

Legal Q&A

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May a city own a cemetery?

Yes, a city may acquire burial grounds by gift, devise, purchase, or eminent domain. TEX. LOC. GOV'T CODE § 331.001. The land acquired may be inside or outside the city, but it must be within the county in which the city is located. The land may be acquired in any size tract considered suitable by the city council. *Id.* A city is also specifically authorized to purchase, establish, and regulate a cemetery or enclose and improve a cemetery already owned by the city. TEX. HEALTH & SAFETY CODE § 713.001. The city council of a type A general law city is authorized to regulate the burial of the dead. TEX. HEALTH & SAFETY CODE § 694.003.

May a city act as a permanent trustee for the maintenance of the lots and graves in a cemetery?

If a city owns or operates a cemetery or has control of cemetery property, then it may act as trustee for the cemetery. To act as a trustee, a majority of the city council must adopt an ordinance or resolution stating the city's willingness and intention to act as a trustee. When the ordinance or resolution is adopted and the trust is accepted, the trust is perpetual. TEX. HEALTH & SAFETY CODE § 713.002.

May a city accept donations for the maintenance of the lots and graves?

A city that is a trustee for the perpetual maintenance of a cemetery may adopt procedures to receive a gift from any source and may determine the amount necessary for permanent maintenance of a grave or burial lot, including a family lot. TEX. HEALTH & SAFETY CODE § 713.003(a). A city that is a trustee for any person shall accept the amount it requires for permanent maintenance of a grave or burial lot on behalf of that person or a decedent. The city's acceptance of the deposit is a perpetual trust for the designated grave or burial lot. When the city accepts the deposit, the city secretary must issue a certificate stating the depositor's name, the amount and purpose of the deposit, and the location of the grave to be maintained. TEX. HEALTH & SAFETY CODE § 713.003(d). In addition to donating for a specific burial site, an individual, association, foundation, or corporation may donate funds to the trust fund for beautification and maintenance of the burial grounds, generally. TEX. HEALTH & SAFETY CODE § 713.003(e).

What is a city required to do when receiving a deposit for a designated grave or lot?

When accepting the deposit, the city secretary, clerk, or mayor must issue a certificate in the name of the city to the trustee or depositor. The certificate must state: (1) the depositor's name; (2) the amount and purpose of the deposit; (3) the location, as specifically as possible, of the grave, lot, or burial place to be maintained; and (4) any other information required by the city. TEX. HEALTH & SAFETY CODE § 713.003.

How is a city required to retain these records?

A city must maintain a permanent, well-bound record book that includes for each deposit made: (1) the name of the depositor, listed in alphabetical order; (2) the purpose and amount of the deposit; (3) the name and location, as specifically as possible, of the grave, lot, or burial place to be maintained; (4) the condition and status of the trust imposed; and (5) other information required by the city. TEX. HEALTH & SAFETY CODE § 713.005.

Are there any revenue sources available to fund operations of cemeteries by the city?

Yes, a city that serves as a trustee for a cemetery, inside or outside of city limits, may levy up to a five-cent (per \$100) property tax within the city to fund the cemetery operations. TEX. HEALTH & SAFETY CODE §§ 713.002 and 713.006.

How is a cemetery tax levied?

The state statute is silent on the procedures for levying a cemetery tax. Because a city could simply increase its general revenue property tax by any amount to pay for cemetery costs, a court would likely find that the cemetery property tax was intended by the legislature to be a stand-alone property tax, levied separately (though perhaps at the same time) from the general revenue property tax. Likewise, the cemetery property tax would presumably operate outside the city's usual effective and rollback property tax calculations; otherwise, it would have no independent significance. Nothing in the statute would prohibit the appraisal district and tax collector from administering the tax, however.

A city desiring to levy a cemetery property tax should consult with its city attorney about drafting a proper ordinance.

May a city exempt a cemetery from paying drainage fees?

Yes, a city may exempt property used for cemetery purposes from drainage charges under if the cemetery is closed to new interments and does not accept new burials. TEX. LOC. GOV'T CODE § 552.053(d-1).

How can a city address an abandoned cemetery?

If the cemetery is within the city's limits or its extraterritorial jurisdiction, the city council can pass a resolution to take possession and control of the cemetery on behalf of the public if the cemetery threatens public health, safety, comfort, or welfare. TEX. HEALTH & SAFETY CODE § 713.009.

What information must the city's resolution to take possession and control of an abandoned cemetery contain?

The resolution must specify that, not later than the 60th day after the date of giving notice of a declaration of intent to take possession and control, the city must present a plan to: (1) remove or repair any fences, walls, or other improvements; (2) straighten and reset any memorial stones or embellishments that are a threat or danger to public health, safety, comfort, or welfare; and (3)

take proper steps to restore and maintain the premises in an orderly and decent condition. TEX. HEALTH & SAFETY CODE § 713.009(d).

Does the city have to notify anyone before taking possession of the cemetery?

The city must give notice, by mail, of its intent to possess the cemetery to all persons with an interest in the cemetery according to the records in the county clerk's office. TEX. HEALTH & SAFETY CODE § 713.009(e). Notice must also be provided to the Texas Historical Commission, and the city must publish notice in a newspaper of general circulation in the city. *Id.*

If a city takes control of an abandoned cemetery, must it remain open to the public?

Yes, the city must keep the cemetery open to the public. TEX. HEALTH & SAFETY CODE § 713.009.

Is a city required to maintain a cemetery owned by the city?

Yes, a city is responsible for repairing and maintaining any fences, walls, buildings, or roads, as well as leveling or straightening markers or memorials. A city must also maintain the cemetery's lawns, shrubbery, and plants, and must remove any debris. Finally, a city is required to promptly restore gravesites following an interment. TEX. HEALTH & SAFETY CODE § 713.011.

Is it a crime to deface a gravestone?

Yes, using paint, an indelible marker, or an etching or engraving device to make markings, including inscriptions, slogans, drawings, or paintings on a human burial or a public monument is a state jail felony. TEX. PENAL CODE § 28.08.

May a city regulate funeral service disruptions?

State law prohibits an individual from picketing within 1,000 feet of a facility or cemetery being used for a funeral service during the period beginning three hours before the service begins and ending three hours after the service is completed. Picketing is defined as standing, sitting, or repeated walking, riding, or driving by a person displaying or carrying a banner, placard, or sign. It also includes engaging in loud singing, chanting, whistling, or yelling, with or without noise amplification through a device such as a bullhorn or microphone or blocking access to a facility or cemetery being used for a funeral service. This offense is a class B misdemeanor. TEX. PENAL CODE § 42.055.