

TITLE 22 EXAMINING BOARDS

Part 10 Texas Funeral Service Commission

Chapter 203 Licensing and Enforcement - Specific Substantive Rules

Subchapter C. Enforcement

Proposal to Amend Title 22 Texas Administrative Code <*> 203.44 – Procedures and Criteria for Inspections of Licensed Establishments.

The Texas Funeral Service Commission (Commission) proposes to amend Title 22 Texas Administrative Code <*> 203.44 – Procedures and Criteria for Inspections of Licensed Establishments. The rule currently sets out the procedure and criteria for the inspection of funeral establishments, commercial embalming facilities, and crematories.

During a recent audit by the State Auditor's Office it was recommended the Commission develop a rule to outline procedures and criteria for inspecting licensed cemeteries. While the Commission has an internal policy about the inspection of cemeteries, this amendment creates those procedures and criteria in the Commission's rules.

Janice McCoy, Executive Director, has determined for the first five-year period the amendment is in effect there will be no fiscal implication for state or local governments, or local economies.

Ms. McCoy has determined there will be no adverse economic effect on small businesses or micro-businesses required to comply with the amendment, as proposed.

There is no anticipated economic cost to individuals who are required to comply with the amendment, as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. McCoy has determined for the first five-year period the amendment is in effect, the public benefit of the amendment is that licensed cemeteries know how and when they will be inspected by the Commission.

The Commission has determined Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the Commission is not required to complete a takings impact assessment regarding this proposal.

Comments on the proposal may be submitted in writing to Mr. Kyle Smith at PO Box 12217, Capitol Station, Austin, Texas 78711-1440, 512-479-5064 (fax) or

electronically to info@tfsc.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code <*> 651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work, and Texas Occupations Code <*> 651.157, which requires the agency to establish, by rule, procedures for inspection of a cemetery.

No other statutes, articles, or codes are affected by this section.

<*> 203.26 – 44 – Procedures and Criteria for Inspections of Licensed ~~Establishments~~ Entities

(a) Inspection Procedures.

(1) All licensed funeral establishments, commercial embalming facilities, ~~and crematories, and cemeteries~~ shall be inspected at least once every two years. The Commission shall give lower priority to the inspection of cemeteries.

(2) All inspections shall be unannounced.

(3) The inspector shall review prior inspection reports before inspecting ~~an establishment~~ a licensed entity. If prior reports reveal problems, the inspector shall determine whether the ~~establishment~~ licensed entity has corrected the previously identified problems or whether a pattern of violations or new violations exist.

(4) Inspectors shall use reasonable efforts to conduct inspections between the hours of 8:00 a.m. and 5:00 p.m., but ~~an establishment~~ a licensed entity is required to be open at all times to inspections for violations of Occupations Code, Chapter 651, and Health and Safety Code, Chapters 193, 361, 711, 714, 715 and 716.

(5) If ~~an establishment~~ a licensed entity is not open for business during regular business hours and an inspector is unable to contact any employee or owner to open the ~~establishment~~ licensed entity to conduct the inspection, the inspector shall notify the ~~establishment~~ licensed entity by mail of the attempted inspection. If ~~an establishment~~ a licensed entity is unavailable for inspection during regular business hours twice during a six month period, the Commission may file a complaint against the ~~establishment~~ licensed entity, making the ~~establishment~~ licensed entity subject to an administrative penalty or other action.

(b) Criteria for Risk-Based Inspections.

(1) If the Commission previously found violations of Occupations Code, Chapter 651, and Health and Safety Code, Chapters 193, 361, 711, 714, 715 and 716, following a biennial inspection, ~~an establishment~~ a licensed entity shall be inspected annually until it is free of all violations.

(2) ~~Establishments~~ Licensed entities that have received a reprimand or letter of warning, that have been assessed administrative penalties, that have had licenses suspended, or that have received a letter ordering the ~~establishment~~ licensed entity to cease and desist for violations of Occupations Code, Chapter 651, or Rules of the Commission are subject to inspection at anytime within three years following the date that the Commission's action became final.

(3) If the Commission is in the process of conducting an investigation of ~~an establishment~~ a licensed entity, staff may inspect the ~~establishment~~ licensed entity for the limited

purpose of proving or disproving the validity of the complaint. The scope of inspections under this paragraph shall be limited to matters relating to the subject of the complaint.

(c) Notwithstanding section (a)(1), a cemetery may not be inspected unless an interment has occurred in the cemetery within the two years preceding the inspection or the Commission has received a complaint about the cemetery.

The agency certifies legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.