

AN ORDINANCE AMENDING CHAPTER 23, "PLANNING AND COMMUNITY DEVELOPMENT," SUBPART E, "ZONING," OF THE ABILENE MUNICIPAL CODE, BY AMENDING CERTAIN SECTIONS AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY AND CALLING A PUBLIC HEARING.

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

PART 1: That Chapter 23, Subpart E, "Zoning," of the Abilene Municipal Code be amended as set out in Exhibit "A," attached hereto and made a part of this ordinance for all purposes.

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 ON FIRST READING this 14 day of July 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 19 day of June, 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 14 day of July, 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.

PASSED ON SECOND AND FINAL READING THIS 28 day of July, A.D. 1994.

ATTEST:


CITY SECRETARY


MAYOR

APPROVED:


CITY ATTORNEY

EXHIBIT "A"

Amend: Section 23-306.5.E.(2) Cemeteries

DELETE: Cemeteries, crematories, or mausoleums shall have the principal entrance or entrances on an arterial street, and shall provide screening on all property lines abutting any residential district or residential street.

ADD: (a) Cemeteries, crematories, or mausoleums shall have the principal entrance or entrances on an arterial street, and shall provide screening on all property lines abutting any residential district or residential street.

(b) A person desiring to establish or use a cemetery located inside the boundaries of the City of Abilene must submit an application to the City Council. No person may establish or use a cemetery located inside the boundaries of the City of Abilene without the approval of the City Council.

(c) 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 had 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.

- (d) An application under this section must contain:
- (1) The name, address and telephone number of the applicant;
 - (2) The name, address, and telephone number of the applicant's authorized agent, if any;
 - (3) The street address of the property proposed to be used as a cemetery, if any;
 - (4) The legal description of the property proposed to be used as a cemetery;
 - (5) A sworn affidavit, executed by the applicant or the applicant's authorized agent, stating that:
 - a. The proposed establishment or use of the property as a cemetery will be in compliance with the City of Abilene Zoning Ordinance;
 - b. The proposed establishment or use of the property as a cemetery will be in accordance with all applicable state and local laws and regulations, including, but not limited to Chapters 711 and 712 of the Texas Health and Safety Code; and
 - c. The proposed establishment or use of the property as a cemetery will not adversely affect public health, safety or welfare.
 - d. Above ground crypts shall be floodproofed and restrained in such a manner as to resist flotation and lateral movement.
 - e. Upright headstones shall be restrained in such a manner to resist lateral movement produced by floodwaters.
 - f. 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.
- (e) In the event the City Council determines that the establishment of a cemetery upon the subject property complies with the City of Abilene Zoning Ordinance and does not adversely affect public health, safety or welfare, the application shall be granted. NOTE: Special Exception approval is also required by the Board of Adjustment in GC, HC, LI, and HI districts.