


# COUNCIL COMMUNICATION

	Number:	<b>19-381</b>	Meeting:	<b>September 9, 2019</b>
	Agenda Item:	<b>57</b>	Roll Call:	<b>19-1427</b>
	Submitted by:	<b>Benjamin R. Page, Park and Recreation Director</b>		

## AGENDA HEADING:

Approve proposed amendments of Municipal Code Chapter 34 regarding municipal cemeteries to clarify intent of ordinance, align with Iowa Code Chapter 523I definitions and requirements, and update sections regarding management, sale of interment rights, interments and disinterment, memorials, maintenance fund, and public conduct in cemeteries.

## SYNOPSIS:

Approve recommended changes to Municipal Code Chapters 34 - Cemeteries, including:

- Definitions of terms are in alignment with the State of Iowa Code 523I (Iowa Cemetery Act)
- Defining the powers of the Parks and Recreation Board and the Parks and Recreation Director (or his or her designee)
- Updating the sale of interment rights in alignment with the Iowa Cemetery Act
- Updating standard practices for interments and disinterment
- Updating standards for memorials
- Updating the Perpetual Care Fund in alignment with the Iowa Cemetery Act
- Change the public conduct section so it follows the Parks and Recreation Department's Comprehensive Plan – LiveDSM
  - Use of grounds
  - Hours
  - Wildlife in cemeteries
  - Refreshments
  - Smoking prohibited

## FISCAL IMPACT:

Amount: It is estimated that the proposed fee changes will have minimal impacts to the revenue received by the City.

## ADDITIONAL INFORMATION:

- At the July 5, 2019 meeting of the Citizen Cemetery Advisory Committee of the Parks and Recreation Board, the committee unanimously approved the following proposed changes to Chapter 34 of the Des Moines Municipal Code. Chapter 34. At the August 27, 2019 meeting of the Parks and Recreation Board, a recommendation to approve the proposed changes to Chapter 34 was unanimously approved. Cemeteries are dedicated to the management and operations of

the City cemeteries in alignment with the requirements of Iowa Cemetery Act. The Citizen Cemetery Advisory Committee role is a standing committee of the Board providing recommendations to the Parks and Recreation Board.

- Municipal Cemeteries are operated by the Parks and Recreation Department under the direction of the Director.
- The proposed changes to Chapter 34 represent the first review of the entire ordinance since the adoption of LiveDSM, the City's Parks and Recreation Comprehensive Plan in December of 2018.
- The Perpetual Care Cemetery Fund requirements of the Iowa Cemetery Act have been spelled out in Chapter 34 along with other changes to be consistent with industry changes and current City practices. Updated definitions of terms were made to be consistent with Iowa Cemetery Act definitions. Further practices regarding interment rights, use of burial spaces, right of burials space owners, memorials, and purposes of the Perpetual Care Cemetery Fund were updated in compliance with the Iowa Cemetery Act.
- Staff conducted significant research with local funeral homes, memorial companies and vault companies in preparing the proposed changes to Chapter 34. Additionally, a number of private and public cemeteries across the country were engaged for research and to learn best practices.

Proposed Ordinance Changes: -

The following summary describes the proposed major changes to the ordinance.

- *Sec. 34-1 Definitions* – All definitions are updated to be consistent with the Iowa Cemetery Act.
- *Sec. 34-31 Operations* – The responsibility for the operation of the cemeteries was moved from the Parks and Recreation Board to the Parks and Recreation Director or his or her designee. These revisions reflect how cemetery management has been conducted for decades.
- *Sec. 34-32 Powers and duties of the Parks and Recreation Board* – Reduced responsibilities from operations including selling plots, setting hours, determining method of payments, re-plating or changing boundaries and landscaping to reviewing fees, rules and regulations, and hearing appeals. These revisions reflect how cemetery management has been conducted for decades.
- *Sec. 34-33 Powers and duties of the Parks and Recreation Director* – Moved the operational responsibilities formerly under the Parks and Recreation Board to the Director including issuing permits, sales, hours for services, re-plating and determining improvements. These revisions reflect how cemetery management has been conducted for decades.

- *Sec. 34-61 Sale of rights of interment* – Added the following to align with State of Iowa Code 523I: The sale or transfer of interment rights in the cemetery shall be evidenced by a certificate of interment rights or other instrument evidencing the conveyance of exclusive rights of interment upon payment in full of the purchase price. The agreement for interment rights shall disclose all information required by the Iowa Cemetery Act, including the amount or percentage of money to be placed in the perpetual care fund.
- *Sec. 34-63 Interment rights of owners* – Clarification of purchaser, surviving spouse, joint tenants, succession (revert to the City after 100 years).
- *Sec. 34-64. Termination of rights of interment* – Clarification of termination of right of interment to align with current practices.
- *Sec. 34-68 Access roads* – Clarification on accessing space and spaces not covered by right of interment.
- *Sec. 34-96 Standards for in-ground burial receptions* – Updated to meet national and cemetery standards, certified by the National Concrete Burial Vault Association (NCBVA).
- *Sec. 34-98 Application for interment* – Updated to align with Iowa Cemetery Act and current practices including completing order forms provided by the cemetery office, and filing a burial order at least twenty-four business hours prior to any interment.
- *Sec. 34-101 Interment of more than one body or cremation urn* – Changed to allow up to four (4) burials in one (1) inground space. An interment plot may contain the non-cremated remains of one (1) person plus up to the cremated remains of three (3) persons.
- *Sec. 34-102. Subdivision of plots* – The subdivision of interment plots is not allowed.
- *Sec. 34-104 Disturbing caskets* – Clarification of who can remove remains.
- *Sec. 34-136 Memorials – Standards for erection* – Clarification and updates to align with current practices. These include allowing the Cemetery Manager the authority to approve proposed memorials, any alterations to existing memorials, corrected installation of memorials, and permitting engraving and cleaning of memorials.
- *Sec. 34-137 Materials* – Clarification of the standards for what materials can be used for memorials.
- *Sec. 34-166 Perpetual Care Cemetery Fund* – Clarification of use of funds as approved by City Council in accordance with the Iowa Cemetery Act and to indicate current practice. These changes are as follows:
  - (a) Separate designations within the Permanent Cemetery Maintenance Fund shall be made for each municipal cemetery. The Fund shall be administered in accordance with the purposes and provisions of Iowa Code Chapter 523I and in accordance with the Investment Policy approved by the City Council.
    - (1) The Permanent Cemetery Maintenance Fund may also include funds from the following:
      - a. Contributions in the form of a gift, grant, or bequest.

- b. Any accumulated income allocated to principal.
    - c. Money or real or personal property impressed with a trust by the terms of Iowa Code Chapter 523I.
  - (2) The interest accumulation from the income from the Permanent Cemetery Maintenance Fund shall be used for the care of the cemeteries and shall be in accordance with the definition of perpetual care in this chapter and with the purposes and applicable provisions of Iowa Code Chapter 523I.
  - (3) The Permanent Cemetery Maintenance Fund shall be maintained separate from all operating funds of the municipal cemeteries and the principal of the fund shall not be reduced voluntarily except as specifically permitted by Iowa Code chapter 523I, the Iowa Cemetery Act and applicable administrative regulations.
  - (b) Pursuant to Iowa Code Section 523I.502, the City shall be the trustee for the Permanent Cemetery Maintenance Fund and the City Council shall act on the City's behalf as trustee of such fund. The City hereby states and affirms its continued willingness and intention to act as a trustee of the Permanent Cemetery Maintenance Fund.
  - (c) A registry of individuals who have purchased interment rights in the municipal cemeteries operating as a perpetual care cemetery shall be maintained, including the amounts deposited from the sale of interment rights from such cemetery in the Permanent Cemetery Maintenance Fund. The Parks and Recreation department shall maintain for each municipal cemetery a registry of individuals who have purchased interment rights in the cemetery subject to the care fund requirements of the Iowa Cemetery Act, including the amounts deposited in the Permanent Cemetery Maintenance Fund.
- *Sec. 34-168 Use of accumulated interest of Permanent Cemetery Maintenance Fund* – Clarification of use of interest accumulation for permanent cemetery maintenance fund in accordance with the Iowa Cemetery Code.
  - *Sec. 34-169 Use of Temporary maintenance funds* – Clarification of use of funds as approved by City Council in accordance with the Iowa Cemetery Code. The funds from the temporary maintenance fund may be used to supplement the funds in the Permanent Cemetery Maintenance Fund to provide for perpetual care. Funds from the temporary maintenance fund shall not be used for the care of any interment space, except for the provision of perpetual care.
  - *Sec. 34-171 Acceptance and use of gifts and Investment of gift or special care fund* – Clarification of current practice in which special care or gift cemetery funds shall be accepted, held and used in accordance with the City's administrative policy regarding the acceptance and use of gifts and may be invested with and in the same manner as perpetual care funds.
  - *Sec. 34-201. Use of walks and grounds* – Updated to allow some forms of passive recreation. These changes are as follows:
    - (a) The walks and roads within the City cemeteries may be used by persons during the times that the cemeteries are open to the public, including for such recreational activities as walking, jogging, biking, wildlife observation, and dog walking. The grounds of the cemeteries may be used during the times that the cemeteries are open for purposes of attending interment services, visitation of an interment space, tours authorized by the Parks and Recreation Director, and for other activities authorized

by the Park and Recreation Director pursuant to section 34-33(1) of this chapter, and for picnicking and historical exploration within designated areas of the cemeteries. The throwing of objects or playing of lawn games and the flying of drones or model airplanes is not permitted within the City cemeteries.

- (b) Flag retirement ceremonies authorized by the Parks and Recreation Director and conducted pursuant to a burn permit issued by Polk County may be conducted on Glendale Cemetery grounds.

- *Sec. 34-202. Hours of operation* – Changed to reflect the current practice of being open to the public from 6:00 a.m. to 8:00 p.m. year-round. Previously hours of operation changed seasonally.
- *Sec. 34-204. Refreshments* – Changed to only prohibit food and drink in the proximity of, and during the time of, graveside or other interment services.
- *Sec. 34-205. Automobiles, motorcycles and bicycles* – Allows vehicles and bicycles to be driven through the grounds of the cemetery not to exceed speeds greater than 15 miles per hour, and vehicles and bicycles shall not be parked or come to a full stop in front of an open grave or graveside or other interment services, except to be in attendance at such graveside or other interment services.
- *Sec. 34-206. Peddling or soliciting* – Allows only with authorization from the Parks and Recreation Director.
- *Sec. 34-207. Firearms and weapons* – Updated to comply with 70-86 of this Code stating no person shall carry firearms or weapons within the cemetery except pursuant to a valid permit to carry weapons.
- *Sec. 34-209. Smoking Prohibited* – Changed to align with Chapter 74 as follows:
  - (a) No person shall smoke or use tobacco of any kind in or on any cemetery property.
  - (b) For purposes of this section “smoke” or “smoking” means to carry or exercise control over a lighted cigar, cigarette, pipe, or other lighted smoking equipment.
  - (c) Tobacco means any product made or derived from tobacco that is intended for human use, including any component, part, or accessory of a tobacco product. This includes, but is not limited to, cigarettes, electronic smoking devices, cigarette tobacco, roll-your-own tobacco, smokeless tobacco, and dissolvable tobacco.
  - (d) Electronic smoking devices means any device that can be used to deliver an aerosolized solution that may or may not contain nicotine to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, e-hookah, or other simulated smoking device.
  - (e) Nicotine products approved by the United States Food and Drug Administration for tobacco cessation shall be allowed within the cemeteries.
- *Sec. 34-210. Fireworks and novelties Prohibited* – Added that the use or possession of fireworks, as defined in article VI of chapter 46 of this Code and novelties as defined in American Pyrotechnics Association Standard 87-1, Chapter 3 are prohibited in any cemetery.

**PREVIOUS COUNCIL ACTION(S):**

Date: March 26, 2012

Roll Call Number: [12-0475](#), [12-0476](#), and [12-0477](#)

Action: [Amending](#) Chapter 34 of the Municipal Code regarding reduction of the allocation deposited into the Cemetery Perpetual Maintenance Fund from 30% to 20%. ([Council Communication No. 12-137](#)) Moved by Hensley that this ordinance be considered and given first vote for passage. Motion Carried 7-0.

- (A) [Final](#) consideration of ordinance above, (waiver requested by Park & Recreation Department) requires 6 votes. Moved by Hensley that the rule requiring that an ordinance must be considered and voted on for passage at two Council meetings prior to the meeting at which it is to be finally passed be suspended, that the ordinance be placed upon its final passage and that the ordinance do now pass, [#15,096](#). Motion Carried 7-0.
- (B) [Amendment](#) to the Schedule of Fees. Moved by Hensley to adopt. Motion Carried 7-0.

**BOARD/COMMISSION ACTION(S):**

Board: Parks and Recreation

Date: August 27, 2019

Resolution Number: 19-065

Action: Motion by Ogle to recommend approval of Chapter 34 updates. Second by Facto. Motion carried.

**ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:**

Second and third reading of ordinance.

For more information on this and other agenda items, please call the City Clerk's Office at 515-283-4209 or visit the Clerk's Office on the first floor of City Hall, 400 Robert D Ray Drive. Council agendas are available to the public at the City Clerk's Office on Thursday afternoon preceding Monday's Council meeting. Citizens can also request to receive meeting notices and agendas by email by calling the Clerk's Office or sending their request via email to [cityclerk@dmgov.org](mailto:cityclerk@dmgov.org).