

PLANNING COMMISSION REPORT
Regular Agenda -- Public Hearing Item

PC Staff Report
05/15/2017

ITEM NO. 5: TEXT AMENDMENT FOR CREATING A "COLUMBARIUM" USE (BJP)

TA-16-00388: Consider a Text Amendment to the City of Lawrence Land Development Code, Articles 4, 5, & 17, regarding *Funeral and Interment Services* as defined in Section 20-1729. The requested amendment would allow *Columbariums* as Accessory Uses to established *Religious Assembly Institutions*. Submitted by Corpus Christi Catholic Church. *Initiated by City Commission on 9/20/16.*

Revised language highlighted in **Bold Blue**.

RECOMMENDATION: Staff recommends that the Planning Commission forward a recommendation for approval of the proposed amendment, TA-16-00388, to establish a use group for Columbariums amending Sections 20-402, 20-403, 20-505, and 20-1729 and that the Planning Commission forward a recommendation for approval to the City Commission.

Reason for Request: To create a specific use group category for Columbariums to allow the use as an accessory to established *Religious Assembly Institutions*.

RELEVANT GOLDEN FACTOR:

- Conformance with the comprehensive plan.

PUBLIC COMMENT RECEIVED PRIOR TO PRINTING

- None received prior to publication.

ATTACHMENTS

Attachment A – Initiation Memo

Attachment B – K.S.A. 65-1732

OVERVIEW OF PROPOSED AMENDMENT

The Corpus Christi Catholic Church submitted a text amendment to the Land Development Code to the Planning Office. The request was to allow columbariums as an accessory use to established *Religious Assembly Institution* uses. A columbarium is a room or building in which funeral urns are stored.

The associated land use in the Land Development Code is *Funeral and Interment Services*. The Code defines this use through examples of activities, which include cemeteries, cremating, interring and undertaking. In the Code, interring includes columbariums and mausoleums.

<i>Funeral and Interment Services</i>			
ACTIVE		PASSIVE	
Activity	Typical Uses	Activity	Typical Uses
Cremation	Crematoriums	Cemeteries	Cemeteries
Undertaking	Funeral Homes and Mortuaries	Interring	Columbariums and Mausoleums

Table 1. Land use activities associated with the *Funeral and Interment Services* use.

Through the review of the request, staff determined that the *Funeral and Interment Services* use contained a combination of active and passive land uses (**Table 1**). The active uses include cremation and undertaking. The passive uses are defined as cemeteries and interring. Staff recognized that combining the active and passive uses in this manner did not provide an opportunity to utilize the passive land uses that may be more appropriate in a larger variety of zoning districts. The active land uses may not be an appropriate uses in most residential zoning districts, however, it may be reasonable to permit the passive land use as an accessory use to established *Religious Assembly Institution* uses. Given this, staff determined that the text amendment should include all of the passive land uses defined in the *Funeral and Interment Services* use. Along with columbariums, cemeteries and mausoleums are also included in this text amendment.

COLUMBARIUMS

At the November 16, 2016 Planning Commission, the Planning Commission directed staff to research the disposition of columbariums in the event a Religious Institution dissolved. The research showed that this situation is a civil matter and is not determined by the City or State. Religious Institutions with columbariums typically establish a policy regarding the outcome of that use. For example, a columbarium may be constructed in a manner that would allow it to be moved to a new foundation if the Religious Institution relocated. If the Religious Institution were to cease to exist, the remains would be placed with a person legally entitled to authorize the cremation and final disposal. If the remains are not claimed, the disposition of the remains would be at the discretion of the church board.

Staff did not find Kansas state statutes that regulated the outcome of columbariums. The most applicable statute provides regulation of embalmers, funeral directors, and funeral establishment regarding the disposal of remains (K.S.A. 65-1732. Disposal of unclaimed cremated remains; veteran's unclaimed cremated remains; rules and regulations.)

CEMETERIES

Further changes are proposed with this text amendment to correct an inconsistency associated with the *Cemetery* use and to add conditions for that use. The Land Development Code categorizes the *Cemetery* use within the *Funeral and Interment* use. However, while cemeteries are included as part of the *Funeral and Interment* use, they are listed as separate uses in Article 4, Use Tables. Further, the information provided for these two uses do not align. The *Cemetery* use is permitted in many zoning districts that do not permit the *Funeral and Interment* use. The proposed text amendment fixes this inconsistency by removing the *Cemetery* use from the Use Table. It is not necessary to have a separate line for the *Cemetery* use because the use is included as part of the *Funeral and Interment* uses.

With the Planning Commissions' direction to research the disposition of columbariums, staff also researched the disposition of cemeteries. Kansas statutes provide regulation regarding the maintenance of cemeteries and the selling of land. An outline of the applicable regulations is provided below:

- K.S.A. 12-1419b states that a City may accept as a gift any cemetery owned by a religious institution.
- Chapter 17, Article 13 of the 2012 Kansas Statue provides regulations for Cemetery Corporations. A Cemetery Corporation is defined as "any individual or entity required to maintain permanent maintenance funds".
- K.S.A 17-1328 states that Cemetery Corporations with less than 20 graves may sell

the land, "provided that sufficient grounds shall be retained for the proper care of the remaining graves."

The proposed text amendment adds a condition to the cemetery use regarding management. The purpose of the condition is to provide protection to the City regarding potential acquisition of cemeteries. The City does not intend to assume the responsibility for maintenance of any potential cemeteries created in the future. The condition establishes that newly created cemeteries must be managed by a Cemetery Corporation and/or maintain permanent maintenance funds.

Proposed Article Changes

Changes to the text are shown on the following pages and noted in red. Additions are underlined and deleted text is ~~struckthrough~~.

Amend Section 20-402:

[illegible]

Amend Section 20-403:

Key: A = Accessory P = Permitted S = Special Use * = Standard Applies - = Use not allowed		Base Zoning Districts															Use-Specific Standards (Sec. 20-)
		CN1	CN2	MU	CO	CD	CC	CR	CS	IBP	IL	IM	IG	OS	GPI	H	
Community Facilities	Active Funeral and Interment	-	P*	-	P*	P*	P*	P*	P*	P*	P*	-	-	A*	-	-	505
	Passive Funeral and Interment	A*	A*	A*	A*	A*	A*	A*	A*	::	A*	::	::	P*/A*	A*	::	505
	Cemetery	P*	P*	::	P*	::	P*	P*	P*	P*	P*	::	::	P*	P*	::	505
Religious Assembly	Campus or Community Institution	P*	P*	P*	P*	P*	P*	P*	P*	-	P*	-	-	-	-	A*	522
	Neighborhood Institution	P*	P*	P*	P*	P*	P*	P*	P*	-	P*	-	-	-	-	-	522

Amend Section 20-505:

20-505 FUNERAL AND INTERMENT

Active Funeral and Interment:

Funeral and Interment Services that are subject to this standard shall have direct Access to an Arterial Street, with ingress and egress so designed as to minimize traffic congestion.

- ~~(1) Cemeteries and Interment services shall provide a wall or fence at least 6 feet in Height along all Lot Lines.~~
- (1) Structures used for ~~Interment and~~ Cremation services, ~~such as mausoleums, columbariums, and crematories,~~ when located in an OS District may not be located within 50 feet of any R District.
- ~~(2) Funeral and Interment facilities, such as funeral homes and mortuaries, are only permitted in the OS District when accessory to a Cemetery use.~~

Passive Funeral and Interment:

- (1) **Cemeteries and Passive Interment improvements are permitted in residential districts when accessory to a permitted Religious Institution following site plan approval.**
- (2) ~~Cemeteries and~~ **Passive Interment improvements services** shall **include provide** a wall or fence at least ~~6~~ **4** feet in Height along ~~all Lot Lines~~ **the perimeter of the cemetery use.**
- (3) ~~Funeral and Interment facilities, such as funeral homes and mortuaries, are only permitted in the OS District when accessory to a Cemetery use.~~
- (4) **Cemeteries shall be managed by a Cemetery Corporation in accordance with K.S.A 17-1301**

et seq., as amended.

- (5) **Cemeteries AND PASSIVE INTERMENT IMPROVEMENTS** created after the effective date (date) shall be accompanied by a management and disposition plan.

Amend Section 20-1701

Term	Definition
Cemetery Corporation	Any individual or entity required to maintain permanent maintenance funds under the provisions of K.S.A 17-1312f.

Amend Section 20-1729

20-1729 FUNERAL AND INTERMENT SERVICES

Provision of services involving the care, preparation or disposition of the dead. The following are funeral and interment services use types:

Active Funeral and Interment:

(1) Cemeteries

~~Land used for burial of the dead.~~

(1) Cremating

Crematory services involving the purification and reduction of the bodies by fire. Typical uses include ~~crematories and~~ crematoriums.

(3) Interring

~~Interring services involving the keeping of human bodies other than in cemeteries. Typical uses include columbariums and mausoleums.~~

(2) Undertaking

Undertaking services such as preparing the dead for burial and arranging and managing funerals. Typical uses include funeral homes and mortuaries.

Passive Funeral and Interment Services:

(1) Cemeteries

Land used for burial of the dead.

(2) Interring

Interring services involving the keeping of human bodies **or ashes** other than in cemeteries. Typical uses include columbariums and mausoleums.

CRITERIA FOR REVIEW AND DECISION-MAKING

Section 20-1302(f) provides review and decision-making criteria on proposed text amendments. It states

that review bodies shall consider at least the following factors:

1) Whether the proposed text amendment corrects an error or inconsistency in the Development Code or meets the challenge of a changing condition; and

The proposed text amendment corrects an inconsistency in the Development Code. As currently defined, the *Funeral and Interment Services* use contains a mix of passive and active land uses. These land uses are permitted only in two residential districts [RSO (Single-Dwelling Residential – Office) and RMO (Multi-Dwelling Residential – Office) Districts]. However, historically many churches were located in residential districts and had small parish cemeteries on their grounds. Therefore, it may be appropriate to permit the passive land uses as an accessory to the *Religious Assembly* use.

The proposed text amendment also corrects an inconsistency related to the *Cemetery* use. Article 4, Use Tables, provides information for the *Funeral and Interment* use, as well as the *Cemetery* use. The information provided, however, does not align. In Section 20-402, the *Cemetery* use is shown to be permitted in all of the residential zoning districts except for the RMG (Multi-Dwelling Residential – Greek Housing) District. However, the *Funeral and Interment* use is only permitted in the RSO (Single-Dwelling Residential – Office) and RMO (Multi-Dwelling Residential – Office) Districts. In Section 20-403, the *Cemetery* use is permitted in the CN1 (Inner Neighborhood Commercial), OS (Open Space), and GPI (General Public and Institutional Use) Districts; however, the *Funeral and Interment* use is not permitted in these districts. Conversely, the *Funeral and Interment* use is permitted in the CD (Downtown Commercial) District, while the *Cemetery* use is not permitted that in that district.

The proposed text amendment corrects the inconsistency by removing the *Cemetery* use in the Use Table. The proposed text amendment categorizes the *Cemetery* use under the *Passive Funeral and Interment* use. Given these new land use categories, it is not necessary to have a separate *Cemetery* use in the Use Table.

2) Whether the proposed text amendment is consistent with the Comprehensive Plan and the stated purpose of this Development Code (Sec. 20-104).

The proposed amendment separates the land uses associated with the *Funeral and Interment Services* into active and passive uses. This separation expands the zoning districts in which the passive uses would be permitted as an accessory use to *Religious Assembly* uses.

The Comprehensive Plan recommends “Consideration of good site planning and design principles that minimize unnecessary impacts to surrounding neighborhoods and promote compatible land use activities are encouraged.” The compatibility of land uses and the impacts to the neighborhood will be reviewed through the site plan process. As such, cemetery, columbarium, and mausoleum uses will be subject to the dimensional standards and landscaping requirements applicable to the zoning district.

