

ORDINANCE NO. 2022-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS, AMENDING THE NEW BRAUNFELS CODE OF ORDINANCES, CHAPTER 144, ZONING, ARTICLE V DEVELOPMENT STANDARDS, BY ADDING SECTION 5.29, CEMETERY APPLICATION; AND, AMENDMENTS TO APPENDIX D, FEE SCHEDULE, SECTION A SCHEDULE OF DEVELOPMENT FEES; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; CONTAINING A SAVINGS CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Section 711.008 (g-2) of the Texas Health and Safety Code, as amended (the “Act”), authorizes the City of New Braunfels (the “City”) to permit the establishment or use of cemeteries located in the boundaries of the City; and

WHEREAS, the Act requires the City by ordinance to prescribe the information to be included in a written application (a “Cemetery Application”) filed by an individual, corporation, partnership, firm, trust, or association to establish or use a cemetery in the City; and

WHEREAS, the Act further requires that a Cemetery Application must be filed with the City Council not later than December 1, 2022; and

WHEREAS, the Act further requires that following receipt and consideration of a Cemetery Application, the City, by ordinance, may authorize the establishment or use of such cemetery within the City if the City Council determines and states in such ordinance that the establishment or use of such cemetery does not adversely affect public health, safety, and welfare; and

WHEREAS, the City Council shall consider such an ordinance following receipt of a recommendation by City staff and the Planning Commission; and

WHEREAS, this Ordinance prescribes the information to be included in a Cemetery Application and the process by which a Cemetery Application shall be received, considered, and acted upon; and

WHEREAS, the City Council has directed that regulations dealing with the use and development of land be reviewed by the Planning Commission to make recommendations concerning improving those regulations; and

WHEREAS, the Planning Commission held a public hearing on September 7, 2022 and recommended approval of the proposed Ordinance; and

WHEREAS, the City Council held a public hearing on said Ordinance on September 12, 2022; and

WHEREAS, the adoption of this Ordinance is in the best interest of the residents of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS:

SECTION 1

THAT Chapter 144, Zoning, Section 5-29 Cemetery Application, is hereby added as follows:

Sec. 144-5.29. Cemetery Application.

- 5.29-1. *Applicability.* An individual, corporation, partnership, firm, trust, or association may file a written application to establish or use a cemetery located within the city limits.
- 5.29-2. *Use.* The development or the use of a cemetery within the boundaries of the City are subject to all laws of the State of Texas and ordinances and regulations of the City, including but not limited to the City's Code of Ordinances.
- 5.29-3. *Location.*
 - (a) Must be an allowed use within the zoning district.
 - (b) Must be located so that patient rooms located within a hospital, psychiatric hospital or a crisis stabilization unit don't have a view of the cemetery.
 - (c) Burial plots are prohibited within a FEMA defined floodway.
 - (d) Burial plots are prohibited within the Special Flood Hazard Areas (SFHAs).
- 5.29-4. *Application procedures and elements.* Complete Cemetery Applications shall be submitted to the planning and development services department. Incomplete applications will not be accepted. The following items shall be included in an application submission to be considered complete:
 - (a) The application submission shall be made on an application form available in the planning and development services department that demonstrates the cemetery's compatibility with the goals and objectives of the of the City's Comprehensive Plan and compliance with laws, ordinances and regulations as specified herein.
 - (b) An accurate legal description with a plat or survey of the area proposed for the cemetery.
 - (c) A site plan that includes the minimum information necessary to demonstrate compliance with this chapter. The site plan shall show the following:

- (1) The proposed name of the cemetery.
- (2) Date of preparation, scale of site plan, and north arrow.
- (3) Property boundary lines indicated by heavy lines and the computed acreage of the cemetery.
- (4) Land subject to any special flood hazard zone according to the city's adopted flood maps.
- (5) The locations of identified streams, rivers, and sensitive features.
- (6) The location and name existing or recorded streets, alleys, drainage structures, reservations, easements or public rights-of-way within the cemetery, intersecting or contiguous with its boundaries or forming such boundaries.
- (7) The location, dimensions, description and name of all proposed internal drives, areas for burial plots, mausoleums, public areas, buildings, structures, and driveway approach details: flares/radii; width and spacing between driveways; distance from intersection; and any associated parking.
- (8) Topographical information shall include contours on the basis of five vertical feet in terrain with a slope of two percent or more, and on a basis of two vertical feet in terrain of less than two percent. Contour lines shall be based upon city datum, if available.
- (9) Location of city limits line and zoning district boundaries.
- (10) Additional information as may be required by state law, the planning director, city engineer, or city council.

(e) Accompanied by payment of the fee.

5.29-5. *Licenses and permits.*

- (a) No cemetery shall be developed or operated within the City unless the developer or operator, as applicable, shall receive from all state and local jurisdictions all licenses and permits required for such development or operation when required. The developer or operator, as applicable, shall promptly upon receipt deliver to the City a copy of all such licenses and permits issued by all entities other than the City.
- (b) All other necessary permits for development must be obtained to develop and operate a cemetery subsequent to the approval of a Cemetery Applications, including but not limited to: grading and drainage permits, applicable building permits, and sign permits.

5-29-6. *Timing and approval.* Completed Cemetery Applications must be filed with the City Council no later than December 1, 2022. No Cemetery Application will be considered by the City Council after December 1, 2022. Placement on a City Council agenda with a staff recommendation of approval will constitute acceptance (but not approval) and filing of the Cemetery Application. Approval of the Cemetery Application by an ordinance adopted on final reading by the City Council shall constitute the City's official approval of the application.

SECTION 2

THAT Appendix D, Fee Schedule, Section A, Schedule of development fees, is hereby amended with additions as underlined:

Sec. A. Schedule of development fees.

APPLICATION	FEE
ZONING	

<u>Cemetery Application</u>	<u>\$500.00</u>

(Ord. No. 2018-21, § 7, 3-26-18; Ord. No. 2019-05, § 3, 1-28-19; Ord. No. 2019-34, § 2, 5-28-19; Ord. No. 2019-43, § 2, 6-24-19)

SECTION 3

IT is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance.

SECTION 4

THAT all provisions of the Code of Ordinances of the City of New Braunfels not herein amended or repealed shall remain in full force and effect.

SECTION 5

THAT all other ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict only.

SECTION 6

THAT in accordance with the provisions of the City Charter, this Ordinance may be read and published by descriptive caption only. This Ordinance has been publicly available in the office of the City Secretary prior to its adoption.

SECTION 7

THAT this Ordinance shall become adopted and effective upon its second reading, signature required by City Charter, and filing with the City Secretary's Office.

PASSED AND APPROVED: First reading this, September 12, 2022

PASSED AND APPROVED: Second reading this the September 26, 2022

CITY OF NEW BRAUNFELS

RUSTY BROCKMAN, Mayor

ATTEST:

GAYLE WILKINSON, City Secretary

APPROVED AS TO FORM:

VALERIA M. ACEVEDO, City Attorney