

RESOLUTION R-2009-3

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, DECLARING A CEMETERY LOCATED AT GOSS STREET AND STATE HIGHWAY 155 (FRANKSTON HIGHWAY) IN TYLER, TEXAS, TO BE ABANDONED, NOT MAINTAINED AND A PUBLIC NUISANCE; DECLARING THAT THE CITY OF TYLER IS TAKING POSSESSION AND CONTROL OF SAID CEMETERY ON BEHALF OF THE PUBLIC; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, it is the intent of the City Council to protect the public health, safety and welfare; and

WHEREAS, Texas Health and Safety Code Chapter 713 provides for local regulation of cemeteries; and

WHEREAS, Texas Health and Safety Code Chapter 713, Subchapter A. provides for municipal regulation of cemeteries; and

WHEREAS, Texas Health and Safety Code Section 713.009 provides that a municipality with a cemetery inside the municipality's boundaries or extraterritorial jurisdiction may, by resolution, take possession and control of the cemetery on behalf of the public if the cemetery threatens or endangers public health, safety, comfort or welfare; and

WHEREAS, Texas Local Government Code Section 217.042 provides that a home-rule municipality may define and prohibit any nuisance within the limits of the municipality and within 5,000 feet thereof; and

WHEREAS, Section 1 of the Tyler City Charter states that the City of Tyler may make any and all rules and regulations by ordinances and resolutions; and

WHEREAS, Section 1 of the Tyler City Charter states that the City may define, prohibit, abate, suppress and prevent all things detrimental to the health, morals, comfort, safety, convenience and welfare of the inhabitants of the City;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS:

PART 1: The City Council hereby finds that the cemetery located at the southeast intersection of Goss Street and State Highway 155 is not maintained and is abandoned.

PART 2: The City Council hereby finds that there is no evidence that the cemetery is a perpetual care cemetery incorporated under the laws of the State of Texas or that the cemetery is a family cemetery.

PART 3: The City Council hereby finds that the cemetery threatens and endangers public health, safety, comfort and welfare due to its abandoned and not maintained condition,

because it may constitute a hazard to persons, may serve as an attractive nuisance to children, and it is harming the growth of surrounding trees.

PART 4: The City Council hereby declares the cemetery to be a public nuisance.

PART 5: The City Council hereby declares that it is the intent of the City of Tyler to take possession and control of the cemetery.

PART 6: The St. Louis Baptist Church, which is located directly across from the cemetery, has expressed an interest in maintaining the cemetery. St. Louis Baptist Church is hereby authorized to act in place of the City of Tyler in performing any repair or maintenance activities as St. Louis Baptist Church deems appropriate.

PART 7: Not later than the 60th date after the date of this Resolution, the City of Tyler shall, as appropriate, take the following actions either on its own or hereby authorizes St. Louis Baptist Church to act on the City's behalf in taking the following actions:

- A. Remove or repair any fences, walls or other improvements, as necessary;
- B. Straighten and reset any memorial stones or embellishments that are a threat or danger to public health, safety, comfort or welfare, as necessary;
- C. Take proper steps to restore and maintain the premises in an on orderly and decent condition, as necessary.

PART 8: That as long as St. Louis Baptist Church continues to perform periodic repairs or maintenance activities on the cemetery, it is hereby authorized to continue to act on behalf of the City of Tyler.

PART 9: That notice of this Resolution shall be made to all interested persons by publication in the newspaper.

PART 10: That while said cemetery is in the possession and control of the City of Tyler, it shall remain open to the public and no additional burial spaces shall be offered for sale.

PART 11: That the City of Tyler shall be responsible for continuing to maintain the cemetery so that it does not endanger the public health, safety, comfort or welfare.

PART 12: That City Staff is hereby directed to file record of said abandoned cemetery with the Smith County Clerk consistent with Texas Health and Safety Code Section 711.011.

PART 13: That this Resolution shall take effect immediately upon adoption.

ADOPTED this 28th day of January, A. D., 2009.

Barbara Bass
BARBARA BASS, MAYOR OF
THE CITY OF TYLER, TEXAS

ATTEST:

Cassandra Brager
CASSANDRA BRAGER, CITY CLERK

APPROVED:

Mary C. Sanders
MARY C. SANDERS, CITY ATTORNEY

