

TRAVERSE CITY PLANNING COMMISSION STUDY SESSION

TUESDAY, JUNE 16, 2015

7:30 P.M.

COMMISSION CHAMBERS

Governmental Center, 2nd Floor

400 Boardman Avenue

Traverse City, Michigan 49684

Posted: 6/12/15

AGENDA

The City of Traverse City does not discriminate on the basis of disability in the admission or access to or treatment or employment in, its programs or activities. Penny Hill, Assistant City Manager, 400 Boardman Avenue, Traverse City, Michigan 49684, 922-4440, T.D.D., 922-4766, has been designated to coordinate compliance with the non-discrimination requirements. If you are planning to attend and you have a disability requiring any special assistance at the meeting and/or if you have any concerns, please immediately notify the ADA Coordinator.

Planning Commission
c/o Russell Soyring, Planning Director
400 Boardman Avenue, Traverse City, MI 49684
231-922-4778

- 1. CALL MEETING TO ORDER**
- 2. ROLL CALL**
- 3. ANNOUNCEMENTS**
- 4. TEXT AMENDMENT REQUEST TO ADD FUNERAL HOME AND CREMATORY AS USES IN THE INDUSTRIAL DISTRICT (DISCUSSION)**
- 5. REQUEST TO REZONE A SEGMENT OF GARFIELD AVENUE (DISCUSSION)**
- 6. PUBLIC COMMENT**
- 7. ADJOURNMENT**

Text amendments are legislative decisions and should to be based on sound planning principles. The following questions are appropriate when considering text amendments to the zoning code.

- 1. Are crematories and funeral homes compatible with other uses allowed in the Industrial District?**
- 2. Are crematories and funeral homes compatible with uses that are adjacent to the Industrial Districts? If not, are there standards that can be applied so the uses can be compatible?** (Please review the zoning map to identify the areas within Traverse City that are zoned Industrial.)
- 3. Is the inclusion of crematories and funeral homes in industrial zoned areas consistent with the goals, polices and future land use plan of the Master Plan?**
- 4. Are there adequate utilities and infrastructure available to serve crematories and funeral homes in the Industrial zoned areas?**

Crematories or any facilities for cremation are currently not addressed anywhere within the Zoning Code with the exception of the C-2 district where it states they are not allowed. Cremation is now common and rapidly growing within Michigan and the nation. Crematories are licensed by the State of Michigan.

Based on the reading several articles crematories have a very low impact on the air quality or the environment. The evaporation of mercury is the biggest concern, but other allowed uses in the industrial district would likely generate higher levels of mercury vapor. Many other allowed uses in the I District would also have the potential of higher emissions in terms of particulates such as coal fired power plant or steel smelting plant.

If the use is to be incorporated in the zoning code, staff recommends that a definition for "Crematories" to be added. A possible definition would be: *"Crematory: A building or structure, or a room or space in a building or structure which has been licensed by the State of Michigan for the cremation of deceased persons. Crematory includes a crematorium."* The definition could be expanded to include a crematory for animals as well.

Staff noted after reading several articles on crematories being considered by other communities that there are often concerns and opposition to having crematories located in close proximity to residential areas or other places where people regularly congregate. The article from the City of Knoxville provides a good overview on the topic and how several communities regulate crematories. Staff noted that several communities in their research required a set distance between a crematory and a residential district or use or where the public would gather such as parks and schools.

Based on a review of several studies, review of the Master Plan and giving considerations to the questions noted above, staff finds crematories to be a compatible use for the I industrial district and recommends that the use be allowed by right with conditions in the Industrial District.

In conclusion, staff recommends the Zoning Code to be amended as follows:

- 1. Allow Crematories by right in the Industrial District with a condition that a crematory must be at least 500 feet from a residential zoned district, public park or school as defined by the Zoning Code.**
- 2. Add a definition for Crematories.**
- 3. Allow Funeral homes by right in the Industrial District. This would allow a funeral home in a new building be allowed in the two industrial parks.**

RS

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City of Knoxville
Tennessee

Ordinance
1462

12.a An Ordinance to amend the Knoxville City Code, Appendix B, "Zoning Regulations" regarding regulations for crematories, columbariums, and funeral establishments. (MPC Approved 9-4) (File No. 1-A-12-OA) (All Districts)

Information

Department:

M.P.C.

Sponsors:

Category:

City Code Amendment

Attachments

Ordinance
crematory packet

Body

COUNCIL DISTRICT(S) AFFECTED

All districts

BACKGROUND

At its November 29, 2011 meeting City Council requested MPC study, analyze and make recommendations to City Council with respect to appropriate siting and permitting of crematories within the City. In the fall of 2011, a funeral home in Fountain City obtained a license from the State of Tennessee, approval by the Knox County Health Department, and a building permit from the City of Knoxville and began construction of a crematory as an accessory use to its Fountain City facility.

In December, an appeal of the decision by the City's building official to issue a permit for this construction was filed and a hearing before the City's Board of Zoning Appeals (BZA) was held on January 19, 2012. The BZA denied the appeal of the Fountain City neighborhood group, thereby upholding the decision of the Building Official to issue a building permit for the crematory.

The BZA decision was then appealed to City Council, and considered February 21, 2012. City Council, in a 4 - 5 vote, failed to approve a motion to approve the appeal, thereby letting stand the decision by the Building Official.

At its March 8, 2012 meeting, MPC postponed this item to the May 10, 2012 meeting and requested that staff invite local funeral directors to an additional public meeting. Staff conducted a meeting on Thursday, May 3, 2012 at the Cansler YMCA building and described the proposed amendments to those in attendance.

ANALYSIS

The planning commission is primarily involved in siting and permitting of land uses through its administration of the City of Knoxville zoning ordinance. In supporting the resolution to request MPC study this issue, there was discussion by Council members related to crematories as an accessory use, a use-on-review, or a permitted use with respect to the zoning ordinance.

Currently, there is no mention of crematories in the zoning ordinance. The code uses three different terms to describe roughly the same type of related facility (mortuary, funeral home or parlor, and undertaking establishment) but does not offer definitions for any of these terms.

There is limited mention of these types of facilities as permitted uses:

- Mortuary establishments are listed as a prohibited use as a home occupation [Article V, Section 12 (C) (5);
- Undertaking establishments and funeral homes are listed as a permitted use in the O-1 (Office, Medical and Related Services) zone district [Article IV, Section 2.2.1(B)(5)]; and
- Funeral Homes are listed as a permitted use in the C-3 (General Commercial) zone district [Article IV, Section 2.2.6(B)(5)]. All uses specifically listed in C-3 are also allowed in the C-4 (Highway and Arterial

Commercial) zone district and C-6 (General Commercial Park) zone district.

Article V (Supplemental Regulations) of the zoning ordinance provides regulations for a variety of specific land uses, but there is currently no mention of crematories, mortuaries, funeral homes or undertaking establishments, other than off-street parking requirements found in Section 7. Section 3 provides development standards for a number of uses permitted on review and Section 4 provides a list of specified accessory uses for a number of principal uses, with some specific regulations.

There are a number of directions that may be considered to provide appropriate review of proposed facilities for cremation in the City of Knoxville, and there are a number of local, state and national issues and trends to take into consideration.

Cremation trends:

The demand for cremation is increasing steadily in the United States. According to the Cremation Association of North America (CAMA), it is expected that the cremation rate will top 50% of all deaths by 2025, a doubling of the rate since 2001. Tennessee lags behind most other states in its 2006 cremation rate, 16%, compared to a national rate of 34% and a top state rate of 68% in Nevada, again according to CAMA. According to a study by ENSAFE, an environmental/engineering/health and safety consulting company hired by Spring Hill, TN, there are 45 crematories permitted in Tennessee. With a 2010 population of 6,346,105, that would be, on average, one crematory for every 141,000 people, or a demand for 3 facilities in Knox County alone. There are no crematories presently operating in Knox County.

Columbarium trends:

The interment of cremated remains is often done in places other than cemeteries. Buildings or structures used exclusively for the interment of cremated remains are known as columbariums. Many cemeteries and churches have begun incorporating columbariums into their sites as indoor and outdoor structures, and many churches have established outdoor gardens for the exclusive purpose of interment of cremated remains through the burial of urns or through direct application to the earth with or without an urn. These types of structures and places are not described in the zoning ordinance and should be addressed.

January 10, 2012 public meeting:

On January 10th MPC staff conducted a public meeting attended by 30 to 35 citizens. Comments from citizens included:

- Crematories are an incompatible land use with residential property and public property such as parks.
- Crematories are incinerators and belong in industrial zone districts.
- Emissions from crematories are an air quality concern. Pollutants have negative cumulative impact on surrounding property. Local air quality is already bad enough. Crematories would make it worse.
- Surrounding private property will be devalued.
- Surrounding community should be notified.
- Crematories aren't inspected often enough. Emissions aren't tested.
- There aren't established standards for emissions.
- If all other local crematories are prohibited and the Fountain City crematory is allowed to continue, Fountain City will bear the brunt of negative impacts.
- Scrubber equipment and technology is available for cremation chambers

Funeral Establishments and Crematories in state law.

- Definition of funeral establishment at TCA § 62-5-101(7).

"Funeral establishment" means any business ... engaged in arranging, directing, or supervising funerals for profit or other benefit; or preparing of dead human bodies for burial; or the disposition of dead human bodies; or the provision or maintenance of places for the preparation for disposition; or for the care or disposition of human dead bodies ...

- TN Supreme Court opinion in *Cunningham v. Feezell*, 218 Tenn. 17, 400 S.W.2d 716 (1966)

T.C.A. sec. 62-501 defines "funeral directing" and among other things, it can mean. . . the business of preparing dead human bodies for burial by means other than embalming, or the Disposition of dead human bodies; or the provision or maintenance of a place for the preparation for Disposition, or for the care or Disposition of dead human bodies; . . . It seems that this definition includes the operation of a crematory.

- TN Court of Appeals opinion in *BMC Enterprises Inc. v. City of Mt. Juliet*, No. M2007-00795-COA-R3-CV (2008)

"Clearly, state lawmakers do not view funeral homes and crematories as separate industries, but, rather, as complementary services offered by the funeral industry."

Spring Hill studies.

Two recent studies have been completed at the request of the City of Spring Hill, TN, which is involved in a situation comparable to Knoxville. The Spring Hill Memorial Park and Funeral Home has proposed to construct and operate a crematory on its premises, which is adjacent to a residential subdivision. The same company owns a funeral home in nearby Williamson County. They plan to provide cremations for both of their own funeral homes but do not plan to perform cremations for other funeral homes.

A September 2011 study by Ensafe, titled *Air Emissions from Potential Spring Hill Crematory*, reviews the cremation process and provides estimates of air emissions from the proposed Spring Hill crematory. The study provides the following findings:

- The estimated emissions of the toxins mercury and PCDD/F (dioxins and furans), based on United States EPA factors, are low and within the range of estimated emissions from other types of generally accepted sources.

1. Estimated emissions of PCDD/F are roughly three orders of magnitude (i.e. 1,000 times) lower than estimated emissions from a residential woodstove.
 2. Estimated emissions of mercury on an annual basis are on the same order of magnitude as estimated emissions for natural gas or wood fired commercial boilers having the same heating capacity.
- Other emissions, such as soot, smoke and odors from a properly maintained facility are negligible.

A November 2011 study by Ensafé, titled Assessment of Proposed Crematory Emissions, uses the USEPA's air dispersion model to predict long-term and short-term concentrations of mercury, dioxins and furans in the area surrounding the proposed facility and analyzes the results of potential exposure of contaminants through air emissions in a residential setting considering a variety of sources of screening levels. Its findings include:

- Based on the results of the dispersion model analysis from the proposed facility, no predicted long-term ambient air concentrations of mercury, total dioxins, or total furans exceeded the reviewed screening levels at any location in the vicinity of the facility.
- With respect to short-term air concentrations of these elements, using a worst-case (most conservative) scenario, the maximum 1-hour and 8-hour concentrations of mercury exceeded the California short-term screening levels at some locations in the vicinity of the facility. However, when the number of cremations estimated by the facility (approximately 10% of the modeled volume) is taken into consideration, the study reports it is unlikely that the predicted emissions would result in adverse health effects.
- The study concludes that, based on the results of modeling performed using emissions estimated from USEPA emission factors, no predicted short-term or long-term ambient air concentrations from mercury or long-term ambient air concentrations of total dioxins or total furans exceeded the reviewed screening levels at any location in the vicinity of the proposed crematory. The study concludes that, in the scenario reviewed, the risk of adverse public health impacts resulting from emissions of these pollutants is low.

Crematories as an accessory use:

The current definition of accessory uses in the zoning ordinance makes it clear that, in order to be considered accessory to a principal use, an accessory use or structure must be incidental, appropriate and subordinate to the principal use or structure located on the same lot. To be an accessory use to a principal use, the principal activity associated with the accessory use must occur on the same lot as the principal use. Therefore a facility for cremation as an accessory use should be limited to support of other activity associated with the principal funeral establishment. To expand the activity of a facility for cremation beyond support of the principal funeral establishment by accepting bodies for cremation from other than the funeral establishment on the same lot would establish the crematory as an additional principal use on the lot and not an accessory use.

Crematories as a principal use:

A service, such as cremation, moves beyond an accessory use (being incidental and subordinate to the principal use located on the same lot) when it provides those services to establishments or individuals other than its own. Just as storage space that supports a retail operation on the same site would be considered an accessory use, a storage space that supports operations at remote sites becomes a warehouse, and thus would be considered a principal use, a facility for cremation that is used by a funeral establishment for the cremation of bodies for its own clients could be considered an accessory use, while a crematory that provides services to other funeral homes of individuals for cremation alone would be considered a principal use.

There could be a considerably different impact from a facility for cremation that is accessory to a funeral home on the same site compared to a crematory that provides cremation services for clients other than the funeral establishment on the same site.

Cremation of animals:

Locating facilities for the cremation of animals has also been contentious in Knoxville. The zoning ordinance is equally silent on animal cremation as it is on human cremation. A 1993 use-on-review case highlights this history. East Tennessee Pet Cremation made application to locate a pet crematory on property within an I-4 (Heavy Industrial) zone district. I-4 permits an incinerator as a use permitted on review. An incinerator is the closest land use category to a facility for cremation that is described in the zoning ordinance. The property was surrounded by other industrially zoned land. MPC unanimously approved the proposed pet crematory as a use-on-review. The MPC decision was appealed to City Council, which overturned MPC's approval and denied the application. It is also necessary to address the cremation of animals in the zoning ordinance.

Cremation in other city zoning ordinances:

Crematories are not universally included among the defined land uses mentioned in the zoning ordinances of many cities. In fact, they are still rarely mentioned. There are, however, a growing number of cities that are including crematories and related land uses, as well as some standards, in their zoning documents that can serve as models:

- In Tennessee, the City of Murfreesboro includes facilities for cremation within its definition of a funeral home, but defines a crematory as a facility not accessory to a funeral home. It allows funeral homes as a specific use in its local commercial zone district, and by right in its highway commercial, light industrial and heavy industrial zone districts. It allows a crematory as an accessory use to cemeteries and as a specific use in the light and heavy industrial zone districts. It has standards for crematories as a specific use.
- In North Carolina, the City of Charlotte and Mecklenberg County, which share a common zoning code, includes facilities for cremation within its definition of a funeral home, and has a separate definition for crematories. Charlotte also has definitions and lists as permitted uses, cemeteries, crematories and funeral homes for animals, something that could also be considered in Knoxville. Crematories and funeral homes are permitted by right in all the office zone districts, the two basic business zone districts and two mixed use districts. Ironically, only an animal crematory is listed as a permitted use in the industrial zone districts.

- In Minnesota, the City of Orono, a suburb of Minneapolis, recently amended its zoning ordinance to allow the interment of cremated remains as an accessory use to places of worship and created standards for approval.

In summary:

- Crematories or any facilities for cremation are currently not addressed anywhere within the City of Knoxville zoning ordinance. Funeral homes are allowed by right in the O-1, C-3, C-4, and C-6 zone districts.
- There is no definition in the ordinance for funeral establishments or any other like term, nor is there a definition for cemetery.
- Cremation is common and rapidly increasing in Tennessee and the U.S.
- Interment of cremation remains in columbarium or memorial gardens is becoming common.
- Area residents have long had concerns about facilities for cremation located in close proximity to residential land uses and other areas where people, particularly children, regularly congregate.
- State law and court decisions consider cremation facilities as the same industry as funeral establishments.
- Recent studies done for the City of Spring Hill conclude that the air emissions from a proposed crematory located in close proximity to a residential neighborhood are low and within the range of estimated emissions from other types of generally accepted sources.
- There is a significant difference between facilities for cremation (as an accessory use) that are a part of a funeral establishment as one of the services provided, compared to a crematory (as a principal use) that operates for the sole purpose of doing cremations for many funeral establishments.
- Providing for facilities for the cremation of animals should also be done at this time.
- Other cities provide reasonable models for the approach to addressing cremation facilities in the zoning ordinance.

STRATEGY

The strategy of these recommendations is to reflect state law as found at Tennessee Code Annotated; Chapter 62, while respecting the perceived and real impacts of a crematory facility depending on its scale and intensity of use.

- Definitions must be created.
- The use of terms within zoning ordinance for "funeral establishments" must be consolidated.
- Standards (primarily separation distances from residences, etc) for facilities for cremation as an accessory use to a funeral establishment must be created and review as a use-on-review must be established.
- ~~Appropriate zone districts for crematories must be established. Under the proposed ordinance, crematories as an accessory use ("facilities for cremation") would be allowed as a use-on-review in the O-1, C-3, C-4, and C-6 zone districts. Crematories as a principal use and animal crematories would be allowed in all of the industrial districts as a use-on-review.~~
- Appropriate rights for interment of cremated remains (columbarium) must be established.

OPTIONS

1. Approve First Reading 2. Approve on Emergency 3. Deny 4. Postpone for future consideration

RECOMMENDATION

The Metropolitan Planning Commission recommended approval of the proposed amendments to the zoning ordinance as shown in Exhibits B, C, D, E, and F Option 2 by a vote of 9-4.

ESTIMATED PROJECT SCHEDULE

Not applicable.

PRIOR ACTION/REVIEW

Ads Published

MPC Meeting	5/10/2012	Published ad on	12/30/2011
Knoxville City Council	6/12/2012	Published ad on	5/18/2012

FISCAL INFORMATION

Not applicable.

Meeting History

Jun 12, 2012 7:00 PM **City Council** **Regular Meeting**  **Draft**

RESULT: POSTPONED [UNANIMOUS] *Next: 8/7/2012 7:00 PM*
MOVER: Duane Grieve, 2nd District
SECONDER: Finbarr Saunders, At-Large Seat C
AYES: Nick Pavlis, Duane Grieve, Brenda Palmer, Nick Della Volpe, Mark Campen, Daniel Brown, George C. Wallace, Marshall Stair, Finbarr Saunders

Aug 7, 2012 7:00 PM **City Council** **Regular Meeting**  **Draft**

RESULT: POSTPONED [UNANIMOUS] *Next: 9/4/2012 7:00 PM*
MOVER: Nick Pavlis, 1st District
SECONDER: Brenda Palmer, 3rd District
AYES: Nick Pavlis, Duane Grieve, Brenda Palmer, Nick Della Volpe, Daniel Brown, George C. Wallace, Marshall Stair, Finbarr

ABSENT: Saunders
Mark Campen

Sep 4, 2012 7:00 PM **City Council** **Regular Meeting**

 **Draft**

RESULT: REFERRED [UNANIMOUS]
MOVER: Nick Pavlis, 1st District
SECONDER: Finbarr Saunders, At-Large Seat C
AYES: Nick Pavlis, Duane Grieve, Brenda Palmer, Nick Della Volpe, Mark Campen, Daniel Brown, George C. Wallace, Marshall Stair, Finbarr Saunders

Next: 11/13/2012 7:00 PM

City County Building, 400 Main St, Knoxville, TN 37902 | Phone: Call 3-1-1



Communication to the Planning Commission

FOR THE MEETING OF: JUNE 16, 2015

FROM: RUSS SOYRING, PLANNING DIRECTOR

SUBJECT: REZONING A SEGMENT OF GARFIELD AVENUE

DATE: JUNE 12, 2015

A request has been made by Shannon Walters, One World Winery Cons. LLC to rezone 537 S. Garfield from C-1 (Office Service) to C-3 (Community Center). Staff suggested that the specific rezoning request be put on hold until the Planning Commission had the opportunity to consider a more district approach to rezoning of the commercial area of Garfield Avenue.

The Traverse City Master Plan designates the properties along Garfield Avenue from 8th Street to the south City limits to be within the TC-4 (Corridor) Neighborhood. This neighborhood type is the least formally developed neighborhood where a wide variety of uses and building types are envisioned. The Master Plan supports overall, higher activity levels and uses are geared toward motorized transportation. Design and architectural solutions are to ameliorate emissions to quieter adjoining neighborhood types.

The Zoning Element states as a long term recommendation, "Garfield Avenue is a corridor of significance and should be developed as an overlay district or in conjunction with any future corridor studies. Unless an overlay district or future corridor study states differently, the C-1 District along Garfield Avenue should be rezoned to C-3 District." The Zoning Element goes on to read, "Regulations that reduce intensity levels at the boundaries of Conventional or Traditional neighborhoods should be developed (i.e. larger setback, limited hours of operation). Please note that the Master Plan interchanges "Conventional" and "Contemporary" for the TC-2 type neighborhood.



The Corridors Master Plan indicates the subject area is appropriate for “Local Office”. (Please see page 65 of the Corridors Master Plan.) In this area, the Corridors Master Plan recommends residentially scaled/styled buildings, compatible with the existing residential neighborhood. Uses are to be limited to residential or possibly low-impact neighborhood commercial/office. The current C-1 (Office-Service) zoning allows for these types of uses and limit the building size to 4,500 square foot footprints. With a residential floor, C-1 zoning allows a three story building as large as 13,500 square feet.

Staff recommends the current C-1 (Office-Service) zoning remain in this area until a form-based code overlay zone is developed for the corridor and/or there are more complete intensity standards developed within the Zoning Code to ensure more intensive uses can be accommodated without negatively impacting the nearby residential neighborhoods.

RS