

STATE OF GEORGIA
CITY OF MCDONOUGH

ORDINANCE NO. 22-11-21

AN ORDINANCE AMENDING THE CITY OF MCDONOUGH, GEORGIA, CODE OF ORDINANCES TO CREATE A NEW TITLE 19, MUNICIPAL CEMETERY, AND FOR OTHER LAWFUL PURPOSES

WHEREAS, the City of McDonough (“City”) is a municipal corporation duly organized and existing under the laws of the State of Georgia;

WHEREAS, the duly elected governing authority of the City of McDonough, Georgia are the Mayor and Council (“City Council”) thereof;

WHEREAS, the City is authorized pursuant to Section 2.17(b) of the City Charter to adopt ordinances resolutions, rules and regulations deemed necessary, expedient, or helpful for the good order, welfare, prosperity and well-being of the City;

WHEREAS, the City is authorized under Georgia law to make reasonable rules and regulations concerning the City cemetery, which includes the selling of burial lots. O.C.G.A. § 36-37-6;

WHEREAS, the City desires through this Ordinance to help ensure that the City cemetery is a quiet and beautiful place for the deceased and visitors;

WHEREAS, the rules and regulations herein been established in furtherance of such desire; and

WHEREAS, this Ordinance is in the best interest and general welfare of City residents, the general public and City.

THE COUNCIL OF THE CITY OF MCDONOUGH HEREBY ORDAINS as follows:

Section 1. The City of McDonough Code of Ordinances is hereby amended by adding a new Title 19, Municipal Cemetery, which shall read as follows:

TITLE 19 – MUNICIPAL CEMETERY
CHAPTER 19.04 - GENERAL

19.04.010 - Definitions.

The following words, terms and phrases, when used in this title, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- a. *City cemetery and/or cemetery* means the area of real property owned by the City of McDonough and set aside by the city for the purpose of interment of the remains of deceased persons.
- b. *Cemetery Coordinator* means any person/entity designated by the city administrator.
- c. *Grave, plot and/or lot* means the deeded portion of property measuring five feet by ten feet (one-person plot) or ten feet by ten feet (two-person plot) set aside by the city for the specific purpose of receiving the remains of a deceased person.
- d. *Interment* means the burial of human remains but shall not include the opening and closing of a grave space, crypt or niche; nor the installation of a vault.
- e. *Owner* means the purchaser of the grave/lot, or heirs and/or an executor to such purchaser's estate. Also referred to as "*grave owner*" or "*lot owner*."
- f. *Vault* means an enclosure into which a casket is placed and includes, but is not limited to, containers made of concrete, steel, fiberglass, copper or other metals, sectional concrete enclosures, or crypts.

19.04.020 - Lot sales.

- a. *Authorization Required.* The purchase price of cemetery lots shall be as set forth in the city's schedule of cemetery fees and charges. No lots shall be sold in city cemetery sections not opened by the city.
 - b. The city clerk shall be authorized to take applications for cemetery lots. The city clerk shall be authorized to execute deeds to city cemetery lots.
 - c. *Sale or Transfer by Owner.* Owners of city cemetery lots shall not be permitted to sell or transfer such lots without the written notification to the city clerk.
 - d. *City right to lot access.* The city reserves a perpetual easement to go with any and all burial lots, as may be necessary for maintenance and to fulfill any duties and rights set forth under local, state or federal ordinances, regulations or law.
 - e. *Human remains only.* City cemeteries will only accommodate the burial of human remains. ~~No other remains other than human remains shall be buried by any person in any city cemetery.~~
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19.04.030 - Recordation.

The city clerk shall keep a record pertaining to the ownership of all lots in the city cemetery, which shall be open to public inspection as required by law.

19.04.040 - Fees.

A schedule of cemetery fees will be on file at City Hall for lot sales permits and other activities set forth under this title.

19.04.050 - Cemetery hours.

It shall be unlawful for any person to enter or be upon the grounds or premises of any city cemetery at any time after sundown and before sunup, without the consent of the city.

19.04.060 - Driving in cemetery.

It shall be unlawful to operate or drive any motor vehicle in the city cemetery, except on the designated streets and thoroughfares. It shall be illegal for any person to drive any motor vehicle across or over any concrete walls or markers in the city cemetery, or at a speed exceeding 5 miles.

19-08-070 - Disinterment.

No disinterment shall be allowed, except as provided by state law. Any court order for disinterment must be brought before the Henry County Coroner or city Police and/or his assignees.

19.04.080 - Vandalism.

It shall be unlawful to mutilate or deface any portion of a grave in the city cemetery. Anyone convicted of this offense in the municipal court may be sentenced within the maximum sentencing guidelines of state law and the city charter. If lots are vandalized, the cemetery coordinator may immediately clean the lot without notifying the owner.

19.04.090 - Plans for grounds.

The city council, from time to time, may lay out or alter such avenues or walks, or make such rules and regulations for the government of the ground as they may deem requisite or proper to promote the general objects of the cemetery.

19.04.100 - Subsequent regulations; nonliability of city.

- a. The city council reserve to themselves and their successors in office the right to alter, amend, modify or add to the rules, regulations, conditions, and restrictions set forth in this title at any time it is deemed advisable to do so in order to carry out the purposes of this title.
- b. There shall be no liability whatsoever, either tort or contractual, on the part of the city, or its officials or officers, or their successors in office, or its agents or employees, to any purchasers of any lots in the cemetery, or to any person holding under them, or to the family or relatives of any person buried in the cemetery, or to any person or the family of such person who has erected any monument, marker, or mausoleum therein, by reason of any act, thing, omission, negligence, or otherwise relating to the cemetery. In accepting any conveyance of any burial lot, each purchaser agrees that all provisions of this title are valid and that he and his heirs and assigns shall hold such lot subject to all the provisions of this title and subject to all amendments to this title made by the city council.

CHAPTER 19.08 - BURIAL

19-08-010 - Burial permit required.

- a. *Permit/qualified personnel required.* No interment and/or grave digging shall occur in the city cemetery without a licensed funeral director and a city-issued burial permit.
- b. *Notice Required.* The grave lot owner shall apply at City Hall for a burial permit no less than twelve (12) business hours before the requested burial time, and present a copy of the deed or evidence showing entitlement to the lot. The owner shall also provide information on the deceased as to name, date of death, birthdate, age and last residential address.
- c. *Fee.* The fee for said burial permit shall be as set forth in the schedule of cemetery fees and charges.
- d. *Marking of lot boundaries; encroachments prohibited.* Lot owners shall have the cemetery coordinator physically mark the corners of the lot prior to burial therein. No lot owner shall encroach upon another lot. The City of McDonough shall verify that the proposed location of the grave is a valid location prior to the issuance of said permit.

19.08.020 - Grave opening and closing.

- a. *Contract for service.* The funeral director shall be responsible for grave opening and closing *except under conditions of disinterment.*

b. *Vaults.*

1. Vaults are required for all burials.

2. Vaults must be a minimum of thirty-eight (38) inches wide.
3. Vaults must be made of concrete, fiberglass, steel, or an equally leak-proof substance. Wooden boxes shall not be used for vaults.
4. No grave shall be less than four feet to the bottom of the vault.
5. No grave shall be dug closer than one foot from the side line of the grave lot.

c. *Cremation vaults.*

1. Cremation vaults are required and shall have a minimum of 24 inches of dirt covering the cremation vault top.
2. Burial of cremains are limited to no more than four per grave.

d. *Maintenance following closing of grave.*

1. At least two feet of dirt shall cover the top of the vault and shall be leveled off in a timely manner and a permanent grave site covering be made or placed on the grave.
2. The lot owner and grave service company are responsible for insuring that all excess dirt, rock and other debris from the burial is removed from the city cemeteries within 30 days of the date of burial.
3. Graves not leveled and cleared of dirt, rock and debris within 30 days, shall be leveled and cleared by the city; and, funeral home shall be fined \$100.00 per day.
4. In no case shall one grave serve as a resting place for more than one body.

e. *General maintenance.*

1. General maintenance may be done on the lots by plot owners or their contractors at any time the cemetery is open, except while a burial is in progress.

2. *Duty to maintain lot.* All lot owners and their representatives shall comply with all applicable local, state and federal laws, and shall keep their lots neat and clean at all times and shall not abandon the cemetery lots. Maintenance which must be performed by the city due to owner neglect shall be charged to the plot owner at cost or as may be otherwise prescribed by the city council.
3. *Placing of flowers, wreaths and other decorations.* Lot owners may place flowers, wreaths, etc., limited only on their plots, at any time. Florals of artificial materials shall be removed when they encroach upon other cemetery lots/property or become faded, weather-beaten, or otherwise unsightly and objectionable to the general appearance of the cemetery.
4. *Weeds, debris.* It shall be unlawful for the owner of any cemetery plot to allow their plot to grow up in weeds or tall grass or to become littered with debris of any kind.

5. *Care of cut or planted materials.* It is the responsibility of the plot owner and members of the family of the deceased to water and care for cut and potted flowers or plants so as to help keep them alive and fresh. Cut and potted flowers or plants will not be removed by

the city so long as they are kept in proper condition to prevent being unsightly; however, planted materials which violate this title may be removed by the city.

- f. *Liability for damages and violations.* The contractor shall assume responsibility for all damages attending the execution of any work in the cemetery and shall be held liable for any violations of the rules and regulations of the cemetery or the laws and ordinances of the city.
- g. *Duty to protect work, repair damage.* The contractor shall provide adequate protection for his work and shall bear the cost of repairing or replacing any damage done by him, his workmen, or his equipment.
- h. *When work should stop.* All work of any description shall cease while a funeral or interment is being conducted nearby, and trucks and workmen will withdraw to a reasonable distance from the service. All workmen employed by the contractors while within the cemetery are subject to all regulations of this article and the city.
- i. *Confining of equipment; observance of regulations.* The contractor must confine his equipment and supplies to the owner's lot or an area agreed upon with the city. The contractor and any person employed by him shall observe all rules and regulations of the cemetery.

19.08.030 - Erection of monuments, gravestones and markers.

- a. Grave headstones, markers and monuments must be inside the boundaries of the owner's lot by six inches on all sides.
- b. Repair of damage to headstones, markers and monuments shall be the responsibility of the owner and be completed within forty-five (45) days of notification to the owner.
- c. Each headstone and foot stone shall have a six-inch concrete base or footing.
- d. *Walls and lot enclosures.* Walls and lot enclosures shall require written preapproval by the City, and shall be constructed in accordance with the specifications, rules and regulations prescribed by the city.

19.08.040 - Aboveground vaults, crypts, or mausoleums.

- a. Interments in mausoleums or tombs, either wholly or partially aboveground, are permitted, provided the following general conditions are met:
 - 1. A sarcophagus with one or more crypts shall be considered as a tomb. A building having a vestibule, fitted with a bronze door or doors, and having one or more crypts, is a mausoleum.
 - b. Tombs and mausoleums shall be constructed:
 - 1. By a qualified, bonded mausoleum contractor using Best Management Practice (BMP) for the industry;
 - 2. With granite or equivalent exteriors; and

3. Using precast concrete or equivalent for the interior.

CHAPTER 19.12 – CEMETERY TRUST FUND

19-.12.010 - Established.

The city finance director shall establish a trust fund to be known as the McDonough Cemetery Trust Fund, referred to in this article as the trust fund, for the purposes of the perpetual care and maintenance of the city cemetery.

19.12.020 - Appropriations and investment.

- a. The trust fund shall be subject to the review and approval of an annual budget by the city council. Any unbudgeted expenditures or transactions must have prior approval of the city council. The trust fund shall be audited each year with the annual city audit.
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Section 2. It is hereby declared to be the intention of the City Council that:

- (a) All sections, paragraphs, sentences, clauses and phrases of this Ordinance are or were, upon their enactment, believed by the City Council to be fully valid, enforceable and constitutional.
- (b) To the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. No section, paragraph, sentence, clause or phrase of this Ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this Ordinance.
- (c) In the event that any phrase, clause, sentence, paragraph or section of this Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the City Council that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of the Ordinance.

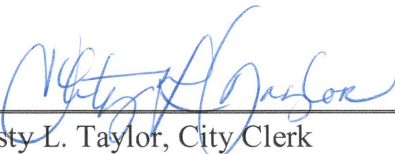
Section 3. The City’s legal counsel and City Clerk are authorized to make non-substantive editing and renumbering revisions to this Ordinance for proofing and renumbering purposes.

Section 4. The effective date of this Ordinance shall be the date of adoption, unless provided otherwise by the City Charter, state and/or federal law.

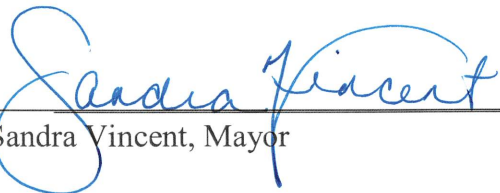
BE IT SO RESOLVED, this 21st day of November, 2022.

ATTEST:

CITY OF MCDONOUGH, GEORGIA:



Christy L. Taylor, City Clerk



Sandra Vincent, Mayor

