

**AGENDA
LEBANON CITY COUNCIL
MARCH 20, 2019**

9. NEW BUSINESS:

**9.A – DISCUSSION AND SET PUBLIC HEARING FOR APRIL 3, 2019:
ORDINANCE #2019-03 TO REPEAL AND REPLACE
CITY CODE CHAPTER 46, CEMETERIES**

BACKGROUND

On June 20, 2018, at the close of a duly noticed public hearing, the City Council voted unanimously to establish Lebanon's first Board of Cemetery Trustees. Citizen representatives were appointed by the Council on August 1, 2018, and the Trustees began meeting on October 4, 2018.

The first order of business for the Trustees was to adopt a set of by-laws to govern their functions, and the second was to review and propose amendments to City Code Chapter 46, Cemeteries. Before being codified as part of the overall City Code, Chapter 46 was known as Ordinance #25 (Municipal Cemeteries Rules and Regulations). Ordinance #25 was first adopted by the City Council in 1966, and last revised in 1999. The only change that has been made to Chapter 46 since 2000, was to cross-reference a change to Chapter 18, Animals, to regulate dogs in cemeteries.

The Cemetery Trustees have been working diligently with members of City Staff to reformat the contents and review and update the language to incorporate long-needed changes and clarifications. When all was said and done, the amount of reformatting, rewording, and additional proposed language resulted in the request to repeal and replace rather than to simply amend the Chapter. The revised language has received legal review and a formal opinion in accordance with City Code Chapter 115 will be available for the public hearing.

ACTION

Should the Council wish to move forward with proposed Ordinance #2019-03, the following motion is offered for consideration:

MOVED, that the Lebanon City Council hereby schedules a public hearing for Wednesday, April 3, 2019, beginning at 7:00pm in Council Chambers, City Hall, for the purpose of receiving public input and taking action on proposed Ordinance #2019-03, to repeal and replace City Code Chapter 46, Cemeteries.

Included in this Section:

1. Proposed Ordinance #2019-03

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ORDINANCE 2019-03

AN ORDINANCE TO AMEND the Code of the City of Lebanon by deleting and repealing Chapter 46, Cemeteries, and replacing it with a new Chapter 46, to be entitled Cemeteries, which chapter provides regulations for the proper operation and use of municipal cemeteries in the City of Lebanon.

Be it ordained by the Council of the City of Lebanon as follows:

Section 1.

The Code of the City of Lebanon is hereby amended by deleting and repealing Chapter 46, Cemeteries

Section 2.

The Code of the City of Lebanon is hereby amended by adding a new Chapter 46, Cemeteries, to read as follows:

- § 46-1. Declaration of Policy
- § 46-2. Application of Rules and Regulations
- § 46-3. General Regulations
- § 46-4. Traffic Regulations
- § 46-5. Establishment of Municipal Cemeteries
- § 46-6. Purchase of Lots, Deeds and Ownership
- § 46-7. Burials
- § 46-8. Cemetery Maintenance
- § 46-9. Monumentation
- § 46-10. Perpetual Care
- § 46-11. Violations & Penalties
- § 46-12. Authority of Cemetery Trustees

§ 46-1. Declaration of Policy.

The City Council of the City of Lebanon hereby ordains that the following rules and regulations are hereby established to constitute an ordinance for the proper operation and use of municipal cemeteries within the City of Lebanon. The City Council recognizes that the municipal cemeteries are places of honor and respect reserved as a final resting place for the people of the City and desires to have the cemeteries maintained in the best possible manner and firmly believes that these rules and regulations are necessary for the protection of the city and of lot and grave owners, and for the proper conduct and good order of the cemeteries.

§ 46-2. Application of Rules and Regulations.

- A. The rules and regulations herein contained shall apply to any person, firm, corporation, association, club, partnership, society or any other form of association or organization.

- B. The City Council of the City of Lebanon, upon its own motion, or upon recommendation of the City Manager and/or Board of Cemetery Trustees, for good cause shown, may modify, suspend, repeal, or amend the provisions of this chapter in whole or in part thereof.

§ 46-3. General Regulations. The following shall be the general rules and regulations for use of municipal cemeteries as specified in §46.5 herein. No person shall:

- A. Enter a cemetery except through an established gate or entranceway.
- B. Deposit rubbish or debris on cemetery grounds.
- C. Pick or damage any flowers, tree, shrub, (either wild or domestic) soil, or other plant material.
- D. Use the cemeteries as picnic grounds, or consume any liquor or alcoholic beverages, in accordance with RSA 175:I, XIII, and Article I, Consumption in Certain Places, of Chapter 14 of the Code of the City of Lebanon in a cemetery, or bring the same upon the premises.
- E. Use any form of advertising on municipal cemetery premises.
- F. In any way injure or deface any monument, stone, fence or other structure, or property within any municipal cemetery.
- G. Allow any unleashed dogs in any municipal cemetery.
- H. Cause or allow any horses or horseback riding within or through cemeteries expressly prohibited except when authorized by the Director of Public Works or his/her designee for a burial ceremony.
- I. Allow a child under the age of fourteen (14) years of age in any municipal cemetery unless accompanied by an adult.
- J. Use skates, a skateboard, bike or dirt bike, or similar instrumentalities on municipal cemetery property.
- K. Enter any municipal cemetery between the hours of 10:00 p.m. and 6:00 a.m.
- L. In accordance with Chapter 18, Animals, §18-12, an owner or person having custody of any dog or other animal shall not permit said dog or other animal to defecate in any cemetery unless said defecation is removed immediately and properly disposed of in a container for trash or litter or similar manner. Any person having control over a dog or any other animal, whether or not the owner, and has knowledge that such dog or other animal is defecating on cemetery grounds and does not remove and properly dispose of the defecation in a container of trash or litter or similar manner, shall be in violation of this chapter.

§ 46-4. Traffic Regulations.

- A. Any person operating a vehicle within any municipal cemetery shall be subject to all the traffic laws of the City of Lebanon and State of New Hampshire applicable to motor vehicle operation.
- B. No person shall operate or cause to operate any vehicle within a municipal cemetery except for cemetery business and only on roads designed for that purpose, and no vehicle shall be driven at a speed in excess of 10 miles per hour upon any roads within municipal cemeteries.
- C. No person shall enter any municipal cemetery with a loaded truck, except the City maintenance crews, unless permission has been received from the Department of Public Works.
- D. No person shall unload or remove any stone, dirt or other material in any municipal cemetery, except the City maintenance crews in the normal discharge of their work, or encumber walks, avenues or places with such material, without express permission and consent of the Department of Public Works.
- E. No person shall operate an Off-Highway Recreational Vehicle in any municipal cemetery.

§ 46-5. Establishment of Municipal Cemeteries.

- A. The City Council of the City of Lebanon, acting on its own motion, or upon formal recommendation by the Board of Cemetery Trustees shall have the final authority for the establishment of municipal cemeteries within the corporate limits of the City of Lebanon and shall as the need arises set aside new City-owned ground areas for this purpose.
- B. Existing cemeteries. The following named existing cemeteries shall be deemed to have been established as municipal cemeteries:
 - Glenwood/Mt. Calvary Cemetery - ***117 Dulac Street, Lebanon***
 - Valley/Sacred Heart Cemetery – ***258 Mascoma Street, Lebanon***
 - School Street Cemetery (Village Cemetery) - ***30 School Street, Lebanon***
 - West Lebanon Cemetery - ***Pleasant Street, West Lebanon***
 - Old Pine Tree Cemetery - ***Old Pine Tree Cemetery Road, West Lebanon***
 - Mascoma Cemetery - ***685 Dartmouth College Highway, Lebanon***
 - Cole Cemetery - ***108 Great Brook Road, Lebanon***

 - Upper Valley Jewish Community Cemetery - ***267 Mascoma Street, Lebanon (not city owned, city maintained per quitclaim deed (statutory form) dated April 18, 1994, bk2085 pg0354)***
- C. Platting of cemeteries. Before any new land is opened for municipal cemetery use and the sale of lots, the City Manager shall have such land area laid out showing the system of streets and avenues, and a numbered system of lots; such platting to be done by a registered surveyor and results thereof to be recorded with the Grafton County Registry of Deeds.

- (1) Indigent plots. Single grave lot sections shall be established within cemetery areas for the use of the City for the burial of indigent persons.
 - (2) The Board of Cemetery Trustees may designate areas in any cemetery, as space permits, to be laid out exclusively for cremation burials, and may by regulation establish applicable dimensional requirements therefor.
- D. Lot size established. Lot sizes for municipal cemeteries are hereby established as follows:
- (1) Each single grave: 4feet by 11 feet or 44 square feet.
 - (2) Each infant grave: 24 inches by 44 inches or 1,056 square inches,7.4 square feet.
 - (3) Each cremation lot: 24 inches by 24 inches, or 4 square feet (applies to Sacred Heart and West Lebanon Cemeteries only).
- E. Plat Review. The preliminary plan and layout of new municipal cemetery land areas shall first be submitted to the Board of Cemetery Trustees for nonbinding comments and recommendations, and then shall be submitted to the Planning Board for review and approval. Upon approval, the Planning Board shall advise the City Council of its approval with recommendation for adoption.

§ 46-6. Purchase of Lots, Deeds and Ownership

- A. Condition of lot purchases. Lots purchased in the laid-out sections of cemeteries in the City of Lebanon shall be conveyed by Cemetery Deed, using a format adopted by regulation by the Board of Cemetery Trustees. Conveyance of a lot shall not be deemed to convey ownership of a fee interest, but solely of a perpetual right in the nature of an easement, including interment and placement of monuments in accord with City regulations, and which shall remain subject at all times to the provisions of the City Charter, City ordinances and regulations, and applicable state laws, including any subsequent amendments to such provisions.
- B. Ownership of Lots. For purposes of this Chapter the ownership of a lot shall be determined as set forth in RSA 290:24, provided, however, that the deed form to be adopted by the Board of Cemetery Trustees shall contain provisions whereby each lot purchaser shall have designated, to the extent possible, the person or persons to whom ownership will pass, or a manner for the determination of such ownership when the purchaser or a designated prior owner is deceased – to be applicable both before and after a person is interred on the lot. Such deed provisions shall be deemed to supersede any inconsistent provisions contained in wills or other document, with respect to the cemetery lot. The Board of Cemetery Trustees shall, by regulation, adopt a procedure for hearing and resolving the issue of lot ownership when it has become uncertain or is in dispute. The decision of the Board of Cemetery Trustees on this issue shall be final, in the absence of a petition to the court of probate under RSA 290:24, III.

C. Purchase procedure.

- (1) Lots in the cemeteries of the City of Lebanon may be selected and purchased from the Department of Public Works, and payment for lots purchased shall be made to the City of Lebanon. Such purchases shall require the completion of Cemetery Application in a form approved by the Board of Cemetery Trustees and deemed complete with the issuance of a deed in a format adopted by the Board of Cemetery Trustees and prepared by the Department of Public Works, signed by the City Manager, and recorded by the City Clerk. Such deed shall contain the name of the owner, purchaser (if different from owner), amount paid, name of cemetery, lot number(s), grave number(s), and cemetery section in which located, as well as all information to be used for determining ownership, as set forth in paragraph B above. Full payment (grave and perpetual care) is required at the time of purchase.
- (2) Licensed funeral directors may act as agent of a purchaser for the selection and purchase of lot(s) required for immediate need. The funeral director shall be responsible for fully completing the Cemetery Application with the correct purchaser and owner information necessary for the preparation of the deed, as set forth in paragraph B above, and for the payment of all fees outlined in this chapter on behalf of the purchaser. In addition, the owner must sign the application before a deed will be recorded.

D. Records of cemeteries and purchase of lots. The keeping of records for the cemeteries of the City of Lebanon shall be the responsibility of the Department of Public Works. All maps showing laid out sections of each cemetery, records of lot ownership and burials shall be kept by the Department of Public Works. Copies of the deeds conveyed for lot purchases shall be recorded by the City Clerk in a book provided for this purpose.

E. Transfer of lots/graves. No transfer or assignment of a lot or individual graves shall be made by any owner without the express approval of the City Manager, or his/her designee and all transfers shall be made using a form approved by the Board of Cemetery Trustees, executed through the Department of Public Works, and recorded by the City Clerk in the cemetery records. A fee of \$25 shall be paid to the City of Lebanon for such deed transfers.

F. Charge of lots. The following prices are established as the purchase prices for cemetery lots and their perpetual care (perpetual care is 50% of a grave lot cost):

- (1) Each full grave: \$600. (Grave lot cost is \$300 Perpetual care is \$300)
- (2) Each infant grave: \$250 (Grave lot cost is \$125 Perpetual care is \$125) (applies to Glenwood and Valley Cemeteries only in the areas specifically laid out for infant burials).
- (3) Each cremation grave: \$250 (Grave lot cost is \$125 Perpetual care is \$125) (applies only in the cemetery areas specifically laid out for cremation burials).
- (4) Cremations. In the case of cremation interment, the following provisions shall apply:
 - (a) Minimum purchase is one grave space. Maximum number of cremation-type interments shall be six per grave space (except in the case of combining full and cremation burials in which only one full burial and five cremation burials per grave will be allowed).

§ 46-7. Burials.

- A. Condition for burial. No burial, including a cremation burial, shall take place without first obtaining a burial permit from the City Clerk or State Register where the death occurred. All conditions of laws and ordinances must be complied with, including the payment of any back charges, securance of perpetual care, or purchase of any lot(s).
- B. Preparation of grave. The preparation of graves and laying out of grave side ceremonial material shall be the responsibility of the Department of Public Works unless other arrangements are approved by the Director of Public Works. The availability of City provided grave side ceremonial dress is limited and shall be provided on a first-come first-served basis.
- C. Winter burials. The Department of Public Works will prepare graves for burial during the winter months, weather and other circumstances permitting. In case circumstances are such that burial cannot be made, temporary interment shall be in the cemetery tomb.
- D. Burial rates. The City of Lebanon burial rates shall be as follows:

| FULL BURIALS | |
|---|---|
| Weekday during operating business hours | \$400 |
| Weekday after operating business hours | \$400 plus \$100 per hour after operating business hours |
| Weekend or Holiday | \$700 |

| CREMATION BURIALS | |
|---|---|
| Weekday during operating business hours | \$175 |
| Weekday after operating business hours | \$175 plus \$100 per hour after operating business hours |
| Weekend or Holiday | \$350 |

| INFANT BURIALS | |
|---|---|
| Weekday during operating business hours | \$175 |
| Weekday after operating business hours | \$175 plus \$100 per hour after operating business hours |
| Weekend or Holiday | \$350 |

Burial rates will be reviewed by the Board of Cemetery Trustees on an annual basis. If changes to the rates are proposed, the Board of Cemetery Trustees shall make recommendations to the City Council for consideration.

- E. Burial days. Burials will be allowed on all days of the year with the exception of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day, as recognized and posted by the City of Lebanon unless approved by the Director of Public Works.
- F. Errors in Grave Location. Neither the City of Lebanon nor the Department of Public Works shall be responsible for errors in location of graves on lots arising from improper instructions from persons making arrangements. In all cases, orders for grave openings shall be communicated to the Department of Public Works in writing or can be taken verbally over the phone. Orders from funeral directors shall be construed as orders from owners.
- G. Permanent outside containers. In all interments, cremation or full, the remains shall be enclosed in a permanent outside container and which shall be installed under the supervision of the Department of Public Works personnel. The owner of the lot or his agent shall provide the container. The following are considered permanent outside containers: concrete boxes, copper or steel vaults or cremation urns designed to withstand the deteriorating factor of the elements of burial.
- H. Entombments. No entombment shall take place without notification of the Department of Public Works. Entombment will be made in the City tomb until such time that burial is arranged. The charge for entombment in the City tomb is \$250.
- I. Burial of indigents. In the case of single grave lots for the burial of indigents, the City will provide space and maintenance of a section for such. However, no above ground monumentation will be allowed until such lot has been paid for and perpetual care secured.
- J. No movement or upgrading of monuments, and no opening or shifting of location of any grave or its placement on a lot shall occur without approval of the City, and all relevant provisions of this §46-7 shall apply to such activities.

§ 46-8. Cemetery Maintenance.

- A. Responsibility of the City. The general maintenance of the municipal cemeteries and grounds, designed to improve and maintain their appearance and condition, shall be the responsibility of the City. It shall include such items as the upkeep of drives, buildings, fences, spring and fall cleanup, raking of leaves, and the general periodic mowing of grass. Municipal cemeteries will be cleared of all flowers, artificial or natural, on April 1 and October 1, for a period of one month, each year. Any person wishing to retain their plants, flowers or pots (cement pots excluded) shall remove them prior to those dates.
- B. Care and maintenance of individual cemetery lots.
 - (1) The City shall be responsible for maintenance of individual lots to the extent of mowing and trimming of grass at reasonable intervals, the raking and cleaning of lots, and

grading and seeding, all at levels to be determined in the discretion of the Cemetery Trustees, in light of available funds, including any applicable perpetual care funds.

- (2) The City shall not be responsible for the maintenance or repair of any monuments, stones, markers or walls located on individual lots, nor the planting or care of flowers or plants thereupon, even where permitted under Paragraph C below. Such maintenance and repair shall be the responsibility of the owner or owner's family, with any decisions concerning such maintenance or repair, or any other aspect of the individual lot, to be within the discretion of the owner, as determined under §46-6, so long as such decisions are consistent with applicable regulations.
 - (3) Exception: The City may in its discretion expend public funds to repair grave markers or monuments which have been damaged by act of God or vandalism, or have deteriorated due to lengthy neglect, and if no responsible owner can be identified or located. Prior to performing such work, the City shall make reasonable efforts to determine and notify the then-current responsible owner, as determined pursuant to §46-6, but such efforts shall not require a search of deed or probate records. The City may contract out for such marker/monuments repair as it deems required. All contractors shall provide a certificate of insurance, evidencing coverage at such levels as the City may determine.
- C. Planting trees, shrubs and flowers prohibited. No trees, flowers or shrubs shall be permanently planted in any lot in any municipal cemetery. Existing trees or shrubs may be removed by the Department of Public Works if detrimental to the cemetery, adjoining lots, or inconvenient to the care and maintenance of lots. Natural flowers and plants shall be potted in containers and placed only in the front of the monument within the bounds of the lot readily movable for maintenance operations. Any plants that have died may be removed and disposed of by the Department of Public Works.
- D. Grading and care of lots. All grading of lots shall be done by the Department of Public Works upon request of the owner, and no person shall do any grading causing the surface of the ground to be raised above the existing height of the surrounding area. No person shall discharge any chemical or organic fertilizer, herbicide or other substance on any lot without prior authorization by the Department of Public Works.
- E. Curbing and fencing. No curbs or fences shall be permitted around any individual lot or group of lots.

§ 46-9. Monumentation.

- A. Monuments and markers. All municipal cemeteries allow monumentation. Markers and cornerstones of such dimension and material as shall be approved by the Department of Public Works. Monumentation shall be the total responsibility of the lot owner. Dimensions for monuments shall not exceed 24" width for a single grave, 72" width for two graves, and 84" width for three graves. Monuments are to be centered in lot and in line with other monuments located in that row. All reference to "monuments and markers" is to mean monumentation of a permanent nature that protrudes above the lawn surface. All such monumentation requires a concrete foundation (refer to Subsection B of this section). Only one aboveground monument per owner's lot (grave or group of graves) is permitted unless

additional monuments are approved by the Board of Cemetery Trustees pursuant to §46-12(B). All other structures, including cornerstones, grass markers, and markers, shall be set flush with the lawn surface so that no part shall protrude above the surface of the ground. In areas designated for cremation only burials, only a single grass marker not to exceed 12 inches by 24 inches set flush with the lawn so that no part shall protrude above the surface of the ground is permitted. An exception to the preceding is an allowance of one brass plaque and one flag on a veteran's grave.

B. Monument foundation and marker setting.

- (1) Foundations for monuments shall be constructed of concrete by the Department of Public Works upon request or by a monument company with the approval of the Department of Public Works. Those requesting foundations shall make the request in writing stating the location on the lot and size of foundation desired, both of which are subject to Subsection A.
- (2) The charge to the owner for foundations for monuments shall be:
 - (a) \$50 per square foot (minimum size – 1 foot [12 inches] by 2 feet [24 inches]).
 - (b) The charge for setting cornerstones: \$10 each.
 - (c) The charge for setting grass (flat 2 feet by 1 foot) markers: \$35 each. (additional charges maybe applied for lager size markers)

Foundations are set three times per year. Orders are accepted up to May 15th, July 15th and October 15th and are coordinated through the Department of Public Works.

§ 46-10. Perpetual Care.

- A. Perpetual care required. All cemetery lots sold after August 1, 1966, shall require a perpetual care trust fund reserved in the name of the lot owner for the maintenance and care of such lots in the amounts as set forth in §46-6(F) above. Perpetual care trust funds shall be established and funded through the Department of Public Works at the time a lot is purchased, and the funds shall be held in trust by the Trustees of Trust Funds, the income thereof to be used by the City for perpetual care services, in accordance with the City Charter and applicable state laws.
- B. Perpetual care - previous owners. Owners of cemetery lots purchased prior to August 1, 1966, shall secure perpetual care service by applying to the trustees of trust funds through the Department of Public Works for the acceptance of a sum sufficient to provide the income necessary for the care and maintenance of the lot.

§46-11. Violations and Penalties.

- A. The penalty for violating of any provision of this chapter or of any regulation adopted under this chapter shall not exceed \$1,000 as provided in RSA 47:17, and the City will request that the court order restitution.

- B. Any person violating any provision of §46-3 or §46-4 above shall comply with the order of a police officer to leave the cemetery, and the failure to so comply shall constitute a violation in addition to the underlying violation of those provisions.
- C. In the event that an owner or other person is maintaining a cemetery lot or monument in a manner inconsistent with this Chapter or with regulations adopted hereunder or any permit issued hereunder, in addition to any other remedy or penalty, the Department of Public Works may notify the owner or other person, if known, in writing concerning the deficiency, and setting forth a date before which corrective action must be taken, and if the violation remains uncorrected by that date, the Department may take action to correct the violation, including the removal of markers or monuments in violation.

§ 46-12. Authority of Cemetery Trustees.

- A. In accord with RSA 289:7, I(a), the Board of Cemetery Trustees may adopt such bylaws, regulations or forms as are consistent with this Chapter and with applicable state and federal law. Such regulations may include procedures for the Cemetery Trustees to review, on request, a decision made by the Department of Public Works under this Ordinance.
- B. The Cemetery Trustees may upon request, grant exceptions to the restrictions on individual lots as set forth in §46-7 above, including but not limited to permitting trees, shrubs, curbs or fencing on lots. However, any such exception shall require a long-term agreement giving the owner(s) responsibility for maintenance of any such plants or structures, such agreement to be approved by the Cemetery Trustees and signed by the owner. In the event the plants, structures or other conditions permitted by such exception are not maintained in accord with the agreement, the City may remove or otherwise remedy them.
- C. This ordinance, and all regulations or exceptions adopted hereunder shall be administered by the Cemetery Trustees and Department of Public Works in such a manner as will not be discriminatory toward any person on account of religion, creed, race, color, ethnicity or national origin.

Section 3. Severability.

The provisions of this ordinance are declared to be severable, and if any section, subsection, sentence, clause or part thereof is, for any reason, held to be invalid or unconstitutional by a court of competent jurisdictions, such decision shall not affect the validity of any remaining sections, subsections, sentences, clauses or part of this ordinance.

Section 4. Effective Date.

This ordinance shall become effective upon passage.