

Texas City Attorneys Association
2026 Summer Conference
June 24-26, 2026

Dying to Ask: Cemetery and Burial Q & A for Cities

Katie Leininger
Deputy City Attorney
City of Pearland
3519 Liberty Dr.
Pearland, TX 77581
kleininger @ pearlandtx . gov
281-652-1667

According to the Texas Historical Commission, Texas has close to 15,000 known cemeteries.¹ This number includes currently operating cemeteries, abandoned cemeteries, perpetual care and nonperpetual care cemeteries, and possibly some officially unverified cemeteries, all of which are defined terms.² Many of these cemeteries are searchable in the Texas Historical Commission's atlas, an online map and resource to look up historic landmarks.³ As with many topics in municipal law, there are multiple layers of state, county, and municipal regulations that may be relevant to your specific cemetery issue, but Chapter 711 of the Texas Health and Safety Code is a good starting point for researching questions somehow related to a cemetery.

What makes a property a cemetery?

Generally speaking, a "cemetery" is defined as 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.⁴ Property may be considered a dedicated cemetery or dedicated to a cemetery purpose 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.⁵ In other words, the presence of remains or an unmarked grave as defined by Chapter 711 can be enough to make a property a cemetery as defined by state law, even when the location was previously abandoned or unverified and/or has only recently been identified as a burial site.⁶ Property may also legally be dedicated to a cemetery purpose even before any interments have taken place.

The statutory process for dedicating a property exclusively to cemetery purposes includes subdividing the property into gardens or sections, mapping or platting the property to show individually numbered plots, then filing the map or plat plus a written certificate or declaration of dedication with the appropriate county clerk.⁷ A dedication of property exclusively to cemetery purposes can limit future development, making it difficult to create easements through, over or across property, and exempts the property from public improvements assessments, fees, and public taxation.⁸ In *McAnally v. Friends of WCC, Inc.*, failure to dedicate a one-acre tract including a chapel that was next to a cemetery and under same ownership, and using the one-acre property for a cemetery purpose, namely "worship and burial purposes," made it a fact question whether certain property had been "dedicated for cemetery purposes" or not.⁹ A formal petition process in district court is required to remove the dedication with respect to all or part of a cemetery.¹⁰

What agencies, entities, and governmental bodies may be involved in cemetery issues?

¹ https://thc.texas.gov/sites/default/files/2025-03/HTC_Preserving_Historic_Cemeteries.pdf

² Tex. Health & Safety Code § 711.001.

³ <https://atlas.thc.texas.gov/>

⁴ Tex. Health & Safety Code § 711.001(4).

⁵ Tex. Health & Safety Code § 711.035(g).

⁶ *In re Prehistoric Human Remains Discovered at Archaeological Site 41hr796*, 2012 Tex. Dist. LEXIS 18303.

⁷ Tex. Health & Safety Code § 711.034.

⁸ Tex. Health & Safety Code § 711.035.

⁹ *McAnally v. Friends of WCC, Inc.*, 113 S.W.3d 875 (Tex. App.—Dallas 2003).

¹⁰ Tex. Health & Safety Code § 711.036.

The city and/or county in which property dedicated to a cemetery purpose is located have authority over, and may find themselves responsible for, for any cemetery in their jurisdiction. In addition to general governmental jurisdiction, Chapter 651 of the Texas Occupations Code regulates crematory services, funeral directing, and embalming with enabling legislation for the Texas Funeral Service Commission, which regulates all Texas crematories.¹¹ The TFSC also regulates and licenses funeral establishments and funeral directors and is responsible for funeral home facilities, at-need arrangements, funeral services, and the behavior of funeral directors.¹² Enforcement by the commission is also outlined in Chapter 711 and includes administrative penalties and the ability to bring a civil action to enjoin violations.¹³ The Texas Department of Banking investigates consumer complaints, including against perpetual care cemeteries.¹⁴ The Texas Department of Insurance regulates all insurance products, including insurance policies sold in conjunction with a pre-need funeral contract.¹⁵ The State Health Department also has jurisdiction over cemeteries owned by municipalities, religious organizations, and other nonprofits, in cases when the cemetery has become a health hazard.¹⁶

Perhaps most importantly, the Texas Historical Commission (THC) plays an active role in documenting the existence of and preserving cemeteries across Texas.¹⁷ For certain high-profile locations like the Alamo, the Texas General Land Office and/or other public or private entities may also be involved in any discussions.¹⁸ If your city becomes aware of an abandoned, previously unknown, or unverified cemetery, or if human remains are found during site work at a property, the THC must be notified as required by state law.¹⁹ Involved parties including but not limited to property owners, governmental bodies, and other litigants may also be required to file notice with a county clerk and/or a county historical commission after discovery of an abandoned, unknown, or unverified cemetery. The THC offers resources on their agency website to inform individuals, cemetery organizations, and governmental bodies of their statutory obligations in the context of cemeteries, burials, and related issues.

The general power of eminent domain is not available to most governmental bodies if the property is dedicated to a cemetery purpose. However, the Texas Water Code specifically authorizes water districts to utilize the condemnation process governed by Chapter 21 of the Texas Property Code “for the construction of district dams and creation of lakes and reservoirs for the purpose of conservation and development of the natural resources of this state.”²⁰ This means your local water district might suddenly also have a lot to do with a cemetery in or near your jurisdiction, depending on what projects the water district plans to undertake for their service area.

¹¹ Tex. Occ. Code § 651.004.

¹² Tex. Occ. Code § 651.151.

¹³ Tex. Health & Safety Code § 711.055.

¹⁴ Tex. Finance Code § 12.108; Tex. Health & Safety Code § 711.055.

¹⁵ Tex. Insurance Code § 31.002.

¹⁶ <https://www.txcca.us/faq/>

¹⁷ Tex. Gov’t Code § 442.017; Tex. Health & Safety Code § 711.012(c).

¹⁸ *In re Alamo Defenders Descendants Ass’n*, 619 S.W.3d 363 (Tex.App.—El Paso 2021).

¹⁹ Tex. Health & Safety Code § 711.010; § 711.0111.

²⁰ Tex. Water Code § 49.224.

What can a person do with someone's remains?

Each individual has the right to provide directions for the disposition of his or her remains, including by cremation, via a will, prepaid funeral contract, or by a proper signed, written instrument.²¹ If the decedent has not provided instructions, certain persons have a statutory right to decide how to dispose of remains and a duty to do so properly. Section 711.002 discusses disposition of remains and the general duty to inter; it's a statutory choose-your-own-adventure.²² Possibilities include but are not limited to the traditional burial in a plot or entombment defined in Chapter 711, as well as cremation or donation for organ retrieval or medical research.²³ Under Texas law, "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."²⁴ Importantly, consent by the owner or owners is required to scatter remains on private property.

Disputes over right to control disposition of a decedent's remains are to be "resolved by a probate court with jurisdiction over probate proceedings for the decedent, regardless of whether a probate proceeding has been initiated."²⁵ The general right of interment in a specific burial plot, including potentially contested spousal property rights to a specific plot, is outlined in Sec. 711.039.²⁶ Litigation often ensues when long-estranged family members or other interested parties decide to weigh in on disposition of a decedent's remains.²⁷

Records must be kept for each interment in a cemetery.²⁸ There are specific statutory requirements for how remains may be removed from one place and put in another (disinterment and reinterment) and documentation and reporting of such activity is also required.²⁹ In Texas, moving remains generally requires consent from three parties: 1) the cemetery organization operating the cemetery, 2) the current plot owner or owners, and 3) one of a hierarchy of persons listed in Sec. 711.004(a). However, depending on the nature, condition, and age of a burial area, a county or district court may ultimately determine what happens to any human remains present at a particular location.³⁰ A justice of the peace, state registrar, and others are also authorized to make the determination of what happens to human remains in some situations.³¹

²¹ Tex. Health & Safety Code § 711.002(g).

²² Tex. Health & Safety Code § 711.002.

²³ Tex. Health & Safety Code Ch. 716 ("Cremation"); Tex. Health & Safety Code Ch. 692A ("Texas Anatomical Gift Act").

²⁴ Tex. Health & Safety Code § 716.304.

²⁵ Tex. Health & Safety Code § 711.002(k).

²⁶ Tex. Health & Safety Code § 711.039.

²⁷ *In re Estate of Hemsley*, 460 S.W.3d 629 (Tex.App.—El Paso 2014); *Bonnen v. Serv. Corp. Int'l*, 2025 Tex. App. LEXIS 5765 (Tex.App.—Houston [14th Dist.] 2025, pet. denied).

²⁸ Tex. Health & Safety Code § 711.003.

²⁹ Tex. Health & Safety Code § 711.004.

³⁰ Tex. Health & safety Code § 711.004(c).

³¹ Tex. Health & Safety Code § 711.004(f), (f-1).

If a decedent was an elected or appointed official in Texas at or before time of death, or they were otherwise famous or influential enough, they may also be eligible for burial in the Texas State Cemetery in Austin. Eligibility for a plot in the Texas State Cemetery is outlined in the Texas Government Code and may include spouses and some children of eligible individuals.³² As a side note, the Texas State Cemetery is a fascinating place to visit when you're in Austin.

Some criminal conduct can disqualify a person from their general legal right to be interred in a particular location or to make decisions about disposition of someone else's remains. In certain 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.³³ Person A may also lose the right to control disposition of Person B's remains if Person A has been arrested or is the subject of an arrest warrant issued related to family violence against Person B, or if Person B had filed an application for a protective order against Person A.³⁴

What can a person do with a pet or other animal's remains?

The disposition of pets' remains is much less regulated than disposition of human remains. Some local governments have adopted limited regulations to allow for euthanized animals to be disposed of in compliance with state law. For example, Pearland allows humane destruction of "any animal within the city...so wounded, maimed or injured as to render its recovery hopeless in the opinion of the animal control officer or police officer...in a manner as determined by the officer to be the most effective and least painful, considering attendant circumstances. Upon destruction, such officer shall cause the carcass of such destroyed animal to be lawfully removed and disposed of."³⁵ In cities where the time it takes county staff to make the assessment of an animal's likelihood of survival is or can be slow, having such language in your ordinances may allow for an animal to be humanely euthanized sooner than if city staff have to wait for someone from the county to come evaluate the animal after it has been hit by a car or otherwise critically injured. Pearland's Code of Ordinances also permits humane euthanasia in cases of injured cats or dogs brought to the animal shelter.³⁶ Some counties and cities do not regulate disposition of animal remains at all, but in the absence of local government regulations, state laws will, and property owners' association rules may, apply to pet burials or scattering cremated pet remains in at least some circumstances.

Specific to dead animals retrieved from a roadway by animal services staff, state law says "counties and municipalities may dispose of the carcasses of animals killed on county or municipal roadways by burying the carcasses on property owned by the entity that is responsible for road maintenance. No permit shall be required to dispose of animal carcasses on county or

³² Tex. Gov't Code § 2165.256(d).

³³ Tex. Health & Safety Code § 712.009.

³⁴ Tex. Health & Safety Code § 711.002(l).

³⁵ Pearland Code of Ordinances § 6-15.

³⁶ Pearland Code of Ordinances § 6-43.

municipal property. Disposal shall be conducted in a manner consistent with public health.”³⁷ In general, dead animals are considered a type of “municipal solid waste” as defined in the Solid Waste Disposal Act and can be disposed of accordingly, in compliance with applicable laws.³⁸

If an animal’s death is due to disease, options for disposition may be more limited. If an animal shows the clinical signs of rabies, state law requires it to be humanely destroyed and submitted to a lab for testing.³⁹ The Texas Administrative Code lists the means by which a person who is the owner or caretaker of livestock, exotic livestock, domestic fowl, and/or exotic fowl may permissibly dispose of animals in cases of disease or illness.⁴⁰ The regulation includes a list of options, but if disposition of such an animal is by burial, it should be covered by at least three feet of earth.⁴¹

Where can someone develop a new cemetery?

Answering this question can be much more complicated than it seems like it should be. The general rule for where cemeteries may be established or operated is listed in Sec. 711.008(a). It prohibits establishing or operating a cemetery, or using any land for the interment of remains:

- (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 200,000.⁴²

However, subsection (a) is followed by ten other subsections outlining various exceptions, including cemeteries established before the law was adopted, religious or other nonprofit groups’ cemeteries, some family cemeteries, and many other specifically bracketed groups or locations.⁴³ If someone approaches your city wanting to establish a new cemetery of any kind, ask them to provide the location and as much information about the group as they will share with you, then start reading state law.

How do we match development code use definitions and zoning classifications to normal cemetery activities?

Cemeteries can be complicated to regulate as a use in municipal development codes. What qualifies as a “cemetery purpose” based on the Health and Safety Code definition may be much broader than definitions in your city’s adopted development code.⁴⁴ Some attempts by a city

³⁷ Tex. Health & Safety Code § 361.117(a).

³⁸ Tex. Health & Safety Code § 361.003(20).

³⁹ Tex. Health & Safety Code § 826.043.

⁴⁰ 4 Tex. Adin. Code § 59.12.

⁴¹ Id.

⁴² Tex. Health & Safety Code § 711.008(a).

⁴³ Tex. Health & Safety Code § 711.008.

⁴⁴ Tex. Health & Safety Code § 711.001(8).

to limit certain uses in an existing cemetery, crematorium, embalming facility, or similar may be preempted by state law. For example, crematory services, funeral directing, and embalming are governed by Chapter 651 of the Texas Occupations Code. This chapter governs activities including but not limited to operation of funeral establishments and sale of “funeral merchandise” for use in funeral ceremonies, embalming, or care and preparation of a dead human body for burial, cremation, or other disposition.⁴⁵ If staff want to apply local development regulations to a current or proposed cemetery, they will need to decide how far they want to advocate for use limitations based on local regulations as opposed to permitting cemetery purposes listed in or implied by state law.

If your city requires dedication of right of way at time of platting, or requires construction of sidewalks or other amenities during development, staff should verify whether such requirements conflict with statutory language regarding the effect of cemetery dedication.⁴⁶ Among other limitations, “all property of a dedicated cemetery, including a road, alley, or walk in the cemetery...is exempt from public improvements assessments, fees, and public taxation” and “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.”⁴⁷

Planned developments or annexation agreements may be an option to contract for a cemetery’s compliance with a city’s adopted development regulations. For example, a cemetery might enter into a PD or annexation agreement with a city in which, for any future development of the property, it agrees to comply with development regulations such as setbacks, corridor overlay district, or other regulations designed to standardize and improve development in your city. Such an agreement may improve the cemetery’s relationship with neighbors, depending on whether nearby uses are residential, commercial, or some combination of the two.

Platting may be another point at which mutual benefit may be found by the cemetery organization agreeing to compliance with certain city requirements. If someone wants to develop a cemetery along a roadway your city plans to expand, platting to plan for the expansion may eliminate or minimize problems later, because dedication for cemetery purposes means a street, road, alley, or other public utility or thoroughfare may not be placed through, over, or across a part of a dedicated cemetery without the consent of the directors of the cemetery organization or at least two-thirds of the plot owners.⁴⁸ The cemetery (and your city staff) may also have fewer complaints from single-family residential neighbors if the cemetery plats individual plots to maintain adopted setbacks, rather than platting burial plots all the way to their shared property line at the back of a residential neighborhood.

State law may allow your city to adopt true health and safety regulations that have the effect of restricting some cemetery purposes, but your city’s concern may already be covered by

⁴⁵ Tex. Occ. Code § 651.001(8) and (9).

⁴⁶ Tex. Health & Safety Code § 711.035.

⁴⁷ Id.

⁴⁸ Tex. Health & Safety Code § 711.035(d).

other law. For example, state law defines the maintenance or location of a feed pen for hogs, cattle, or horses, a slaughter pen, or a slaughterhouse 500 feet or nearer to an established cemetery in a county with a population of at least 525,000 as a nuisance.⁴⁹ Such statutory definitions may help you regulate the relative location of a cemetery and a feed lot without needing to adopt ordinances that might be preempted by other state laws. Additionally, state law allows for nuisance abatement of cemeteries, although abatement by injunction or other court order may not necessarily include removing the “cemetery purpose” use restriction on the property.

What enforcement mechanisms exist when a cemetery is not adequately maintained?

Nuisance abatement of property dedicated for a cemetery purpose is permitted under the Health and Safety Code. Sec. 711.007 outlines a process by which any of a list of parties, including cities, nearby homeowners, and plot owners, can file suit in district court. The court *may* order abatement and enjoin the continuance of the cemetery if certain conditions exist;⁵⁰ the court *shall* grant a permanent injunction against each person responsible for the nuisance if a cemetery nuisance exists or is threatened.⁵¹ Notice of such an action must be provided to the THC and to the county historical commission of the county in which the cemetery is located, and either historical commission may intervene and become parties to the suit.⁵²

An important distinction among types of cemeteries is whether a particular location is a perpetual care or a nonperpetual care cemetery, as the maintenance required by state law is (as their names suggest) different for the two types of cemeteries. For cemeteries established after May 15, 1947, and before September 1, 1993, the cemetery corporation’s charter must state whether it is a perpetual care or nonperpetual care cemetery.⁵³ Sec. 711.021 requires any cemetery that began its initial operations on or after September 1, 1993, to operate as a perpetual care cemetery in accordance with Chapter 712 of the Health and Safety Code. However, Chapter 712’s requirements do not apply to family, fraternal, or community cemeteries less than 10 acres in size; nonprofit, unincorporated associations of plot owners; various religious organizations; and public cemeteries operated by the state, a county, or a municipality.⁵⁴

For perpetual care cemeteries, Chapter 712 requires registration with the secretary of state, sets minimum capital requirements to ensure the perpetual maintenance of the site, and mandates these cemeteries hold a certificate of authority to operate, among other things.⁵⁵ Perpetual care cemeteries are also required by state law to post certain informational signage at or near the cemetery entrance or administration building.⁵⁶ They may also become the location at which remains are reinterred after being removed from some other location.

⁴⁹ Tex. Health & Safety Code § 714.002(a).

⁵⁰ Tex. Health & Safety Code § 711.007(a).

⁵¹ Tex. Health & Safety Code § 711.007(c).

⁵² Tex. Health & Safety Code § 711.007(e).

⁵³ Tex. Health & Safety Code § 711.021.

⁵⁴ Tex. Health & Safety Code § 712.002.

⁵⁵ Tex. Health & Safety Code § 712.003, § 712.0032.

⁵⁶ Tex. Health & Safety Code § 712.007.

A cemetery corporation that violates Chapter 711 or Chapter 712 may forfeit the corporation's charter and right to do business in Texas; the attorney general has authority to enforce upon notice of violations, including by bringing suit or quo warranto proceedings in district court.⁵⁷ The attorney general may also bring an action for injunctive relief to enforce Chapter 711 or a rule or order adopted by the Texas Funeral Service Commission.⁵⁸ If the problem is an (unused) individual plot not being maintained, the Health and Safety Code outlines when a plot may revert to cemetery ownership on a finding by a court that the plot has been abandoned.⁵⁹

If nuisance conditions exist at a "perpetual care cemetery" or "endowment care cemetery"⁶⁰, then determining the party responsible for abating nuisance conditions should be relatively straightforward. However, if you have a "nonperpetual care cemetery"⁶¹ (which is simply "a cemetery that is not a perpetual care cemetery") or an "abandoned cemetery"⁶² as defined by state law, your governing body may want to explore authorizing removal of all bodies, monuments, tombs, or other similar items from the cemetery to a perpetual care cemetery as authorized by Sec. 711.007(d), to abate the nuisance conditions. Before seeking a court order to remove bodies, it's important to make sure an "abandoned" cemetery is, in fact, abandoned. In *Levandovsky v. Targa Res. Inc.*, the court determined because the cemetery was being maintained by *any* caretaker, even though the caretaker was the party asking to remove the remains from the family cemetery, it was not an abandoned cemetery as defined by the Texas Historical Commission.⁶³

In these nuisance actions, the district court shall determine whether abatement is to be achieved by repair and restoration or by removal of the cemetery, and the party or parties liable for the costs associated with the abatement.⁶⁴ Larger cities may have additional options for where bodies, monuments, tombs, and other similar items may be moved to, if no perpetual care cemetery is available.⁶⁵ If the parties would rather preserve a historic cemetery and clean it up to abate the nuisance conditions present at the property, Chapter 715 regulates certain historic cemeteries and codifies a process for creating a nonprofit organization to restore and maintain a historic cemetery.⁶⁶

Additionally, your city may be able to use other abatement tools including city ordinances, Chapter 54 or Chapter 214 of the Texas Local Government Code, or other laws to require buildings or structures to be maintained in a condition that does not create a danger to the community. For example, if your city has adopted abatement ordinances and/or building codes governing all structures, you may be able to file a nuisance suit and/or issue citations for a dilapidated fence or other dilapidated structures on cemetery property.

⁵⁷ Tex. Health & Safety Code § 711.051.

⁵⁸ Tex. Health & Safety Code § 711.0515.

⁵⁹ Tex. Health & Safety Code § 714.003.

⁶⁰ Tex. Health & Safety Code § 711.001(30).

⁶¹ Tex. Health & Safety Code § 711.001(28).

⁶² Tex. Health & Safety Code § 711.001(1).

⁶³ *Levandovsky v. Targa Res. Inc.*, 375 S.W.3d 593 (Tex.App.—Houston [14th Dist.] 2012).

⁶⁴ Tex. Health & Safety Code § 711.007(f).

⁶⁵ Tex. Health & Safety Code § 714.004.

⁶⁶ Tex. Health & Safety Code Ch. 715.

What about criminal conduct in a cemetery?

Law enforcement in cemeteries and enforcement of laws relating to cemeteries is the responsibility of local law enforcement, including police and county sheriffs. The Texas Historical Commission and other state agencies have recordkeeping obligations and may receive reports of activities and/or violations, but they do not directly maintain cemeteries or enforce state laws. Access to cemeteries (other than unverified cemeteries) for people wishing to visit, including private burial grounds for which no public ingress or egress is available, is governed by Sec. 711.041.⁶⁷ Interfering with a person's reasonable right to ingress or egress at a cemetery is classified as a Class C misdemeanor.⁶⁸ Certain types of conduct related to operating a business for cemetery purposes may be classified as misdemeanors or felonies under various state laws.⁶⁹ It's likely not a common problem, but failure to comply with the grave depth requirements in state law (and, if applicable, city ordinances) is a Class C misdemeanor.⁷⁰

For better or worse, state law gives certain cemetery keepers including the superintendent, sexton, or other person in charge of a cemetery "the same powers, duties, and immunities granted by law" to police officers in a city, and to constables or sheriffs in a county, in which a cemetery is located.⁷¹ This peace officer-like authority exists if the cemetery is located in a city of 40,000 or more or in a county of 290,000 or more, and exists "in the cemetery over which that person has charge and as near the cemetery as necessary to protect cemetery property."⁷² If this law applies to your city, you may want to talk to your cemeteries about who does what law enforcement, before this legal authority becomes an actual issue.

For people who have morbid friends, the criminal offense entitled Abuse of Corpse⁷³ is usually a state jail felony, unless the vandalism, damage, or offensive treatment is of the space in which a human corpse has been interred or otherwise permanently laid to rest, in which case the offense is a Class A misdemeanor. For purposes of this offense, a "human corpse" includes any portion of a human corpse, the cremated remains of a human corpse, or any portion of the cremated remains of a human corpse.⁷⁴ The elements of Class A misdemeanor Abuse of Corpse (by harming the place where remains are laid to rest) can also overlap with the elements of the general offense of Criminal Mischief, and the offense can potentially be charged under either or both sections.

The general Penal Code offense of Criminal Mischief can be classified as anything from a Class C misdemeanor if the amount of pecuniary loss is less than \$100, up to a first-degree felony

⁶⁷ Tex. Health & Safety Code § 711.041.

⁶⁸ Tex. Health & Safety Code § 711.0521.

⁶⁹ Tex. Health & Safety Code § 711.048; § 711.052; § 716.351; Tex. Occ. Code § 651.602.

⁷⁰ Tex. Health & Safety Code § 714.001.

⁷¹ Tex. Health & Safety Code § 711.009(a).

⁷² Tex. Health & Safety Code § 711.009(b).

⁷³ Tex. Penal Code § 42.08(b).

⁷⁴ Tex. Penal Code § 42.08(c). So in other words, if Victor Frankenstein lived in Texas, he would have committed a state jail felony when he stole that body from its burial site.

if the amount of pecuniary loss is \$300,000 or more.⁷⁵ Additionally, Criminal Mischief is classified as a state jail felony if the damage or destruction is inflicted on a place of worship or human burial or certain other locations, and the pecuniary loss to real property or to tangible personal property is \$750 or more but less than \$30,000.⁷⁶

Many of the more common offenses committed in or near a cemetery are misdemeanors. For example, Obstructing Highway or Other Passageway⁷⁷, Disrupting Meeting or Procession⁷⁸, and Funeral Service Disruption⁷⁹ are generally classified as Class B misdemeanors. The elements of each of these offenses may become important to law enforcement or other staff in the context of high-profile interments or entombments, if the deceased or their family members attract crowds of protestors or others simply wanting to observe the event in or near the cemetery.

Managing high profile interments, entombments, etc.

Unfortunately, funerals and cemeteries have increasingly become a focus of negative attention in recent years, so cities can suddenly find themselves in the national spotlight due to a burial in your city. In the past few years, our city staff have handled both a high-profile funeral and a doxxing of a gravesite. If you start planning before you ever know such an event will be taking place in your city, even emotionally charged funerals or online threads to burial sites can be handled considerately so the family of the deceased can celebrate and remember their loved one without unnecessary upset.

In our situation, city staff had enough advance notice to coordinate with local, state and federal officials and thoroughly plan for an event involving potential security concerns including but not limited to expected high traffic volume, an unknown number of people, possible protests and counter protests, and weather-related complications. After a funeral service in Houston, the deceased was brought to Pearland for entombment in a cemetery just north of the building that houses our police department and municipal court. Thousands of people ultimately participated in memorial events in the Houston area, including the viewing, the funeral, the procession to the cemetery, and lining the streets on the way to the cemetery.

Among the best ways to ensure effective operations before, during, and after any high-profile, potentially disruptive event are prioritizing staff training and maintaining good partnerships with other governmental bodies. Texas peace officers are required to participate in use of force and de-escalation training, as well as ALERRT courses.⁸⁰ Our officers have also participated in training specifically 1) to learn how to safely manage large crowds and protests and 2) to better understand what types of activity are or are not protected by the First Amendment. Our city staff in all departments have taken training in which they learn that while protest is a protected First

⁷⁵ Tex. Penal Code § 28.03(b).

⁷⁶ Tex. Penal Code § 28.03(f).

⁷⁷ Tex. Penal Code § 42.03(b).

⁷⁸ Tex. Penal Code § 42.05(b).

⁷⁹ Tex. Penal Code § 42.055(c).

⁸⁰ https://www.tcole.texas.gov/system/files/2026-02/Peace%20Officer%20Training%20Requirements_0.pdf

Amendment activity, there are limits to what actions, even while protesting, are legal under state law.⁸¹ Law enforcement and others working during a high-profile funeral or related event also need to know if your city has adopted ordinances to restrict or prohibit targeted picketing or similar activity.⁸²

Before and during the event, we partnered with other law enforcement agencies at the local, state, and federal level to ensure thorough planning, adequate staffing, and protect the safety of all involved. It's imperative *all* the people, from *all* the departments involved, understand what the law is as far as who can be where, and what conduct is permitted or not. I believe communication among all participants before, during, and after this event is why it remained as peaceful and respectful as it did. Our communications team for the city and for the PD worked together to provide accurate, timely information to the public so neighbors could prepare for road closures and crowds, and those wanting to attend as a sign of respect knew where to park and what to expect. Frequent information sharing to news media and the public in general also allowed people participating in the procession to have an easier journey on a difficult day.

When you have many agencies or departments working together to manage an event, try to plan out in writing what each agency, group, and sub-group will do. The event will go more smoothly if all individuals understand your city's expectations for their participation. Ensure your written event plan specifies where and what each group (EMS, drone pilots, bicycle or motorcycle officers, SWAT, public works staff, etc.) will be doing or may be reassigned to do, depending on how your event unfolds. For example, our staff's experience from many large summer events meant our ops plan included personnel walking around in the crowd handing out cold drinks to observers, to avoid heat illness among people watching the procession. We also had EMS staff present and moving among the crowd to assist if needed. We partnered with an ISD to use one of their facilities as an additional muster point north of the cemetery. Although our internal experience with this high profile of an event was relatively limited, we had extensive staff experience planning for and safely managing other types of large events in hot weather. Because we were partnering with other agencies who had handled similarly large funereal events in the past, we could incorporate their lessons learned into our planning and help us oversee this event safely.

The threats to a particular gravesite were a much more limited incident in terms of staff time, and it was newsworthy because it allegedly arose from a dispute between two musicians. The fans of one musician publicized the location of the gravesite where the other musician's mother was interred. Law enforcement investigated the threats posted on social media, responded to media requests, and conducted close patrols of the location for a period of time to ensure no criminal activity took place. The cemetery also increased their private security's presence. The quick reaction from the cemetery and law enforcement meant no actual damage to the gravesite was done.

One of the takeaways from both incidents was to expect public information requests and criticism. After each incident, our review of how staff handled the situation was generally positive,

⁸¹ Tex. Penal Code § 42.03; § 42.05; § 42.055.

⁸² Pearland Code of Ordinances § 20-15.

because people and property were kept safe and unharmed. When we received public information requests for information related to event planning surrounding the entombment, city staff intentionally released most of the responsive documents with a goal of greater transparency, even though we could have asserted exceptions to release under the Public Information Act for some of the requested information.⁸³ However, after responsive information was released to civil rights organizations, the media focus moved to concerns about some of the contingencies in our inter-agency event plans. Thankfully our “what if” planning wasn’t necessary, but it would have been irresponsible not to plan for worst possible outcomes such as an active shooter in the crowd or how to stop someone actually damaging or attempting to damage property (or attack people) on the procession route. Local government staff may be used to criticism and skewed facts being what gets media traction, but anticipating possible media fallout and bad press before your city releases responsive information can be beneficial, too. After the high-profile event is another point at which I would encourage a city’s communications team to proactively publicize accurate, relevant information. Our experience has been more transparency is better, in the long run.

Conclusion

Cities may find themselves regulating or answering questions about cemeteries in all kinds of situations. Whether in the context of property development, nuisance abatement, criminal law, or simply responding to citizen requests, the Health and Safety Code and other state laws can provide guidance to municipal lawyers evaluating how to handle many situations. Familiarity with your local regulations and citizen sentiment can also be very important to resolving questions related to cemeteries. No single paper can cover all topics, but hopefully this answers some of the more common questions and assists with further research.

⁸³ Tex. Gov’t Code Ch. 552.