

Chapter 10

CEMETERIES*

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***State law references**— Cemeteries generally, G.S. Ch. 65; municipal cemeteries, Article 17 of G.S. 160A and Chapter 160D, Article 9, Part 4

ARTICLE I. IN GENERAL**Sec. 10-1. Definitions.**

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

Cemetery shall mean Hillcrest Cemetery.

Landmark designation shall mean an individual building, structure, site, or object that has historical, architectural, archeological, or cultural significance and integrity and has been recognized by official designation for its importance.

New section shall mean that part or section of Hillcrest Cemetery, consisting of sections J and K, which the town of Cary acquired in the year 1977, by deed recorded in Book 2509, at page 507, of the Wake County, North Carolina, Registry, on June 6, 1977.

Old section shall mean all those parts or sections of Hillcrest Cemetery, consisting of sections A through I and sections L through N which the Town of Cary owns in fee simple, other than the new section as defined above.

Person shall mean any individual, corporation, limited liability company, partnership or other legal entity.

(Code 1982, § 7-2; Ord. No. 80-4, § 6.1-3(a)(1—5), 1-24-1980; Ord. No. 2014-Code-02, 1-30-2014)

Sec. 10-2. Purpose.

This chapter is adopted for the purpose of operating, maintaining, regulating and controlling the Hillcrest Cemetery, which is owned by the town. The "new section," as defined in section 10-1, shall be regulated by this chapter, and the "old section," as defined in section 10-1, shall continue to be operated and maintained as described herein.

Hillcrest Cemetery has received a landmark designation and is recognized as an important historic resource worthy of preservation. Any substantial design changes to the cemetery's structural and landscape elements, including but not limited to grave markers, entrance markers, fences, gates, roads, walkways, green space and trees, may not be altered, restored, moved, remodeled, or reconstructed so that a change in design, material, or outer appearance occurs unless and until a certificate of appropriateness is obtained from the Town of Cary Historic Preservation Commission or its successors.

(Code 1982, § 7-3; Ord. No. 80-4, § 6.1-2, 1-24-1980; Ord. No. 2014-Code-02, 1-30-2014; Ord. No. 2015-Code-005, 10-22-2015)

Sec. 10-3. Offensive substances.

No person shall deposit, or cause to be deposited, any trash, filth or unclean or offensive substance in the cemetery, including but not limited to bottles, cans, garbage, glass, plaster, nails, paint, oil, human or animal waste, as well as any other substance which may be or could become offensive, annoying, unaesthetic or toxic and possibly injurious to health in any way.

(Code 1982, § 7-5; Ord. No. 80-4, § 6.1-27, 1-24-1980; Ord. No. 2014-Code-02, 1-30-2014)

Sec. 10-4. Conduct of persons within the cemetery.

(a) All persons when within the cemetery are reminded that the grounds thereof are sacredly dedicated to the interment and repose of the dead and respectful observance of the decorum is expected and required.

(b) No person shall take any animal into, or permit any animal to enter, a town-owned cemetery, unless that animal is a service animal individually trained to provide assistance to an individual with a disability.

(c) No person shall drive any vehicle on or over any plot lot or walkway within the cemetery.

(d) No person shall use the cemetery as a playground or parking place, make loud noises of any kind, discharge any firearms (provided that firearms may be discharged in case of military funerals and Memorial Day exercises), or remain within or enter the cemetery after sundown without first having secured permission from the public works director or designee. Persons using the cemetery shall comply with Town of Cary Code of Ordinances, Ch. 22, Article IV, Offenses Involving Public Peace and Order.

(e) All persons, including those providing services within the boundaries of the cemetery shall comply with this ordinance.

(Code 1982, §§ 7-6, 7-8; Ord. No. 80-4, §§ 6.1-22, 6.1-25, 1-24-1980; Ord. No. 2014-Code-02, 1-30-2014)

Sec. 10-5. Speed of vehicles.

No person shall drive a motor vehicle in any town-owned cemetery in excess of 15 miles per hour.

(Code 1982, § 7-7; Ord. No. 80-4, § 6.1-24, 1-24-1980; Ord. No. 2014-Code-02, 1-30-2014)

Sec. 10-6. Plantings and floral arrangements.

(a) No person shall plant or maintain any tree, flower, shrub or ground cover or sow seed of any kind in the town cemetery.

(b) The town reserves the right to trim, prune, exclude or remove from any lot any tree, planting, plant, flowers, floral arrangements or shrubbery that is unsightly or detrimental by reason of roots, branches or otherwise to adjacent walks, roads, or renders access to any grave lot inconvenient, or that detracts from the general appearance of the cemetery.

(c) All cut flowers shall be removed when they become wilted, impaired, or unsightly. If flowers are not removed by the owners, then they may be removed by the public works director or designee. Any containers left at the graveside after the flowers have served their usefulness may be removed by the public works director or designee.

(Code 1982, §§ 7-9, 7-10; Ord. No. 80-4, §§ 6.1-20, 6.1-23, 1-24-1980; Ord. No. 2014-Code-02, 1-30-2014)

Sec. 10-7. Closing hours.

The town cemetery shall be closed from 8:00 p.m. until 8:00 a.m. from April 1 through August 31 and from 6:00 p.m. until 8:00 a.m. from September 1 through March 31. No person shall enter the cemetery while it is closed without the permission of the public works director or designee.

(Code 1982, § 7-11; Ord. No. 80-4, § 6.1-21, 1-24-1980; Ord. No. 94-012, § 1, 5-12-1994; Ord. No. 2014-Code-02, 1-30-2014)

Secs. 10-8—10-36. Reserved.

ARTICLE II. BURIAL EASEMENTS

Sec. 10-37. Responsibilities.

(a) *Intent.* While the town operates and maintains the cemetery, it grants easement interests in the individual burial plots to private parties. Currently, all available burial plots are subject to such easements, meaning the town does not have the ability to grant additional leases to burial plots. The intent of this ordinance is to outline the rules and regulations by which the holders of the existing burial easements maintain and transfer said easements going forward.

(b) Individuals seeking to be interred in the cemetery are granted an easement for burial purposes. All such burial easements are subject to the rules and regulations of the town.

(c) *Reconveyance by easement holder.* In order to properly manage the new sections of the cemetery, the town must know, at all times, the identity of the legal owner of each burial easement. The public records of the Wake County Register of Deeds shall be used for that purpose. If the legal owner of a burial easement wishes to convey the easement, the grantee must record the conveying instrument in the office of the Wake County Register of Deeds within fifteen (15) days of the execution of the instrument, and a copy of the registered instrument must be provided to the Cary Town Clerk within fifteen (15) days of recordation.

(d) Any burial easement deed shall include the following language: *This conveyance is subject to the condition subsequent that the Town of Cary, its successors or assigns, shall have the right to terminate all rights, interest and title of the grantee and all their successors and assigns in this easement, if (1) all subsequent instruments of conveyance are not registered with the Wake County Register of Deeds within fifteen (15) days after the execution of the said instrument, and (2) the Town Clerk, Town of Cary, is not provided a copy of the recorded instrument within fifteen (15) days after recordation.*

(Code 1982, § 7-23; Ord. No. 80-4, § 6.1-7, 1-24-1980; Ord. No. 2014-Code-02, 1-30-2014; Ord. No. 2019-Code-03, 9-26-2019; Ord. No. 2022-Code-05, 11-17-2022)

Secs. 10-38—10-66. Reserved.

ARTICLE III. INTERMENTS

Sec. 10-67. Restrictions.

(a) *Generally.* All interments in lots shall be restricted to members of the family, relatives of the owners, or such other persons as the easement owner may choose to admit. Prior to interment, the owner or his authorized representative shall authorize such burial by executing an authorization-for-burial form obtained from the town clerk.

(b) All interments and disinterments shall be in accordance with Wake County Health Department regulations and North Carolina General Statutes.

(c) The usage of each lot shall be limited to one of the following:

(1) The interment of one human body; or

(2) The interment of one human body and one cremation urn with human remains; or

(3) The interment of one or two cremation urns with human remains.

(Code 1982, § 7-37; Ord. No. 80-4, § 6.1-10, 1-24-1980; Ord. No. 83-16, § 1, 10-13-1983; Ord. No. 2010-Code-02, 3-10-2010; Ord. No. 2014-Code-02, 1-30-2014)

Sec. 10-68. Opening and closing of graves.

The town shall not be responsible for the opening or closing of graves for any purpose, and the town shall not assume any financial responsibility for the opening or closing of graves.

(Code 1982, § 7-38; Ord. No. 80-4, § 6.1-11, 1-24-1980; Ord. No. 2014-Code-02, 1-30-2014)

Sec. 10-69. Hours of interment.

Burial services shall be scheduled generally between 8:00 a.m. and 5:00 p.m.

(Code 1982, § 7-39; Ord. No. 80-4, § 6.1-12, 1-24-1980)

Sec. 10-70. Grave specifications.

The width of graves in the cemetery shall be at least three inches greater than the box width on each side. A minimum of 18 inches of soil shall be placed over the liner and all graves shall be made approximately level with the lot.

(Code 1982, § 7-40; Ord. No. 80-4, § 6.1-13, 1-24-1980; Ord. No. 2014-Code-02, 1-30-2014)

Sec. 10-71. Grave liners.

Concrete, steel or fiberglass grave liners shall be used for all burials in the cemetery. This requirement may not be waived in any situation.

(Code 1982, § 7-41; Ord. No. 80-4, § 6.1-14, 1-24-1980; Ord. No. 2015-Code-003, 7-9-2015)

Sec. 10-72. Marking new grave sites.

(a) A temporary marker shall be placed at the gravesite at time of interment. A permanent marker is required within 12 months of burial. Should the temporary marker become broken or deteriorated before the installation of the permanent marker, the town may remove the temporary marker at any time.

(b) Monuments, footstones or other appropriate grave markings shall have mowing borders around the base of at least three inches and shall not exceed the grave width or encroach on the grave of other owners.

(c) All monuments, headstones and footstones shall be erected under the supervision of the public works director or designee. All persons shall clean the work site of all unused materials or debris upon completion. If unused material or debris is left at the work site, the public works director or designee will notify the responsible party and request that corrective action be taken. If a monument is incorrectly set, it shall be removed or reset at the cost of the owner.

No monuments or markers shall be set without first notifying the public works director or designee.

(Code 1982, § 7-42; Ord. No. 80-4, § 6.1-15, 1-24-1980; Ord. No. 2014-Code-02, 1-30-2014; Ord. No. 2015-Code-003, 7-9-2015)

Sec. 10-73. Vaults, tombs or mausoleums above ground.

No new vaults, tombs or mausoleums above the ground shall be permitted in the cemetery.
(Code 1982, § 7-43; Ord. No. 80-4, § 6.1-16, 1-24-1980; Ord. No. 2015-Code-003, 7-9-2015)

Sec. 10-74. Stones, plantings or obstacles.

(a) No person shall place or cause to be placed on any lot in the cemetery any stone, planting or obstacle, other than markers, monuments, headstones or footstones as described in section 10-72. Placing masonry or brick wall or other enclosure around a lot or lots or around a grave, shall not be permitted.

(b) These requirements shall apply to the designated new sections and the old section of the cemetery. The town shall not be responsible for maintenance of existing masonry or brick wall or other enclosures.

(Code 1982, § 7-44; Ord. No. 80-4, § 6.1-17, 1-24-1980; Ord. No. 89-31, § 1, 3-9-1989; Ord. No. 2014-Code-02, 1-30-2014)

Sec. 10-75. Tents and other private property.

Funeral homes shall erect tents for funerals. Funeral homes must remove these tents within seven days after the funeral. The town assumes no responsibility for any private equipment due to damage from wind, rain, snow, fire or other causes.

(Code 1982, § 7-45; Ord. No. 80-4, § 6.1-18, 1-24-1980; Ord. No. 2014-Code-02, 1-30-2014)

Sec. 10-76. Record of interments and removals.

The town clerk shall keep a complete record of all interments and removals from the town cemetery. The record shall include the section of the cemetery, the lot number, size and location of graves on the lot, the name of the deceased and the date of such action.

(Code 1982, § 7-46; Ord. No. 80-4, § 6.1-19, 1-24-1980)

Sec. 10-77. Cemetery maintenance.

(a) Funeral homes are responsible for gravesite maintenance during the first six months after burial. Within those six months, if a grave space sinks below surrounding ground, becomes eroded or otherwise becomes a problem due to lack of proper restoration or stabilization, the public works director or designee shall notify the funeral director and request that corrective action be taken within ten days.

(b) The easement owner is responsible for maintaining any monument, headstone or footstone. A certificate of appropriateness must be obtained from the Wake County Historic Preservation Commission or its successors, if it is determined that the monument, headstone or footstone needs to be in any way altered, restored, moved, remodeled, or reconstructed so that a change in design, material, or outer appearance occurs.

(c) Only the Town or its designee shall perform mowing, sodding and seasonal maintenance. As part of maintenance, crews shall collect and dispose of all non-permanent items, including wilted flowers, faded and worn artificial flowers and flags, and empty containers. The town shall also trim, prune and remove any existing vegetation or ground coverings in conflict with the cemetery ordinance.

(Ord. No. 2014-Code-02, 1-30-2014)

Secs. 10-78—10-95. Reserved.**ARTICLE IV. OLD SECTION****Sec. 10-96. Generally.**

The old section shall be subject to all the provisions of this chapter which are not in conflict with the regulations provided in section 10-97.

(Code 1982, § 7-58; Ord. No. 80-4, § 6.1-5, 1-24-1980)

Sec. 10-97. Regulations.

The following regulations shall apply only to the old section of Hillcrest Cemetery:

- (1) Upon the dissolution of Hillcrest Cemetery, a nonprofit corporation, the town accepted the old section for maintenance only, but with the specific understanding that the town shall not become involved in the development and sale of lots in the old section of cemetery property.

- (2) The town shall make available to any interested citizen those maps and records delivered to the town by Hillcrest Cemetery association, but shall not in any way guarantee the accuracy of said maps and records.
- (3) The town shall assume no responsibility for determining the location of family graves, lots or plots or the opening or closing of grave sites used by persons owning or claiming ownership of graves, lots or plots.
- (4) The town shall make available all materials and records delivered to the town by Hillcrest Cemetery association, but shall take no position in a determination of the accuracy of such records or possible conflicts between different individuals or families claiming ownership or rights.

(Code 1982, § 7-59; Ord. No. 80-4, § 6.1-4, 1-24-1980; Ord. No. 2014-Code-02, 1-30-2014)

CARY CODE OF ORDINANCES