

Repealed By
24-5849

ORDINANCE NO. 03-5240

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING FOR THE REPEAL OF ORDINANCE NO. 01-5169 REGARDING SECTIONS 8-301 THROUGH AND INCLUDING 8-335, OF THE BILLINGS, MONTANA CITY CODE AND DECLARING SAME TO BE NULL AND VOID AND OF NO EFFECT, AND REPLACING THOSE REPEALED SECTIONS WITH NEW SECTIONS 8-301 THROUGH 8-335 AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

Section 1. That section 8-301, through and including section 8-335 of the Billings Montana City Code (BMCC) as adopted via Ord. No. 01-5169 are hereby repealed.

Section 2. That the Billings Montana City Code (BMCC) be amended by adding sections to be numbered 8-301 through and including 8-335 so that such sections shall read as follows:

Sec. 8-301. Cemetery Defined.

The word "cemetery," as used in this article, shall mean the Mountview and Billings Cemeteries."

Sec. 8-302. Perpetual care fund.

(a) The city shall set aside thirty (30) percent of all money received from all graves or niches sold in the cemetery, which sum shall constitute the "perpetual care fund." The perpetual care fund shall remain forever intact and shall be invested in savings or time deposits in a state or nationally chartered bank insured by the FDIC or in municipal, state or federal government bonds. Only the income from such investments shall be used for the maintenance of the cemetery and the uniform care of all lots therein, and the city shall expend that income, or so much thereof as is necessary, for the uniform, perpetual care and maintenance of the cemetery. It shall be the duty of the city council to make such investments in accordance herewith as they may deem proper. No part of the principal of the fund may be expended in any manner and it shall be kept invested as required by this section.

(b) The city is authorized to accept funds to be held in trust for any purpose designated by the trust. If the donor of any such fund does not provide otherwise, such funds will become a part of the perpetual care fund. Should funds be donated for a

ORD. NO. 03-5240

special purpose or special care of any particular lot in the cemetery, then the funds will be kept as separate funds and the income therefrom expended in accordance with the terms on which funds were donated and received.

(c) The city may, in its discretion, apply towards the care of the cemetery any proceeds from cemetery lot sales that accrue and remain after the perpetual care fund has received thirty (30) percent as provided in subsection (a)(4).

Sec. 8-303. Perpetual trust for family lots.

To prevent relatives from disposing of their family lots, and disinterring the bodies therein, lot owners may re-convey their lots to the city to be held in perpetual trust for their permanent interment and for the interment of such other persons as the lot owners may designate.

Sec. 8-304. Lot conveyances.

The mayor is authorized and empowered to execute on behalf of the city, contracts for the sale of lots, or portions of lots, in the cemetery, and to issue deeds of the city to lots, or portions of lots, located in such cemetery upon payment of the purchase price therefor; to accept on behalf of the city notes of purchasers of lots located in such cemetery in payment of the purchase price thereof; and, to receive applications for, and to issue burial permits for, the interment of the dead in the cemetery; provided, that any conveyance made by such officers shall be subject to the provisions of this article.

Sec. 8-305. Covenants to run with burial lots.

The covenants, rights, limitations and obligations set forth in the conveyance of lots in the cemetery, together with the provisions of this article, are declared to be covenants running with the land, and shall be binding upon all present and future owners of burial lots in the cemetery.

Sec. 8-306. Rules and regulations.

The city administrator or his/her designee shall promulgate and publish rules and regulations for administration, operation, maintenance and control of activities relating to and within the city-owned cemetery.

Sec. 8-307. Right of passage.

The owners of lots shall have the right of passage therein under such rules and regulations as the city may from time to time establish for persons, animals and vehicles, over driveways and walkways for ingress and egress to their respective lots.

Sec. 8-308. Visitors.

Visitors shall be admitted to the cemetery during open hours, but must keep to the walks and drives and shall not cross over, occupy or otherwise trespass upon any lot not their own.

Sec. 8-309. Use of lots.

Lots are sold for no other purpose than for the burial of human dead, and such incidental uses that are suitable and proper for a cemetery lot.

Sec. 8-310. Who may be interred.

All interments in lots shall be restricted to members of the immediate family or relatives of the owner unless permission otherwise is obtained from the city.

Sec. 8-311. Transfer of lots.

No assignment or transfer of lots shall be valid without the prior consent of the city endorsed upon such transfer or assignment and entered on record by the city. Additionally, all cemetery lot owners who wish to sell their lots or portions of their lots must sell them to the city for the same price for which it was originally purchased.

Sec. 8-312. Advertisements.

No advertisement or marketing of products in of any form shall be permitted within the cemetery.

Sec. 8-313. Joint ownership.

The city shall not give joint deeds to lots sold. Persons owning lots in partnership may agree among themselves as to the parts of lots to be used by each, but the city will not be delegated to enforce such agreements.

Sec. 8-314. Dividing lines.

When more than one (1) person claims an interest in a lot no visible dividing line shall be allowed.

Sec. 8-315. Hire of space prohibited.

No lot owner shall have a body interred in the owner's lot for a remuneration, sale or hire of space.

Sec. 8-316. Removal for nonpayment.

Should there be an interment on a lot on which the payments have not been made as per the terms of contract, the city reserves the right to disinter the remains and remove them, together with any monument or other structure thereon, to some other portion of the cemetery equal in price to the amount paid on such lot after the actual cost of removal has been deducted.

Sec. 8-317. Devolution of lots.

When a lot owner dies intestate, the lot shall pass to the heirs recognized by the laws of the State of Montana state.

Sec. 8-318. Proof of ownership required.

It shall be the duty of the heirs or devisees to file with the city full proof of the ownership upon death of the owner of any lot. The city may not allow interment to take place until such proof is given.

Sec. 8-319. Orders for interment and disinterment.

(a) Orders for interment and disinterment must be made in writing by the lot owner upon proper forms blanks furnished by the city before a grave will be opened.

(b) If the original owner is dead and there are two (2) or more legal heirs, the order must be signed by all legal heirs.

(c) If the lot is owned by a lodge, society or any organization, the order must be signed by an officer having proper authority to act.

Sec. 8-320. Multiple burials.

Burials of two (2) human remains in the same grave casket shall not be allowed except when the remains of the bodies can be placed in one (1) outer burial container approved by the city. A maximum total of three (3) persons may be buried in a single, traditional grave if at least two (2) of the remains are cremated. Only one cremated remains may be buried in a grave in the
Cremation Section of the cemetery.

Sec. 8-321. Cement, walks, trinkets.

Gravel, stone, brick or cement of any kind, or artificial walks, shall not be allowed upon the lots, nor will any boxes, shells, trinkets, toys and the like be permitted on such lots.

Sec. 8-322. Fencing and enclosures prohibited.

ORD. NO. 03-5240

(a) Fencing, coping or enclosures of any nature whatsoever shall not be allowed upon the lots or graves, except ~~cornerstones on lots, which must be level with the ground~~ ~~those~~ copings and fences which were erected in the Billings Cemetery before the Mountview Cemetery was established.

(b) Fencing, coping and curbing that exists in the oldest part of the cemetery which has deteriorated through neglect or wear to the point of being a hazard or which detracts from the overall condition or appearance of the cemetery, may be condemned and removed by the City, after attempting to contact the property owner. These items may be removed if they are a hindrance to the care and maintenance of the cemetery.

Sec. 8-323. City to mark lots.

All lots shall be marked and put in order by the city.

Sec. 8-324. Mounds prohibited.

Elevated lots or grave mounds shall not be allowed.

Sec. 8-325. Flower receptacles.

~~Flower receptacles shall meet the following specifications:~~

(a)-1. All ground level receptacles shall be standard, furnished and installed by the city at cost.

2. ~~No more than two (2) receptacles on each grave shall be allowed in the older sections. In the newer sections the following additional limitations are imposed~~

(b)-a. A flower receptacle will be placed in a marker or monument base foundation as per city specifications.

(c)-b. Only one (1) receptacle per grave shall be allowed.

(d) All flower receptacles and containers creating a safety hazard may be condemned and removed by city.

Sec. 8-326. Ground level flowers

No artificial or manmade flowers shall be allowed in ground-level flower containers or allowed to be set or laid on the ground in the cemetery from October 15th through May 15th with the exception of holiday decorations. Ground-level, holiday grave decorations shall be allowed three (3) days before and three (3) days after the holiday.

ORD. NO. 03-5240

Christmas decorations are allowed from December 15th through the first week of the New Year.

Sec. 8-327. Injuring plants prohibited.

Picking the flowers, breaking or injuring trees or plants or any other property within the cemetery is prohibited.

Sec. 8-328. Cemetery traffic

Posted speed limit in the cemetery is fifteen (15) miles per hour. Faster driving will not be allowed. Vehicles must remain on designated roads within the cemetery. Parking is allowed on any of the roads within the cemetery.

Sec. 8-329. Picnics and unattended children prohibited.

Children, unless accompanied by an adult, shall not be admitted to the grounds. Picnic parties are prohibited.

Sec. 8-330. Dogs prohibited.

Dogs shall not be admitted to the grounds of the cemetery, except upon a leash and shall be kept on the roadways only.

Sec. 8-331. Monument regulations.

(a) Only one (1) upright monument shall be erected at the head end of the graves so that the monument is centered on two (2) or more graves. The upright monument shall be not less than ~~thirty~~ (30) twenty-eight (28) inches in height or exceed forty-two (42) inches in height. All other grave markers shall be placed flush with the ground surface.

(b) All upright monuments and flat grave markers shall be of natural granite except those specified by the federal government in the veteran sections. No bronze plaques or metal plates shall be attached to the natural granite.

(c) All upright monuments shall have a foundation of concrete that is thirty inches (30") deep and eight inches (8") wider on each side than the dimensions of the base of the monument. All flat grave markers shall have a foundation of concrete that is twenty-four inches (24") deep, and eight inches (8") wider than the dimensions of the stone. Where there is to be a flower container set in the foundation, the side of the stone that the flower container is to be set, the foundation collar shall extend thirteen inches (13") from the stone, and seven inches (7") deep. The base of the upright monument or the flat grave marker shall be wet set into the concrete foundation.

(d) In the Cremation Section only flat markers shall be used. In a single cremation grave the stone itself can only measure eight inches (8") by sixteen inches (16"). Double cremation graves may have a twelve inch (12") by twenty-four inch (24") stone centered on the graves. The foundations for the markers shall be twelve inches (12") deep and surround the stone so that the stone has an eight inch (8") border on three sides and a thirteen inch border on the side where the flower container is placed.

(e) Mausoleums and vaults above ground may be erected only with the consent of the city after all plans and materials have been approved by the city.

(f) All work must be under the inspection of the city and completed as rapidly as possible. Materials not used must be removed as the work is completed.

(g) No materials of any kind shall be received after noon on Saturdays.

(h) Any person desiring to set a monument or marker or build a foundation for that purpose or modify an existing stone, must, before commencing such work, obtain from the cemetery office a permit authorizing such construction. The cemetery office shall not issue a permit required by this division until the applicant has obtained a business license and furnish to the city a surety bond in the amount of \$10,000.00 dollars, which shall be held by the city as a guarantee that the work will be done in a satisfactory manner. The bond shall provide that the applicant will in good faith perform all that the city requires. Continuation certificates to renew the surety bond will not be accepted. Such bond shall be filed with the city clerk. The city shall determine whether or not a monument or foundation has been satisfactorily constructed and set.

(i) Any person desiring to set a monument or marker or build a foundation for that purpose, shall have all the necessary tools and equipment that are recognized by the monument setting industry.

(j) In setting a monument or marker or building a foundation, the contractor shall be liable for any damage to other people's property or to general appearance of the cemetery. The contractor shall be responsible for leaving the cemetery in the same general condition as it was before setting the stone.

(k) Nothing herein shall be construed in any manner to limit the liability of any person engaged in the business of setting monuments or markers, or building foundations for them, for damages in excess of the amount required by the surety bond, nor shall the surety bond be construed to limit the right of any individual who has been damaged by any setting of a monument or marker or building a foundation from bringing an action without regard to the conditions of this provision.

(l) Monuments and markers are personal property and therefore the responsibility of the grave owner. It is the responsibility of the grave owner to notify the cemetery of any change in mailing address or ownership of the grave so that the cemetery can

contact them. Notice sent to an owner at the last address on file in the cemetery office shall be considered sufficient and proper legal notification. The monument permit must have the name and address of the person ordering the stone.

(m) In the event that the owners of a monument cannot be contacted, the city or their agents may modify monuments within the cemetery that present a public safety hazard or detract from the overall appearance of the cemetery.

(n) The city or their agents shall not be held liable if a monument in danger of falling is damaged in the process of modifying the stone to correct the safety hazard.

Sec. 8-332. Grave regulations.

(a) Single infant graves shall be sold only for immediate use.

(b) No markers or flowers shall be allowed in the walks between the graves.

(c) All graves shall be sold for cash before burial can occur.

(d) The space between the graves shall remain the property of the city.

~~(e) The cemetery shall mark graves by lot using the corresponding lot number.~~

~~(e) If a body is disinterred from a grave in the single section, the ownership of that grave reverts back to the city.~~

~~(g) No slab, coping, curbing, hedging or enclosure of any nature shall be permitted in a single grave row.~~

~~(f) All markers for single graves shall be flush with the ground and not more than two (2) feet long and one (1) foot wide.~~

~~(g) No monument or other grave marker shall be placed or erected on a grave until that grave is paid for in full.~~

Sec. 8-333. Dedication and special rules for veteran memorial plot.

(a) The grave spaces in the memorial lot of the cemetery are reserved and dedicated to the sole use and purpose of burying the bodies of veterans and ex-veterans of past and future wars of the United States, subject to the conditions hereinafter specified. Persons to be buried in the veteran memorial plot must be an honorable discharged wartime veteran residing in the city at the time of death.

(b) No charge shall be made for the privilege of using the grave spaces named in subsection ~~(a)(4)~~, nor for any care or maintenance thereon, except that the usual

ORD. NO. 03-5240

charges for opening and closing graves, curbing and flower containers shall be paid therefor in the manner prescribed.

(c) All rules and regulations prescribed by the city governing the use and care of the cemetery shall be observed by all parties interested in the use of the veterans' memorial plot for burial with the following exceptions:

(1) No grave marker shall be installed in this plot, except upright marble type supplied by the United States government.

(2) All burials shall be made in the spaces in consecutive order as designated by the city.

(3) Cremated veterans shall be inurned in the columbarium erected in the veteran plot for that purpose. A veteran's cremains may not be buried in a traditional full size veteran grave unless that grave could not be used for a traditional burial with casket.

(4) The circular park adjoining the veterans' memorial plot may be used by such parties or organizations as are interested in the care and development of the veterans' memorial plot for the installations of a suitable flag staff, instruments of warfare, implements, memorial monuments or other decorations upon the approval of the city.

Sec. 8-334. Miscellaneous provisions.

(a) All caskets or other burial containers shall be placed in domes or vaults constructed of materials specified by the city.

(b) Installation of sectional liners shall be not allowed.

(c) Infants may be buried in the casket-vault combination.

(d) U. S. Government specified concrete domes are allowed.

(e) Outer burial containers sold by other cemeteries are not allowed in the city cemetery.

(f) All graves and niches sale price shall include a thirty per cent (30%) perpetual care cost. Prices for all crypts and niches in the Landmarks Mausoleum shall be maintained and obtained at the cemetery office. All cemetery fees and prices for graves and niches in the cemetery proper shall be established by city council resolution.

(g) Opening, closing and setup for a full size traditional grave shall include a lowering device and tent. A discount shall be issued, except in the mausoleum, when a

ORD. NO. 03-5240

tent is impractical to set up for a traditional full size burial. The opening, closing and setup for cremations and infant burials do not include a lowering device or a tent, but do include artificial turf and a stand for either the baby casket or urn. An additional fee will be charged when a tent is requested for a cremation or infant burial service.

(h) The normal cemetery business hours for burial are from 9:00 AM to 4:00 PM, Monday through Friday. For burial services that start after 4:00 PM on Monday through Friday or after 11:00 AM on Saturday, a late overtime fee will be charged. The late overtime fee will be charged in ten (10) minute intervals at the rate of \$50.00 per ten-minute interval. The minimum late overtime charge is \$50.00 and the maximum late overtime charge is \$300.00. A Saturday morning overtime fee will be charged for burials scheduled between 9:00 AM and 11:00 AM.

(i) ~~The Veteran Sections of the cemetery are special purpose areas. For that reason the city does not make a charge for the grave or niche space, but other charges are issued to compensate for opening, closing, setup, curbing, engraving of the columbarium and flower container.~~

Section 3. Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

Section 4. Repealer. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 5. Effective Date. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

APPROVED on first reading this 24th day of February, 2003.

ADOPTED and APPROVED on second reading this 10th day of March, 2003.



CITY OF BILLINGS:

By *Charles F. Tooley*
Charles F. Tooley
Mayor

ATTEST:

By *Marita Herold*
Marita Herold, CMC/AAE City Clerk