

CASE SUMMARY

APPLICATION TYPE: ORDINANCE AMENDMENT

KNOXVILLE • KNOX COUNTY

M P C
METROPOLITAN
P L A N N I N G
C O M M I S S I O N

T E N N E S S E E

Suite 403 • City County Building
4 0 0 M a i n S t r e e t
Knoxville, Tennessee 37902
8 6 5 • 2 1 5 • 2 5 0 0
F A X • 2 1 5 • 2 0 6 8
w w w • k n o x m p c • o r g

File Number: 1-A-12-OA **Related File Number:**
Application Filed: 12/14/2011 **Date of Revision:**
Applicant: KNOXVILLE CITY COUNCIL (REFERRED BACK TO MPC FOR RECONSIDERATI

PROPERTY INFORMATION

General Location:
Other Parcel Info.:
Tax ID Number: 999 999 **Jurisdiction:**
Size of Tract:
Accessibility:

GENERAL LAND USE INFORMATION

Existing Land Use:
Surrounding Land Use:
Proposed Use: **Density:**
Sector Plan: **Sector Plan Designation:**
Growth Policy Plan:
Neighborhood Context:

ADDRESS/RIGHT-OF-WAY INFORMATION (where applicable)

Street:
Location:
Proposed Street Name:
Department-Utility Report:
Reason: Amendments to the Knoxville Zoning Ordinance regarding definitions, standards and locations for funeral establishments, crematories and related facilities.

ZONING INFORMATION (where applicable)

Current Zoning:
Former Zoning:
Requested Zoning:
Previous Requests:
Extension of Zone:
History of Zoning:

PLAN INFORMATION (where applicable)

Current Plan Category:
Requested Plan Category:

SUBDIVISION INFORMATION (where applicable)

Subdivision Name:

No. of Lots Proposed:

No. of Lots Approved: 0

Variances Requested:

S/D Name Change:

OTHER INFORMATION (where applicable)

Other Bus./Ord. Amend.: Amendments to the Knoxville Zoning Ordinance regarding definitions, standards and locations for funeral establishments, crematories and related facilities.

MPC ACTION AND DISPOSITION

Planner In Charge: Mark Donaldson

Staff Recomm. (Abbr.): Staff recommends that the Planning Commission recommend to City Council approval of the proposed amendments to the zoning ordinance as shown in Exhibits B, C, D, E, and F.

Staff Recomm. (Full):

Comments:

Following consideration of MPC recommendations regarding the regulation of crematories and facilities for cremation as part of a funeral establishment at a workshop on August 30, City Council has directed that MPC consider a strategy to regulate funeral establishments as a use permitted on review in various districts, as well as allowing crematories as a use permitted on review in the I-4 (Heavy Industrial) zone district and as an accessory use in cemeteries.

BACKGROUND

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 City Council asked MPC to study this issue and make recommendations on amendments to the zoning ordinance, with 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.

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 consideration 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.

In May, MPC recommended to City Council that new facilities for cremation be considered as accessory uses permitted on review in funeral establishments, including those establishments currently operating, and that crematories be allowed as a use permitted on review in the I-4 (Heavy Industrial) zone district.

At its workshop in August, there was consensus among council members on the following direction:

- Established funeral establishments may install facilities for cremation without further regulation.
- Funeral establishments should not be allowed in residential zone districts.
- Funeral establishments and crematories could be considered in industrial zone districts.
- There should be a separation distance of 500 feet from the smokestack of a facility for cremation and the nearest property line of an established residential property, park, school or day care facility, unless there is evidence on record that demonstrates that a smaller separation distance is safe.
- There shall be no more than a single facility for cremation (a cremator having two chambers, a primary chamber in which the cremation takes place and a secondary chamber to control air emissions) allowed in a funeral establishment.
- There shall be no more than 33% of the floor area of a funeral establishment devoted to a single facility for cremation.
- Facilities for cremation should be allowed as a use-on-review in cemeteries.
- Crematories should be allowed as a use-on-review only in the I-4 (Heavy Industrial) zone district.
- Funeral establishments should be limited to the C-3, C-4 and C-6 zone district as a use-on-review.

Funeral establishments should no longer be allowed in the O-1 zone district.

ANALYSIS

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)]

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.

Cemeteries are listed as uses permitted on review in the A-1 (Agricultural), R-1 (Low Density Residential), R-1A (Low Density Residential), EN-1 and EN-2 (Established Neighborhood), R-2 (General Residential), R-3 (High Density Residential), and O-1 (Office, Medical, and Related Services) zone districts.

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 Ensaf, 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 Ensafe, 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.

Summary of existing regulations and trends

•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 and C-3 zone districts. Cemeteries are allowed as uses permitted on review in a number of residential and office 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 following strategy is offered in response to direction from City Council:

•Describe current use of terms related to funeral establishments

•Create necessary definitions

•List funeral establishments as uses permitted on review in C-3, C-4 and C-6, eliminate in O-1

•List crematories as use permitted on review in I-4

•List columbarium (indoor and outdoor) and memorial gardens as permitted accessory uses for churches and cemeteries and crematories as permitted accessory uses for cemeteries

•Create standards for funeral establishments as a use permitted on review and add to standards for cemeteries as a use permitted on review

Action: Approved as Modified

Meeting Date: 10/11/2012

Details of Action:

Summary of Action: approve the proposed amendments to the zoning ordinance as amended in Exhibits B, C, D, E, and F.

Date of Approval: 10/11/2012

Date of Denial:

Postponements: 1/12/2012-3/8/2012

Date of Withdrawal:

Withdrawn prior to publication?: **Action Appealed?:**

LEGISLATIVE ACTION AND DISPOSITION

Legislative Body: Knoxville City Council

Date of Legislative Action: 3/5/2013

Ordinance Number:

Disposition of Case: Other

If "Other": PP to 8-7-2012 to have a workshop, PP to 9-4-12, Sent back to MPC for reconsideration 9-4-12, PP 11/13/12, 1/22/13. sent back to MPC again 3/5/2013

Amendments:

Sent back to MPC for reconsideration 9-4-12 and again 3/5/2013 SEE new file # 4-A-13-OA

Date of Legislative Appeal:

Date of Legislative Action, Second Reading:

Other Ordinance Number References:

Disposition of Case, Second Reading:

If "Other":

Amendments:

Effective Date of Ordinance: