest corner of said 46.87 acre tract, a found 1/2" metal rebar bears S37 deg. 41'W 800.0', from which the Southeast corner of said Bishop Survey is called to bear S 37 deg. 41'W 775' and East 3450.7';

Thence S89 deg. 55' 09"E with the North line of said 46.87 acre tract and the South line of said Southern Sands Addition, Section 1, and the South line of Southern Sands Addition, Continuation No. 1 and Continuation No. 2, Section 1, recorded in Plat Cabinet 2, Slide 182-C, and Plat Cabinet 2, Slide 240-D, Plat Records, and the South line of a 3.45 acre tract recorded in Volume 1583, Page 655 Deed Records, at 3025.60' pass a 1/2" metal rebar set for reference and continue on for a total distance in all of 3114.2' to a point in the center of Elm Creek for the Northeast corner of this tract;

Thence up Elm Creek with it's meanders as follows: S12 deg. 14'W 115.10', S28 deg. 38'24"W 242.11', S 28 deg. 47'39"W 176.36', S 42 deg. 50' 30"W 163.70' and S 58 deg. 30'46"W 55.85' to a point on the South line of said 46.87 acre tract for it's Southeast corner and the Southeast corner of this tract;

Thence West with the South line of said 46.87 acre tract at 170.51' pass a 1/2" metal rebar set for reference and continue on for a total distance in all of 2706.91' to a set 1/2" metal rebar for the most Southerly Southwest corner of this tract and the Southeast corner of Elliot Hamil Addition, Section 1, recorded in Plat Cabinet 2, Slide 185-A, Plat Records;

COJER ENGINEERING AND SURVEYING, INC.

1165 Lytle Way • Suite B

Abilene, Texas 79602

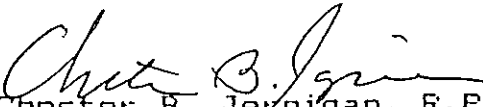
(915) 673-3704

Thence North with the East line of said Elliot Hamil Addition at 298.22' pass a set 1/2" metal rebar at it's Northeast corner and continue on a total distance in all of 336.13' to a set 1/2" metal rebar at the Northeast corner of a 30' wide street dedication as shown by said plat recorded in Plat Cabinet 2, Slide 185-A, for an interior corner of this tract;

Thence N52 deg. 19' W with the North line of said 30' wide Street dedication 199.72' to a set 'X' in a concrete walk at it's Northwest corner and being on the East R.O.W. line of said U.S. Highway 277 and the West line of said 46.87 acre tract;

Thence N37 deg. 41' 00"E with the said R.O.W. line and the West line of said 46.87 acre tract, 221.0' to the place of beginning and containing 43.2590 acres more or less.

Surveyed on the ground June 23, 1994.

  
Chester B. Jernigan, R.P.L.S.  
R.P.L.S. No. 2078

PAGE 2 OF 2

00164