

Chapter 7

CEMETERIES*

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***Cross references**—Streets, sidewalks and other public places, ch. 26; general zoning provisions for cemeteries, app. C, art. VI, § 10.13.

State law references—Authority of city to own and regulate cemeteries, Code of Ala. 1975, §§ 11-47-40—11-47-42; location and extension of cemeteries, Code of Ala. 1975, § 22-20-4.

ARTICLE I. IN GENERAL**Sec. 7-1. Application of article provisions.**

The provisions of this article apply to all cemeteries in the city.

Sec. 7-2. Establishment of lawfully operated cemetery; operation of cemetery without sexton or superintendent unlawful; powers and duties.

(a) Every cemetery, to be lawfully established and operated, shall provide to the mayor, or his designee, a business license, proof of ownership and the identity of the current sexton or superintendent.

(b) It shall be unlawful for any cemetery in the city to operate without a designated sexton or superintendent, whose duty it shall be to enforce all laws and regulations affecting such cemetery and its operation.

(c) Each such sexton or superintendent, when approved by the mayor, or his designee, shall have the power and authority of the city for the enforcement of such laws and regulations. There may be more than one sexton or superintendent for a cemetery, and a person may be a sexton or superintendent of more than one cemetery.

(d) In cases where a cemetery is owned by a business entity (i.e., firm, partnership, association of persons, corporation, etc.), such business entity shall designate the name and address of its chief executive officer or general manager who has the primary responsibility for operating such cemetery. The name of the designee shall be filed by the person owning or operating a cemetery with the city, on or before September 1 of each year and each time a cemetery changes ownership. The designee shall be the person arrested and prosecuted for violations of subsections (a) and (b) of this section.

(e) In cases where a cemetery is owned by a church or other non-profit organization, such entity shall designate the name and address of the person who has primary responsibility for operating such cemetery. The name of the current designee shall be filed by the entity owning or operating the cemetery with the city, on or before September 1 each year, or at any time there is a change in the designee.

(Code 1980, § 11-1; Ord. No. 17-2013, § 1, 4-2-2013)

Editor's note—Ord. No. 17-2013, § 1, adopted April 2, 2013, changed the title of section 7-2 from "Cemeteries to be supervised; powers and duties of sextons" to "Establishment of lawfully operated cemetery; operation of cemetery without sexton or superintendent unlawful; powers and duties." The historical notation has been preserved for reference purposes.

Sec. 7-3. Register of burials and map to be kept.

The sexton or superintendent of each cemetery in the city shall keep a permanent register, alphabetically indexed, of all burials in such cemetery, with the name, age, sex, color, place of

birth, residence and place and time of death, of each person buried in such cemetery. He shall also keep a map of such cemetery and shall mark on such map the place of each burial as soon thereafter as possible.

(Code 1980, § 11-2)

Sec. 7-4. Cemetery maintenance.

(a) Every person owning or operating a cemetery in the city shall provide permanent maintenance and care for such cemetery to keep it clean and free from rubbish, waste and weeds, shrubs and other vegetative growth higher than six inches.

(b) It shall be the duty of every person owning or operating a cemetery in the city to cut or mow the weeds, shrubs and other vegetative growth and grass thereon to a height of not more than six inches.

(c) Whenever maintenance of the cemetery is neglected and in violation of the provisions chapter 12 of the City Code, the housing code department may declare condition of the cemetery is a public nuisance and abate the condition pursuant to that chapter.

(Code 1980, § 11-3; Ord. No. 45-82, §§ 1—4, 6-22-1982; Ord. No. 17-2013, § 1, 4-2-2013)

Sec. 7-5. All work to be performed under supervision of sexton.

All work done in a cemetery shall be performed under the supervision of the sexton or superintendent of the cemetery.

(Code 1980, § 11-4)

Sec. 7-6. Digging and filling of graves.

It shall be unlawful to bury or inter the body of a human being in a grave or other excavation in the city which is less than four feet in depth, and every such body or the casket containing the body shall be covered with soil to a depth of not less than two feet below the natural level of the surface of the surrounding ground at the edges of the grave or excavation. All graves shall be kept filled with dirt to the level of the surface of the surrounding ground. The owner or operator of a cemetery and the sexton or superintendent of the cemetery shall see that the provisions of this section are complied with.

(Code 1980, § 11-5)

Sec. 7-7. Construction of vaults.

All vaults shall be constructed of reinforced concrete of one-two-four mixture or of equally indestructible material approved by the health officer.

(Code 1980, § 11-6)

Sec. 7-8. Duties of undertakers as to graves and vaults.

Undertakers acting at interments shall cause every grave to be properly filled and every tomb and vault properly opened and closed.

(Code 1980, § 11-7)

Sec. 7-9. Graves to be marked.

Each grave shall be marked with a marker made of indestructible material, and such marker shall contain such information as will readily identify the person buried there. Such markers shall be maintained so long as such cemetery is used for burials.

(Code 1980, § 11-8)

Sec. 7-10. Monument foundations.

All monument foundations shall be placed on solid masonry or concrete, and all such foundation work shall be under the control and direction of the sexton or superintendent of the cemetery.

(Code 1980, § 11-9)

Sec. 7-11. Construction of concrete slabs on graves.

Where graves are covered with concrete slabs, the concrete shall be of a one-two-four mixture and shall be reinforced with wire or other satisfactory material in such manner as to prevent cracking.

(Code 1980, § 11-10)

Sec. 7-12. Area used for burial not to be used for additional burials.

No body of a human being shall be buried in an area which has been used for a former burial or interment.

(Code 1980, § 11-11)

Sec. 7-13. Persons erecting monuments, tombstones, statuaries or vaults; construction to be licensed.

No person owning, operating or in charge of any cemetery in the city shall allow any person to erect or construct within such cemetery any monument, tombstone, statuary or vault, unless such person has a license from the city to do such work.

(Code 1980, § 11-12)

Sec. 7-14. Animals and trespass.

It shall be unlawful for any person to allow a dog to run at large in any cemetery in the city, or to molest any squirrels or birds therein, or for any person to attempt to enter or enter any such cemetery after nightfall, without the written permission of the superintendent or sexton thereof.

(Code 1980, § 11-13)

Cross reference—Animals, ch. 4.

State law reference—Trespass, Code of Ala. 1975, § 13A-7-1 et seq.

Sec. 7-15. Injuries to property or planting.

It shall be unlawful for any person wilfully or maliciously to injure, deface, break or destroy any tomb, monument, gravestone or memorial in any cemetery in the city, or, without permission from the owner of the lot, to remove from any lot or other place in a cemetery any decoration, flower or other thing deposited upon such lot, left therein or planted thereon.

(Code 1980, § 11-14)

State law reference—Criminal mischief, Code of Ala. 1975, § 13A-7-20 et seq.

Sec. 7-16. All burials to be in established cemeteries.

It shall be unlawful for any person to bury or inter, or to assist in burying or interring, the body or remains of any dead human being in the city, except in a lawfully established cemetery.

(Code 1980, § 11-15)

Sec. 7-17. Unlawful to inter or bury without notice; permits.

(a) It shall be unlawful for any person to inter or bury, or to assist in interring or burying, the body or remains of any dead human being in the city without providing notice and a permit of interment or burial.

(b) It shall be the duty of any person providing interment or a burial in a cemetery in the city limits to provide notice to the sexton or superintendent of a cemetery of a proposed interment or burial therein, accompanied by information as to the lot and the particular place on the lot where the grave is to be dug or opened or the vault is to be located. Such notice shall be presented not less than eight working hours before the interment or burial.

(c) Notice of burial shall be submitted with a burial permit form and an administrative fee in the amount of \$125.00 payable to the city to cover the costs of maintaining accurate record of all deaths and burials which occur in the city.

(d) The burial permit form shall provide the name, date of birth, date of death, sex, race, place of birth, residence and place and time of death, of each person buried in the cemetery. The burial permit form shall also provide the actual location of the interment to include the cemetery name, location of the plot, etc.

(Code 1980, § 11-16; Ord. No. 17-2013, § 1, 4-2-2013)

Editor's note—Ord. No. 17-2013, § 1, adopted April 2, 2013, changed the title of section 7-17 from "Notice of proposed interment to be given" to "Unlawful to inter or bury without notice; permits." The historical notation has been preserved for reference purposes.

Sec. 7-18. Interments in nighttime.

No sexton or superintendent of a cemetery shall permit any interment between sunset and sunrise, without the written permission of the mayor. Such permit shall specify the reasons for its issuance.

(Code 1980, § 11-17)

Sec. 7-19. Violations of state law.

It shall be unlawful for any person in the city to violate any law of the state or rule or regulation promulgated thereunder relating to interments of human beings or the registration of deaths and burials.

(Code 1980, § 11-18)

State law reference—Burial permits, Code of Ala. 1975, § 22-19-3.

Sec. 7-20. Crematories.

Any crematory established after October 21, 1997, shall be prohibited from locating in any other zoned area with a use higher than M-1. All crematories shall be required to conduct a test of the facility once a year according to the requirements of the Method 5, Determination of Particulate Emission from Stationary Sources, and Method 9, Visual Determination of Opacity of Emissions from Stationary Sources tests. All crematories must be in compliance with the standards established by the state department of environmental management for emission of particulate matter.

(Ord. No. 33-97, § 1, 10-21-1997)

Sec. 7-21. Lincoln Cemetery Rehabilitation Authority.

(a) *Composition of the authority.*

- (1) The Lincoln Cemetery Rehabilitation Authority (also referred to as "LCRA") shall consist of five members who shall be appointed by the city council, and who shall serve at the pleasure of the council. The city council will appoint the chairmen and vice-chairmen from amongst the five members appointed.
- (2) Members shall serve for three-year terms, which shall be staggered after the first year. Upon the creation of the LCRA, two members shall be appointed for one year, two for two years, and one for three years. Upon the expiration of the initial terms, all members shall be appointed to three-year terms.

(3) The council shall endeavor to appoint representatives of genealogical and historical societies and other citizens who have shown an interest in preserving cemeteries.

(b) *Powers of the authority.* The LCRA shall have the following powers:

- (1) To identify, catalogue and record burials in Lincoln Cemetery located within the city.
- (2) To survey said cemetery according to the standards set forth by the state historical commission and to forward all such surveys to the state historical commission for inclusion in the statewide inventory.
- (3) To provide for the registration of Lincoln Cemetery with the historical commission. The registration shall take place within one year.
- (4) To maintain Lincoln Cemetery to city standards and according to preservation guidelines set forth by the state historical commission and to accept the assistance of private citizens, corporations, organizations, foundations, etc., including money donated by private citizens, corporations, organizations, foundations, etc. in order to afford the restoration and upkeep of cemeteries designated as neglected.
- (5) To establish a trust fund to supply continuing needs of Lincoln Cemetery.
- (6) To work with private landowners when necessary to determine frequency of access, either for specified work days or visits by family or genealogical researchers.

(c) *Waiver of liability.* Pursuant to Section 2(g) of Act No. 2007-408 of the Alabama Legislature, no person, while providing good faith assistance in securing or maintaining Lincoln Cemetery, and acting under the proper action and duties of the Lincoln Cemetery Rehabilitation Authority direction may be subject to civil liabilities or penalties of any type. (Ord. No. 25-2010, §§ 1—3, 6-1-2010)

Editor's note—Ord. No. 25-2010, §§ 1—3, adopted June 1, 2010, did not specify manner of inclusion; hence, inclusion as section 7-21 is at the discretion of the editor.

Secs. 7-22—7-50. Reserved.

ARTICLE II. CITY-OWNED OR CITY-OPERATED CEMETERIES

DIVISION 1. GENERALLY

Secs. 7-51—7-70. Reserved.

DIVISION 2. OAKWOOD CEMETERY

Sec. 7-71. Scope of division.

The provisions of this division apply to Oakwood Cemetery.

Sec. 7-72. City sexton.

(a) *Duties generally.* The city sexton shall keep an alphabetical index book of the owners of lots in Oakwood Cemetery, with a description of the lot owned by each and the date of its purchase. He shall, at any time and without charge, upon request, exhibit the register and map of the cemetery to any person applying to him and shall, upon request, point out any grave in the cemetery. He shall take care of and preserve all shrubbery, flowers and ornaments in the cemetery; shall protect all graves, tombs, tombstones, monuments, fixtures and ornaments therein; shall keep the grounds in good order; and shall superintend the digging of all graves.

(b) *Monthly reports.* The city sexton shall make a monthly report to the mayor of all interments in Oakwood Cemetery.

(Code 1980, §§ 11-19, 11-20)

Cross reference—Officers and employees, § 2-161 et seq.

Sec. 7-73. Enclosure of lots; planting allowed.

The owner of each lot in Oakwood Cemetery may enclose the lot with a wall or railing, under the direction of the city sexton, and may cultivate trees, shrubs and plants in such lot. No tree or shrub growing in any such lot shall be cut down or destroyed without the consent of the city sexton. If any such tree or shrub becomes detrimental to the adjacent lots or avenues, or dangerous or inconvenient, the city sexton shall have such trees or shrubs or such parts thereof as are detrimental, dangerous or inconvenient removed, after reasonable notice to the owner of the lot of such proposed action.

(Code 1980, § 11-21)

Sec. 7-74. Removal of nonconforming structures.

If any monument, effigy, enclosure or structure placed in or upon any lot in Oakwood Cemetery is determined by the city sexton to be offensive or improper or injurious to the surrounding lots or grounds, he shall have the offensive or improper object removed.

(Code 1980, § 11-22)

Sec. 7-75. Fees for cemetery services.

The director of finance shall charge and collect fees for services performed by the city sexton, or his assistants, in Oakwood Cemetery, as follows:

For digging a grave for a child under three months of age	\$15.00
Except, that if an adult size grave is requested, the cost shall be	40.00
For digging a grave for a person of any age over three months	40.00
For digging a grave for cremated remains of a person any age	12.50
For digging a grave for any age person on Saturday, Sunday or holiday	
Single grave	80.00
Double grave	95.00

CEMETERIES

§ 7-75

For making excavation for vault (underground) for one person of any age. . . .	40.00
For making excavation for vault (underground) for two persons of any age. . .	60.00
For making excavation for vault (surface) for one person of any age.	40.00
For making excavation for vault (surface) for two persons of any age.	60.00
For opening vaults (surface) for burial of a person or ashes, either adult or child	35.00
For opening vaults (surface) for burial of a person or ashes, either adult or child on Saturday, Sunday, or holiday	60.00
For opening vaults (underground) for burial of a person or ashes, either adult or child	35.00
For opening vaults (underground) for burial of a person or ashes, either adult or child on Saturday, Sunday or holiday.	60.00
For disinterring a body of a person under three months old.	35.00
For disinterring a body of a person over three months old	35.00
For disinterring ashes of a cremated person of any age.	25.00
All vaults emptied by disinterments shall be left covered, or shall be refilled with dirt at the owner's expense	
Single grave.	40.00
Double grave.	45.00

There shall be an additional charge per hour for each employee required to work after the hour of 4:00 p.m. on any Monday, Tuesday, Wednesday, Thursday or Friday, equal to 1½ times the hourly salary rate of such employee.

(Ord. No. 156-73, § 1; Ord. No. 98-75, § 1; Code 1980, § 11-23)

ORDINANCE NO. 45-2014

AN ORDINANCE AMENDING SECTION 7-21. LINCOLN CEMETERY
REHABILITATION AUTHORITY (A) COMPOSITION OF THE AUTHORITY OF THE
CODE OF ORDINANCE

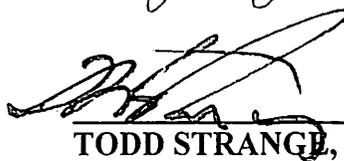
BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF
MONTGOMERY, ALABAMA, that the Montgomery Code of Ordinances, Section 7-21.
Lincoln Cemetery Rehabilitation Authority (a) Composition of the authority is hereby
amended to read as follows:

Section 7-21. Lincoln Cemetery Rehabilitation Authority.

(a) Composition of the Authority.

1. The Lincoln Cemetery Rehabilitation Authority (also referred to as "LCRA") shall consist of seven members who shall be appointed by the City Council, and who shall serve at the pleasure of the Council. The City Council will appoint the chairmen and vice-chairmen from amongst the seven members appointed.
2. Members shall serve for three-year terms, which shall be staggered after the first year. Two members shall be appointed for one year, three for two years, and two for three years. Upon the expiration of the initial terms, all members shall be appointed to three year terms.
3. The Council shall endeavor to appoint representatives of genealogical and historical societies and other citizens who have shown an interest in preserving cemeteries.

ADOPTED this the 15th day of July, 2014.



TODD STRANGE, MAYOR

ATTEST:



BRENDA GALE BLALOCK, CITY CLERK

B-4

M-3

B-5

- (b) Railroad cars shall be a permitted use in an agr-I, agr-II and flood hazard (FH) districts as an accessory use for storage purposes, provided no lot or parcel of land used in conjunction with it is less than five acres. Any lot or parcel of land less than five acres shall be permitted on appeal to the board of adjustment, as a special exception.
- (c) All railroad cars approved by the planning commission, board of adjustment or an administrative official shall be as compatible in appearance with the surrounding property as is reasonably possible, and shall comply with any and all special conditions and safeguards placed on said approval.
- (d) All foundations for use in conjunction with railroad cars shall be approved by the chief building official whether or not the railroad cars are to be a temporary or permanent use.

(Ord. No. 69-83, § 1, 9-27-1983)

[Sec. 10.12. Reserved.]

[Sec.] 10.13. Cemeteries.

For the purposes of this ordinance the following regulations shall apply to establish a cemetery.

- a. Make application to the planning controls division of the city;
- b. Applicant will submit six copies of a detailed development plan showing all planned improvements for proposed cemetery, together with a report from the Montgomery County Health Department indicating the suitability of the proposed cemetery site;
- c. The planning controls division will circulate among the city departments for review, copies of the development plan;
- d. The planning controls division will place the development plan on the agenda of the planning commission, notify adjoining and adjacent property owners by certified letter and public notice will be given as required;
- e. The planning commission will make a recommendation to the council for or against their approval; and
- f. Upon approval by the city council in accordance with Code of Ala. 1975, § 11-47-40, petitioner may obtain a building permit and commence development of the cemetery.

(Ord. No. 10-2002, § 1, 4-2-2002)

Cross reference—Cemeteries, ch. 7.