

CHAPTER 15. CEMETERY PRESERVATION

Sec. 10-15000. CEMETERIES

Sec. 10-15001. FINDINGS AND INTENT

The heritage and history of East Point is the legacy of its people who are now deceased. In their time, the pioneers of East Point played an integral part in making this city what it is today. Many of those who have passed on have been memorialized with resting places in cemeteries, graveyards, and burial grounds that have been abandoned, desecrated, neglected, unmarked, and are threatened by development. Such places are not a fitting tribute to East Point's honorable citizens of the past, and therefore, it is the desire of city council to provide for the preservation, protection, and maintenance of all such family and community cemeteries, graveyards, and burial grounds.

Sec. 10-15002. DEFINITIONS

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned cemetery means a cemetery that shows signs of neglect, including, without limitation, the unchecked growth of vegetation, repeated and unchecked acts of vandalism, or the disintegration of grave markers or boundaries and for which no person can be found who is legally responsible and financially capable of the upkeep of such cemetery.

Archaeologist means any person who is:

(a) A member of or meets the criteria for membership in the Society of Professional Archaeologists and can demonstrate experience in the excavation and interpretation of human graves.

Burial ground means an area dedicated to and used for interment of human remains. The fact that the area was used for burial purposes shall be evidence that it was set aside for burial purposes.

Burial object means any item reasonably believed to have been intentionally placed with the human remains at the time of burial or interment or any memorial, tombstone, grave marker or shrine which may have been added subsequent to interment. Such term also means any marker (whether inscribed or not), coping, curbing, enclosure, fencing, pavement, shelter, wall, stoneware, pottery, or other grave object erected or deposited incident to or subsequent to interment.

Caretaker means any person, business or organization that maintains and/or protects a gravesite, burial ground or cemetery.

Cemetery means any land or structure in this state dedicated to and used or intended to be used for interment of human remains. It may be either a burial park, pioneer, primitive or church burial grounds for earth interments; or a mausoleum for vault or crypt interments or a combination of one or more thereof.

County medical examiner means a person appointed by Fulton County pursuant to law as medical examiner.

Descendant means a person or group of persons related to a deceased human by blood or adoption in accordance with O.C.G.A. § 19-1-1 et seq. as amended.

Genealogist means a person who traces or studies the descent of persons or families and prepares a probative record of such descent.

Human remains means the bodies of deceased human beings in any stage of decomposition, including cremated remains.

Notification means to develop and implement a plan pursuant to O.C.G.A. § 36-72-6, et seq., as amended from time to time.

Preserve and protect means to keep safe from destruction, peril, or other adversity and may include the placement of signs, markers, fencing, or other such appropriate features so as to identify the site as a cemetery or burial ground and so as to aid in the preservation and protection of such cemetery or burial ground.

Sec. 10-15003. EXEMPTION FOR IDENTIFICATION OF BURIAL GROUNDS

The following persons are exempt from the requirements of this division for the purposes of identification of burial grounds by probing, magnetrometer, or such other processes recognized by the archaeological community:

- (a) Archaeologists retained by the cemetery governing board, or family of decedents;
- (b) Individuals retained by the cemetery owner(s) or governing organization to maintain the burial ground or cemetery;
- (c) Individuals employed or retained by an entity licensed to provide burial services; or
- (d) Individuals appointed, employed or retained by the family of a decedent to perform such work.

Sec. 10-15004. NOTIFICATION OF DISTURBED BURIAL GROUND

(a) Any person who knows or has reason to know that a human burial ground is being disturbed, destroyed, defaced, mutilated, removed, excavated, exposed or in which any activity is occurring without the permission of the City, cemetery owner or governing board, or family of a decedent whose remains are interred at the burial ground shall immediately notify the local law enforcement agency with jurisdiction in the area where the burial ground is located.

(b) Any law enforcement agency, City department, company, contractor, business, individual or other source that finds evidence or receives a report that a burial ground has been located or disturbed shall notify the Fulton County medical examiner and the Department of Planning and Zoning.

(c) When human remains are discovered, all land disturbing or tree removal activities that may affect the burial ground shall immediately cease and the discovering party shall notify the local law enforcement agency of the discovery. The Fulton County medical examiner and local law enforcement shall determine whether or not the grave is part of a cemetery. If it is determined that the grave is part of a cemetery, then the applicant is required to retain an archeologist to undertake efforts to identify and preserve the burial ground. If it is determined that it is not a cemetery site, then the local law enforcement agency, in conjunction with the medical examiner, shall be responsible for determining the proper disposition of the

remains. No land disturbing or tree removal activity shall resume without express written approval from the Department of Planning and Zoning.

Sec. 10-15005. CEMETERY BUFFER

Once the approximate boundaries of a burial ground are determined based upon the applicant's archaeologist's report, there shall be established a protective buffer surrounding the defined burial ground of a minimum of thirty-five (35) feet. In addition, the property owner shall erect a fence along the boundary of the defined burial ground in compliance with the provisions of section 10-2044. Any appeal of this determination shall be heard by the City Council. No land disturbing or tree removal activity shall resume without the party seeking an application for a land disturbance permit or tree removal permit.

Sec. 10-15006. ACCESS TO BURIAL GROUNDS

It shall be prohibited for any person or entity to deny reasonable access during daylight hours to a cemetery or burial ground to a family member of a decedent, members of an organization responsible for the protection and maintenance of the burial ground, or a caretaker retained by the family, property owner or organization to preserve and/or maintain the burial ground or cemetery.

Sec. 10-15007. PROHIBITED ACTS

(a) It shall be a violation of this division to willfully disturb, destroy, deface, mutilate, remove, excavate or expose a burial place without first obtaining a permit pursuant to O.C.G.A. § 36-72-1, et seq., or as it may be amended from time to time.

(b) It shall be a violation of this division to fail to report the discovery of human remains or to notify the local authority of the disturbance of a burial ground.

(c) It shall be a violation of this division should any person or entity seeking a permit to disturb a burial place pursuant to O.C.G.A. § 36-72-1, et seq., as may be amended from time to time, and to not comply with the provisions of this division.

(d) It shall be a violation of this division for any person or entity to fail to comply with the provisions of an approved permit.

(e) It shall be a violation of this division for any person or entity to conduct any activity, which is defined as an illegal activity or a crime under Georgia law or East Point Ordinance in a cemetery or burial ground.

Sec. 10-15008. PERMIT APPLICATION AND ADDITIONAL REQUIREMENTS

Any person or entity seeking a permit pursuant to O.C.G.A. § 36-72-4 shall comply with the provisions of that statute and the following:

(a) An application shall be filed with the Department of Planning and Zoning in a form to be approved by that department, but at a minimum shall include the following information:

(1) Evidence of ownership of the land on which the cemetery or burial ground is located in the form of a legal opinion based upon a title search.

(2) A report prepared by an archaeologist stating the number of graves believed to be present and their locations such as can be determined from the use of minimally invasive investigation techniques, including remote sensing methods and the use of metal probes, which activities shall not require a permit.

(3) A survey prepared by or under the direction of a registered surveyor showing the location and boundaries of the cemetery or burial ground based on an archaeologist's report.

(4) A plan prepared by a genealogist for identifying and notifying the descendants of those buried or believed to be buried in such cemetery.

(5) A proposal for mitigation or avoidance of the effects of the planned activity on the cemetery or burial ground. The proposal shall include, at a minimum, the following:

- a. A thirty-five-foot natural undisturbed buffer with a ten-foot improvement setback shall be provided around the perimeter of the outermost burial sites, as determined by an archeologist;
- b. A temporary tree protection fence shall be installed outside the perimeter of the undisturbed buffer before any land disturbing occurs and shall remain in place until all construction is completed;
- c. A permanent fence, four (4) feet in height, shall be constructed along the outer perimeter of the cemetery, and the fence shall not be constructed of chain link or vinyl-clad materials.
- d. The gate to the fence shall have a latch, and be ten (10) feet wide;
- e. A plaque or marker with the name of the cemetery and other historical information may be placed on the fence surrounding the burial ground;
- f. Unrestricted daylight access shall be provided to the burial ground by a twenty-foot graveled easement to the site from the nearest public road, and said easement shall be recorded with the Superior Court of Fulton County;
- g. A maintenance plan for a burial ground, fencing and driveway shall be developed and implemented for sites located on property in which a land disturbance permit is sought; and
- h. The location of the burial ground, as identified by the surveyor, shall be included on the recorded plat.

(6) If the proposal includes relocation of any human remains or burial objects, the proposal shall specify:

- a. The method of disinterment;
- b. The location and method of disposition of the remains;
- c. The approximate cost of the process; and
- d. The approximate number of graves affected.

(b) The application shall be submitted to the Department of Planning and Zoning for review and recommendations.

(c) The applicant shall be required to post the nearest public road and the burial ground not less than thirty (30) days prior to any public hearing to be conducted by the City Council.

(d) The applicant shall pay for all costs incurred related to filing the application, including, but not limited to, obtaining archaeologist's reports and surveys and genealogist's plans and reports; preparing any and all plans and, upon City approval and obtaining any and all necessary permits, executing the approved plan.

(e) The City Council shall conduct a public hearing on the application within sixty (60) days of the filing of the application. The City Council shall be charged with making decisions regarding the sufficiency of the application submitted as to the following:

(1) Notice to descendants;

(2) The plan for mitigation and avoidance;

(3) The disturbance and adverse effects on the burial ground;

(4) The survey of the cemetery;

(5) Any plans for disinterment and re-interment; and

(6) Thereafter, the City Council shall make a written recommendation within fifteen (15) days to the city council or Fulton County Superior Court if the matter is then pending before the court.

(f) Within fifteen (15) days after the City Council is satisfied that all reasonable effort has been made to notify descendants, as provided in O.C.G.A. § 36-72-6, the City Council shall schedule a second public hearing at which any interested party or citizen may appear and be given an opportunity to be heard. In addition to the notice required by O.C.G.A. § 36-72-6, notice of the public hearing shall be advertised in the legal organ of the City two weeks immediately preceding the week in which the hearing is held.

(g) Within thirty (30) days after the conclusion of the public hearing, the City Council shall notify the applicant in writing of its decision. The city council shall have the authority to deny the application, with written reasons, to issue a permit adopting the application in whole or in part, or to issue a permit, which may include additional requirements to mitigate the proposed activity's adverse effects on the cemetery or burial ground, including, but not limited to, relocation of the proposed project, reservation of the cemetery or burial ground as an undeveloped area within the proposed development or use of land, and respectful disinterment and proper disposition of the human remains.

(h) The city council shall consider the following in making its determination:

(1) The presumption in favor of leaving the cemetery or burial ground undisturbed;

(2) The concerns and comments of any descendants of those buried in the burial ground or cemetery and any other interested parties;

(3) The economic and other costs of mitigation;

(4) The adequacy of the applicant's plans for disinterment and proper disposition of any human remains or burial objects;

(5) The balancing of the applicant's interest in disinterment with the public's and any descendant's interest in the value of the undisturbed cultural and natural environment;

(6) Any other compelling factors which the governing authority deems relevant;

(7) Should any applicant or descendant be dissatisfied with a decision of the City Council, he or she may file an appeal, within thirty (30) days of such decision, in Fulton County Superior Court. Until the expiration of time for appeal as set forth in O.C.G.A. § 36-72-11, the applicant shall not begin to resume activities that comply with the permit issued by the City Council. If an appeal is filed, the applicant may begin or resume activities that comply with the permit only upon consent of the City Council and the party seeking judicial review or upon order of the reviewing court for good cause shown.

(i) The city archaeologist, if there is one, shall be the party responsible for inspecting and determining whether the provisions of the permit have been properly completed. If there is no city archaeologist, the applicant shall have that responsibility.

Sec. 10-15009. FEES

The fee for filing an application for a permit under this division shall be established by the City Council pursuant to O.C.G.A. § 36-72-10, as may be amended from time to time.

Sec. 10-15010. VIOLATIONS AND PENALTIES; ABATEMENT OF NUISANCE

(a) Any violation of the provisions of this division by any person is hereby deemed to be a misdemeanor punishable as provided in section 1-1006. The City zoning officials, code enforcement personnel, or law enforcement officers are hereby authorized and directed, upon discovery of any violation of any provision of this division, to issue a citation for the violator to appear before the appropriate court on a day and time certain to answer to the misdemeanor charges.

(b) In addition to any other remedy provided in this division, the City may seek injunctive relief to cease and remove any violations of this division in the appropriate court against the appropriate person or entity.

(c) Any violation of this division is hereby deemed to be a continuing nuisance and may be abated by an application for injunction or other proceedings allowed by law in the appropriate court.