

Dying to Ask:

Cemetery and Burial Q & A for Cities

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Getting to Know You



- Who has a cemetery in your city?
- Who has ever been asked about sprinkling ashes or burying someone (or their pet) in your city park?
- Who has ever had to plan for or around a high-profile funeral or interment?

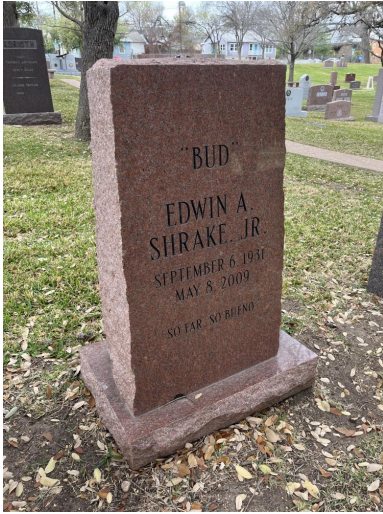
What's a Cemetery?



Defined Terms

- (1) "Abandoned cemetery" means a cemetery, regardless of whether it appears on a map or in deed records, that is not owned or operated by a cemetery organization, does not have another person legally responsible for its care, and is not maintained by any person.
- (2) "Burial park" means a tract of land that is used or intended to be used for interment in graves.
- (4) "Cemetery" means a place that is used or intended to be used for interment, and includes a graveyard, burial park, mausoleum, or any other area containing one or more graves.
- (28) "Nonperpetual care cemetery" means a cemetery that is not a perpetual care cemetery.
- (30) "Perpetual care cemetery" or "endowment care cemetery" means a cemetery for the benefit of which a perpetual care trust fund is established as provided by Chapter [712](#).
- (36) "Unknown cemetery" means an abandoned cemetery evidenced by the presence of marked or unmarked graves that does not appear on a map or in deed records.
- (38) "Unverified cemetery" means a location having some evidence of interment but in which the presence of one or more unmarked graves has not been verified by a person described by Section [711.0105](#)(a) or by the Texas Historical Commission.

What's in the Cemetery



HSC 711.001(5) "Cemetery element" means a grave, memorial, crypt, mausoleum, columbarium, or other item that is associated with the cemetery, including a fence, road, curb, wall, path, gate, or bench and the lighting and landscaping.

More Defined Terms

Sec. 711.001. DEFINITIONS. In this chapter:

- (9) "Columbarium" means a durable, fireproof structure, or a room or other space in a durable, fireproof structure, containing niches and used or intended to be used to contain cremated remains.
- (10) "Cremains receptacle" means a marker, boulder, bench, pedestal, pillar, or other aboveground vessel that contains niches for cremated remains.
- (15) "Crypt" means a chamber in a mausoleum of sufficient size to inter human remains.
- (17) "Entombment" means interment in a crypt.
- (19) "Grave" means a space of ground that contains interred human remains or is in a burial park and that is used or intended to be used for interment of human remains in the ground.
- (21) "Interment" means the permanent disposition of remains by entombment, burial, or placement in a niche.
- (25) "Mausoleum" means a durable, fireproof structure used or intended to be used for entombment.
- (26) "Memorial" means a headstone, tombstone, gravestone, monument, or other marker denoting a grave.
- (31) "Plot" means space in a cemetery owned by an individual or organization that is used or intended to be used for interment, including a grave or adjoining graves, a crypt or adjoining crypts, a lawn crypt or adjoining lawn crypts, or a niche or adjoining niches.

Land Use and Cemeteries



What's a "cemetery purpose"?

HSC 711.001(8) "Cemetery purpose" means a purpose necessary or incidental to establishing, maintaining, managing, operating, improving, or conducting a cemetery, interring remains, or caring for, preserving, and embellishing cemetery property.

Use and Zoning



Cemetery Purposes

Pearland UDC permitted uses:

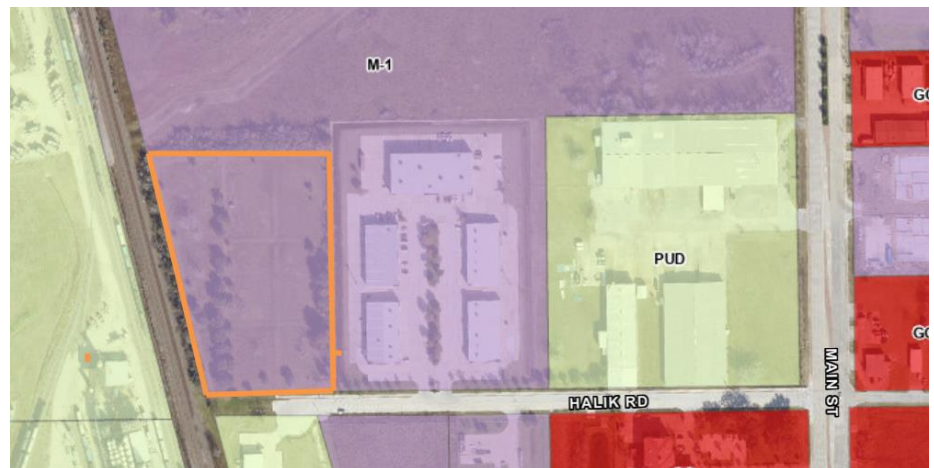
- Cemetery (Including Mausoleum) – permitted in GB, GC; requires CUP in C-MU; not permitted in M-1
- Funeral Home/Mortuary (Including Crematorium) – permitted in GB, GC; requires CUP in M-1; not permitted in C-MU
- Gravestone/Tombstone Sales – permitted in GC, M-1; not permitted in GB or C-MU

What about related uses on site?

- Administrative offices
- Meeting space
 - Sales and planning meetings
 - Religious or secular assembly in conjunction with burial (celebration of life, wake, service, funeral, etc.)
- Parking, driveways, sidewalks, etc.
- Maintenance and storage

Old Settlers Cemetery

- Dedicated 1898
- Annexed 1960
- Currently zoned Light Industrial (M-1)



Disposition of Remains



"I can't take him like that - it's against regulations."

General Disposition Process



Key Requirements for a Lawful Burial in Texas

Requirement or Aspect	Governing Authority	What You Need to Know
Death Certificate	Texas Department of State Health Services (DSHS)	A physician or medical examiner must sign it. This is the first and most critical legal document.
Burial-Transit Permit	Local Registrar (County or City)	Issued after the death certificate is filed; required to legally move and bury the body.
Right of Disposition	Texas Health and Safety Code	A legal hierarchy determines who makes decisions, starting with the deceased's written wishes.
Cemetery Operations	Texas Funeral Service Commission (TFSC) & Texas DSHS	Cemeteries must be properly registered and maintained. Private family cemeteries have specific acreage and filing rules.

https://www.cremation.green/state-of-texas-burial-laws/#elementor-toc__heading-anchor-0

General Disposition Rules

- Disposition of remains; duty to inter (HSC 711.002)
 - Person may provide directions for disposition of remains via a will, prepaid funeral contract, or signed written instrument (711.002(g))
- Records of interment (HSC 711.003)
- Rights of interment in plot (HSC 711.039)
- Depth of grave (HSC 714.001)
- Et cetera



Also check county and municipal regulations

Certain Interments

In some circumstances, if:

- Person A causes the death of Person B, the person having the right to control the disposition of Person B's remains can prevent Person A from being interred in the same perpetual care cemetery as Person B. (HSC 712.009)
- Person A has been arrested or warrant issued related to family violence against Person B, or if B applied for a protective order against A, then A may not control disposition of B's remains (HSC 711.002(l))



Cremation, Generally



HSC Ch. 716

- Release of remains (HSC 716.156)
- Disposition of remains (HSC 716.302)
- Commingling of remains (HSC 716.303)

They Want to Put a Loved One's Remains in the City Park!?

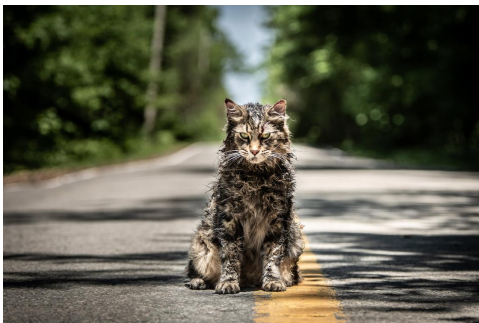
HSC 716.304 Scattering remains. A person may scatter cremated remains over uninhabited public land, over a public waterway or sea, or on the private property of a consenting owner. Unless the container is biodegradable, the cremated remains must be removed from the container before being scattered.



Park Owner Considerations

- Property owner chooses whether to permit interment, entombment, etc. on site or not
- One or more interments might qualify the property as a cemetery
- Once a property is considered a cemetery, it's a process to remove the designation
- Burial of person \neq burial of pet

Disposition of Animals



- County/city regulations
- HOA/POA rules
- Disposal of carcasses of animals killed on roadways (HSC 361.117)
- Diseased/infections dead animals should be covered by at least three (3) feet of earth (4 TAC 59.12)

Establishing a New Cemetery

The General Rule

Sec. 711.008. LOCATION OF CEMETERY. (a) Except as provided by Subsections (b), (f), (g), (g-1), (g-2), (g-3), (g-4), (h), (k), and (m), an individual, corporation, partnership, firm, trust, or association may not establish or operate a cemetery, or use any land for the interment of remains, located:

- (1) in or within one mile of the boundaries of a municipality with a population of 5,000 to 25,000;
- (2) in or within two miles of the boundaries of a municipality with a population of 25,000 to 50,000;
- (3) in or within three miles of the boundaries of a municipality with a population of 50,000 to 100,000;
- (4) in or within four miles of the boundaries of a municipality with a population of 100,000 to 200,000; or
- (5) in or within five miles of the boundaries of a municipality with a population of at least 200,000.

BUT: if your cemetery is some combination of old enough, affiliated with an organized religious society or sect, on a campus of higher education, a private family cemetery, maybe your governing body said it was okay, or otherwise bracketed, the general rule may not apply.

Considerations

- Size of property
- Population of city/county
- Dedication of land (platting)
- Visitor access after interment
- City/county/other restrictions (flood plain, drainage, deed restrictions, etc.)
- Ownership structure (family, religious, corporate, etc.)

Formation of Cemeteries

- 711.021 Formation of Corporation to Maintain and Operate Cemetery
- 711.022 Formation of Nonprofit Cemetery Corporation by Plot Owners
- Ch. 711, Subch. C. Cemetery Organizations
- 711.033 Property Acquisition by Cemetery Organization; Recording Title
- 711.034 Dedication



Perpetual Care Cemetery Regs



HSC Ch. 712 regulates perpetual care cemeteries



Per HSC 712.002 general perpetual care cemetery requirements do not apply to:

- (1) a family, fraternal, or community cemetery that is not larger than 10 acres;
- (2) an unincorporated association of plot owners not operated for profit;
- (3) a church, a religious society or denomination, or an entity solely administering the temporalities of a church or religious society or denomination; or
- (4) a public cemetery owned by this state, a county, or a municipality.

Some Rules Get Hyper-Specific



711.008(i):

“A person may file a written application with the governing body of a municipality to establish or use a cemetery located inside the boundaries of the municipality. The municipality by ordinance shall prescribe the information to be included in the application. The governing body by ordinance may authorize the establishment or use of a cemetery located inside the boundaries of the municipality if the municipality determines and states in the ordinance that the establishment or use of the cemetery does not adversely affect public health, safety, and welfare. **This subsection applies only to a municipality that:**

- (1) is located in three or more counties;
- (2) has a population of 18,000 or more; and
- (3) does not have a cemetery within its boundaries, other than a family cemetery.”

Abandoned, Unknown, or Unverified Cemeteries



Abandoned/Unknown Cemetery

HSC 711.010 outlines mandatory process after human remains are found:

- May include removal to other cemetery or another place on the property
- Notice to Texas Historical Commission (see also HSC 711.0111)
- Notice filed with county clerk (HSC 711.011)

HSC 711.0105 describes method of removal

Family Cemeteries

- Not defined in 711.001
- Perpetual care rules typically do not apply
- If operating before 9-1-2009, many general cemetery requirements don't apply



Nuisance Cemeteries

- If cemetery is not being maintained, most cities (or others) may bring suit in district court to abate nuisance (711.007)
- Lien placed on dedicated cemetery property, or on cemetery property later dedicated w/consent of lienholder, does not affect dedication and is subject to dedication; sale on foreclosure of lien is subject to dedication of property for cemetery purposes (711.037)
- Abandoned plots in private cemeteries (HSC 714.003)
- Suit by (at least five) plot owners to maintain perpetual care (HSC 712.026)

Inspection Authority

- Occ. Code 651.157(e) states premises on which funeral directing, interment, cremation, or embalming is practiced shall be open at all times to inspection by authorized agents of county or municipality (among others) for violations of Occ. Code Ch. 651 and HSC Ch. 193, 361, or 716

Cemetery Preservation

- Texas Historical Commission [Preservation Guidelines](#)
- Historic Texas Cemetery designation
- Statewide inventory of cemeteries (see [Texas Historic Sites Atlas](#))
- County and municipal historical commissions, associations, and nonprofits

Someone Wants to Redevelop a Cemetery

Cemetery Dedication

711.035 Effect of Dedication

Sec. 711.035. EFFECT OF DEDICATION. (a) Property may be dedicated for cemetery purposes, and the dedication is permitted in respect for the dead, for the disposition of remains, and in fulfillment of a duty to and for the benefit of the public.

(b) Dedication of cemetery property and title to the exclusive right of sepulture of a plot owner are not affected by the dissolution of the cemetery organization, nonuse by the cemetery organization, alienation, encumbrance, or forced sale of the property.

(c) Dedication of cemetery property may not be invalidated because of a violation of the law against perpetuities or the law against the suspension of the power of alienation of title to or use of property.

(d) A railroad, street, road, alley, pipeline, telephone, telegraph, electric line, wind turbine, cellular telephone tower, or other public utility or thoroughfare may not be placed through, over, or across a part of a dedicated cemetery without the consent of:

- (1) the directors of the cemetery organization that owns or operates the cemetery; or
- (2) at least two-thirds of the owners of plots in the cemetery.

(e) All property of a dedicated cemetery, including a road, alley, or walk in the cemetery:

- (1) is exempt from public improvements assessments, fees, and public taxation; and
- (2) may not be sold on execution or applied in payment of debts due from individual owners and plots.

(f) Dedicated cemetery property shall be used exclusively for cemetery purposes until the dedication is removed by court order or until the maintenance of the cemetery is enjoined or abated as a nuisance under Section 711.007.

(g) Property is considered to be dedicated cemetery property if:

- (1) one or more human burials are present on the property; or
- (2) a dedication of the property for cemetery use is recorded in the deed records of the county where the land is located.



Removal of Dedication

HSC 711.036

Sec. 711.036. REMOVAL OF DEDICATION. (a) A cemetery organization may petition a district court of the county in which its dedicated cemetery is located to remove the dedication with respect to all or any portion of the cemetery if:

- (1) all the remains have been removed from that portion of the cemetery where the dedication is to be removed; or
- (2) no interments were made in that portion of the cemetery where the dedication is to be removed and that portion of the cemetery is not used or necessary for interment purposes.

(b) An owner of land adjacent to a cemetery for which a cemetery organization or other governing body does not exist may petition a district court of the county in which the cemetery is located to remove any human remains and the dedication for all or any portion of the cemetery. In addition to the notice required by Section 711.004, notice of a petition filed under this subsection must be given to the Texas Historical Commission and to the county historical commission of the county in which the cemetery is located. The court may consult the Texas Historical Commission and the county historical commission in making a decision under this section. The court may also designate or appoint any person, party, court appointed representative, or official the court considers necessary to assist in determining whether the removal is in the public interest. Unknown next of kin of deceased persons buried in the cemetery shall be served by publication of a notice in a newspaper of general circulation in the county in which the cemetery is located, or if there is not a newspaper of general circulation in the county, in a newspaper of general circulation in an adjacent county. A reasonable good faith effort shall be made to remove all remains and monuments from the cemetery or that portion of the cemetery for which the dedication is to be removed.

(c) The court shall order the removal of the human remains and the dedication on notice and proof satisfactory to the court that the removal is in the public interest.



Removal of Dedication

HSC 711.010(b) On petition of the property owner, a district court of the county in which an unknown cemetery is discovered or an abandoned cemetery is located may order the removal of any dedication for cemetery purposes that affects the property if court finds removal of dedication is in the public interest. If a court orders removal of a dedication of a cemetery and all human remains have not previously been removed, court shall order removal of human remains from the cemetery to:

- (1) a perpetual care cemetery;
- (2) a municipal or county cemetery; or
- (3) any other place on the owner's property that the district court finds is in the public interest.

*If this happens, notice must be given to the Texas Historical Commission and the county historical commission

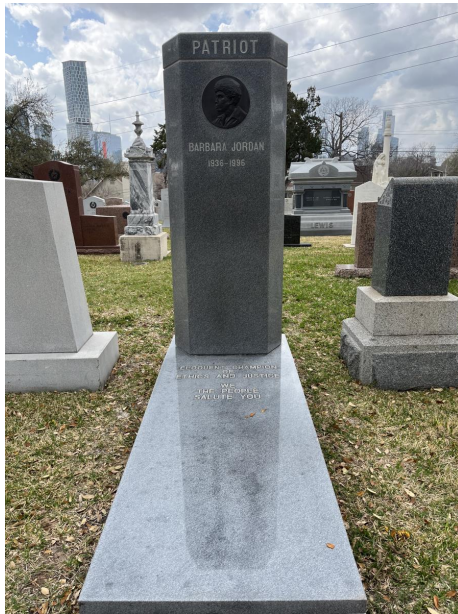
Removal of Remains



- Per 711.004, must get three-part consent; recordkeeping required
- 711.0105 Method of Removal of Remains
 - Supervised by cemetery keeper, licensed funeral director, medical examiner, coroner, or a professional archeologist
 - Good faith effort to remove all remains, casket, and funerary objects
 - Must be reburied unless listed parties approve a different disposition of remains

High Profile Interments

State Cemetery



State Cemetery

Tex. Gov't Code 2165.256(d) persons eligible for burial:

1. Former member of the legislature or member who dies in office;
2. Former elective state official or an elective state official who dies in office;
3. Former state official or state official who dies in office who has been appointed by the governor and confirmed by the senate and served at least 10 years in the appointed office;
4. Person specified by governor's proclamation, subject to review and approval by the State Cemetery Committee;
5. Person specified by concurrent resolution adopted by the legislature, subject to review and approval by committee;
6. Person specified by order of the committee.

See also 13 TAC Ch. 71

Houston Memorial Gardens + Paradise Cemetery South



6/9/2026

43

George Floyd Entombment

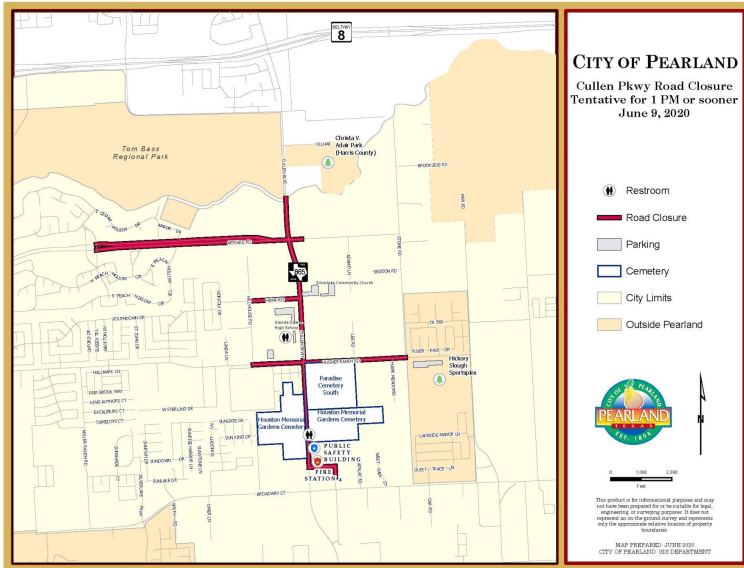


- Funeral in Houston
- Entombment in Pearland, at Houston Memorial Gardens
- Event included federal, state, and local agencies

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44

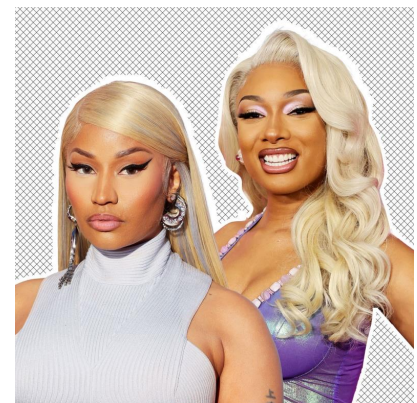
Planning + Communication



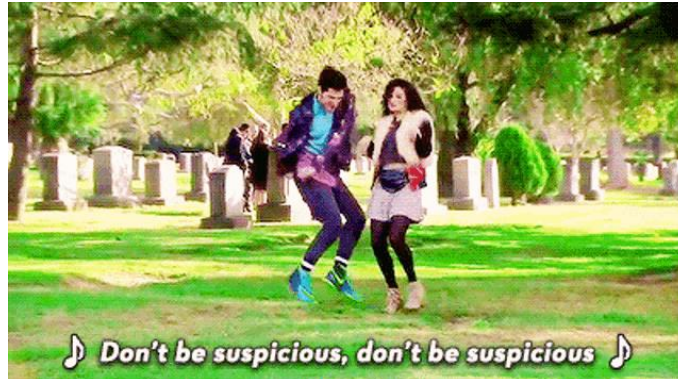
- Use all your local resources (GIS mapping, emergency operations planning, logistics, specialized divisions, communications, etc.)
- Work with other law enforcement agencies and governmental bodies
- Aim for maximum transparency with the public
- Consider your weather forecast
- **Expect PIRs**

Megan Thee Stallion vs. Nicki Minaj

- Megan Pete's mother, Holly Thomas, is buried at Paradise Cemetery South
- Megan and Nicki have beef
- Nicki's fans have doxxed the burial location, made threats of site desecration



Law Enforcement in Cemeteries



6/9/2026

47

Access vs. Trespass



HSC 711.041 Access to cemetery

- General right to reasonable ingress/egress for purpose of visiting; extends only to hours determined by owner(s) of land surrounding the cemetery, who may designate routes and reasonable hours of availability

TPC 30.05 Criminal trespass

- Violation if person enters/remains on property of another, without effective consent, and had notice entry was forbidden or received notice to depart but failed to do so

*Interference with someone's reasonable right to ingress/egress under 711.041 is a Class C misdemeanor (HSC 711.0521)

6/9/2026

48

Penal Code Violations

- TPC 28.03 Criminal Mischief (SJF if inflicted on human burial)
- TPC 42.03 Obstructing Highway or Other Passageway (M/B)
- TPC 42.05 Disrupting Meeting or Procession (M/B)
- TPC 42.055 Funeral Service Disruptions (M/B)
- TPC 42.08 Abuse of Corpse (M/A if damage to space at which corpse was interred, otherwise this offense is SJF)



Other Criminal Offenses

Fact-specific mix of possible misdemeanors and felonies

- HSC 711.052 violations in context of operating cemetery, keeping cemetery records, removing remains improperly, etc.
- HSC 712.048 violations in context of selling plots, misusing assets of perpetual care fund
- HSC 714.001 improper burial
- HSC 716.351 violations related to cremation
- Occ. Code 651.602 violations in context of acting as funeral director/embalmer

Peace Officer Powers

Sec. 711.009. Authority of Cemetery Keeper.

(a) The superintendent, sexton, or other person in charge of a cemetery has the same powers, duties, and immunities granted by law to:

- (1) a police officer in the municipality in which the cemetery is located; or
- (2) a constable or sheriff of the county in which the cemetery is located if the cemetery is outside a municipality.

(b) A person who is granted authority under Subsection (a) shall maintain order and enforce the cemetery organization's rules, state law, and municipal ordinances in the cemetery over which that person has charge and as near the cemetery as necessary to protect cemetery property.

(c) This section applies only to a cemetery located in a municipality with a population of 40,000 or more or in a county with a population of 290,000 or more.



Thank you!

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