

ORDINANCE NO. 15,801

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, by amending Sections 34-1, 34-31, 34-32, 34-33, 34-61, 34-62, 34-63, 34-64, 34-65, 34-66, 34-67, 34-68, 34-96, 34-97, 34-98, 34-99, 34-100, 34-101, 34-102, 34-103, 34-104, 34, 105, 34-106, 34-136, 34-137, 34-138, 34-139, 34-140, 34-166, 34-168, 34-169, 34-170, 34-171, 34-172, 34-173, 34-174, 34-201, 34-202, 34-203, 34-204, 34-205, 34-206, 34-207, 34-208, 34-209, amends Section 34-34 and renumbers it to Section 34-35, repeals 34-69, 34-107, 34-167, and adds and enacts new Sections 34-34 and 34-210 relating to municipal cemeteries.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, is hereby amended by amending Sections 34-1, 34-31, 34-32, 34-33, 34-61, 34-62, 34-63, 34-64, 34-65, 34-66, 34-67, 34-68, 34-96, 34-97, 34-98, 34-99, 34-100, 34-101, 34-102, 34-103, 34-104, 34, 105, 34-106, 34-136, 34-137, 34-138, 34-139, 34-140, 34-166, 34-168, 34-169, 34-170, 34-171, 34-172, 34-173, 34-174, 34-201, 34-202, 34-203, 34-204, 34-205, 34-206, 34-207, 34-208, 34-209, amends Section 34-34 and renumbers it to Section 34-35, repeals 34-69, 34-107, 34-167, and adds and enacts new Sections 34-34 and 34-210 relating to municipal cemeteries, as follows:

**ARTICLE I. IN GENERAL**

**Sec. 34-1. Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Burial* means the in-ground interment or scattering of human remains.

*Cemetery* means an area owned by the city and designated by the city for the final disposition of human remains and includes in-ground interments, a community mausoleum for vault or crypt or urn interments, and columbarium for cremated remains, interments or a combination of one or more thereof, and areas designated for the scattering of human remains.

*Cemetery rules and regulations* and *rules and regulations* mean those rules and regulations approved by the parks and recreation board and the city council in accordance with section 34-32 of this chapter.

*Columbarium* means a freestanding vault or other structure with niches or recesses in the walls for the disposition of cremated remains.

*Cremated remains* means human ashes intended for in-ground burial, scattering over designated locations, or placed in memorials.

*Crypt* means a chamber in a mausoleum of sufficient size to contain casketed remains.

*Disinterment* means the removal of human remains from an interment space.

*Family* means the spouse of the owner of the right of interment, if any, and all lineal ancestors and descendants as designated in the right of interment, or if none such are designated, then any and all lineal descendants.

*Family burial plot* means an interment plot which shall be held as indivisible for family members of the owner thereof upon one family member's remains being interred therein for a period extending to 100 years after the last interment.

*Foundation* means the concrete or sand base created to place a monument or memorial marker on or in a designated burial space or plot.

*Grave* means a space of ground that is used for an in-ground burial.

*Infant* or *small child* means a child eight years old or less at death who requires an interment space no greater than five feet in length.

*Infant burial plot* means that area of the cemetery restricted to infant interments.

*Infant interment* means an interment in which the casket or urn is placed within an in-ground interment space five feet in length.

*Interment* means the permanent disposition of the remains of a deceased person by inurnment, entombment or burial.

*Interment plot* or *plot* means the area designed for the interment of the remains of one or more persons.

*Interment space* means the area designed for interment of the remains of one person.

*Iowa Cemetery Act* means Iowa Code Chapter 523I and its implementing regulations in the Iowa Administrative Code, as such chapter and rules may be amended from time to time.

*Mausoleum* means an enclosed structure designed for the interment of two or more people.

*Memorial* means any product, excluding a mausoleum or columbarium, used for identifying an interment space of a decedent, including, without limitation, a monument, tablet, headstone, footstone, vase, marker or bench, including those within a designated scattering area, private mausoleum, tombstone, surface burial vault, urn and crypt and niche plates.

*Niche* means a recess or space in a columbarium or mausoleum used for the placement of cremated human remains.

*Owner* means the person named as grantee in a certificate of right of interment or other instrument of conveyance.

*Ownership*, as the term relates to interment spaces or interment plots in the city cemeteries, is limited in meaning to the right of interment and includes no other elements of title ascribed to real estate by law.

*Perpetual care*, when used in reference to cemetery burial spaces, or plots, means the cutting and raking of the grass upon such interment spaces at reasonable intervals. When used in reference to cemetery grounds and facilities, means the lawn maintenance and care, the pruning of the shrubs and trees, and the general preservation and repair of the grounds, walks, roadways, drives, curbs, parking spaces, sewers, water lines, cemetery offices and maintenance buildings, fences, gates, boundaries, signage, entrance features, removal of litter and burial space or plot decorations, maintaining cemetery machinery, tools and equipment, so that such grounds and

facilities shall remain and be reasonably cared for as cemetery property forever. The removal of snow and ice from cemetery walks, roadways, and parking spaces, and the back filling of eroded soil on graves and cemetery grounds, are included within the meaning of perpetual care. When used in reference to a city mausoleum and columbarium, perpetual care means repair necessitated by ordinary wear, the cleaning and sweeping of the building at reasonable intervals and the revision of locks and doors to prevent the entrance of unauthorized persons. No perpetual care for private mausoleums is provided by the city, with the exception that, at the City's sole discretion, limited perpetual care consisting solely of the removal of biological microbes, such as mold, algae, or lichens from exterior surfaces may be provided.

The term "perpetual care" shall not be construed as meaning:

- (1) The maintenance, repair or replacement of any memorials placed or erected upon burial spaces or plots, or on any columbarium or within any mausoleum.
- (2) The planting of flowers or ornamental plants on burial spaces or plots or the maintenance or doing of any special or unusual work in the cemetery or in a mausoleum or columbarium.
- (3) The reconstruction of any marble, granite, bronze or concrete work on any section or plot or any portion thereof in the cemetery, mausoleum and columbarium or other buildings or structures, caused by the elements, an act of God, common enemy, thieves, vandals, strikers, malicious mischief makers, explosions, unavoidable accidents, invasions, insurrections, riots or by the order of any military or civil authority, whether the damage shall be direct or collateral, except as specifically approved by the city parks and recreation board.

*Perpetual Care Maintenance Fund* means a perpetual care fund as defined in Iowa Code Chapter 523I and in section 34-166 of this chapter.

*Remains* means the body of a deceased human or a body part, or limb that has been removed from a living human being, including a body, body part, or limb in any stage of decomposition, or cremated remains.

*Restricted burial section* means an area restricted to the in-ground interment of remains of members of an association, organization, brotherhood or sisterhood, religious group, denomination or other similar entity, but shall not mean a family burial plot or veteran's plot.

*Right of interment* refers to the document delivered by the city as grantor to a grantee of a designated interment space or interment plot. Such document does not convey title in any form and shall not be construed as more than a right to inter human remains at a particular place as limited by city ordinances and cemetery rules and regulations, as such may from time to time be amended.

*Scattering area* means a designated area where cremated remains may be comingled with other cremated remains.

*Special care* means the maintenance work performed by cemetery staff at the request of and billed to, the owner or family, for work that is beyond perpetual care and includes only those specific services set forth in special care agreements with owners. It may include the erection, maintenance, removal, repairs or preservation of any memorial structure; the planting and cultivation of flowers, trees, shrubs or plants in and around the cemetery or any part thereof; and the filling and care of vases, special care of flower beds and the placing of flower beds, and the placing of floral decorations on specified religious or other days, national holidays or at any other date requested, including the special care of ornamenting of any burial space or plot, section or

building or any portion thereof, in the cemetery; or any other purpose or use consistent with the purpose for which such cemetery was established or is being maintained.

*Veteran*, for purposes of interment in the veteran's plot of a cemetery, means a person who served in any armed service of the United States as defined in Iowa Code Section 35.1.

*Veteran's plot* means an area of a city cemetery restricted to and reserved for veterans and their spouses.

## ARTICLE II. MANAGEMENT

### **Sec. 34-31. Operation and supervision.**

The operation, supervision, and maintenance of the municipal cemeteries is the responsibility of the parks and recreation department under the direction of the director or his or her designee.

### **Sec. 34-32. Powers and duties of parks and recreation board.**

For the purposes of this chapter, the parks and recreation board has the authority to:

- (1) Review and determine the amount of fees for all rights of interment, cemetery services, rentals, and incidental products offered or performed under this chapter subject to the approval of the city council and the amount set forth in a schedule of fees adopted by the city council.
- (2) Without notice, make exceptions, suspensions or modifications in the enforcement of this chapter when such are deemed necessary or advisable; provided, however, that such exception, suspension or modification applies only to a single circumstance.
- (3) Review and approve rules and regulations necessary and beneficial to regulate the conduct in the city cemeteries, subject to section 74-26 of this Code.
- (4) Hear appeals from any person in regard to any decision of the parks and recreation director. Appeals must be made in writing and filed with the parks and recreation director within ten (10) days of the date of the director's written decision. Appeals must be received by the board at least 20 days before the next meeting of the board.

### **Sec. 34-33. Powers and duties of parks and recreation director.**

The parks and recreation director, in addition to the enforcement of this chapter and all rules and regulations approved by the parks and recreation board and the city council, shall exercise the following duties and authority:

- (1) Authorize, including by issuance of a permit, events and activities sponsored by the parks and recreation department or other events and activities for a compelling cultural, historical, or educational need of the community which is consistent with and furthers the purposes of the city cemeteries.
- (2) Sell burial spaces or plots to persons desiring to purchase and transfer the right of interment in the city cemeteries subject to this chapter and the Iowa Cemetery Act. The director may designate the cemetery manager to execute right of interment documents and other related cemetery documents.

- (3) Establish the days and times for burial and conditions for granting exceptions thereto.
- (4) Determine the method of payment for right of interment and related interests and cemetery services, whether by direct and full payment at the time of purchase or payment by an installment plan subject to the conditions of section 34-61 of this chapter.
- (5) Determine the expenditures of the income from the perpetual cemetery maintenance fund in such manner as in his or her judgment will be most advantageous to the owners as a whole and in accordance with the purposes and provisions of the applicable state laws, including the Iowa Cemetery Act.
- (6) Enlarge, reduce, replot, or change the boundaries or grading of the cemetery or of a section thereof or modify or change the location of, remove or regrade grounds, drives or walks therein and lay, maintain or alter pipelines or drainage.
- (7) Determine the location of trees, shrubs, herbage, and flowers or removal of such if such becomes unsightly, dangerous, detrimental or diseased.
- (8) Determine improvements on and care of cemeteries such as addition of trees, shrubs, herbage and flowers or removal of such if such becomes unsightly, dangerous, detrimental or diseased.
- (9) Use cemetery property which has not been sold to individual owners for cemetery purposes, including the interring of human remains or incidental thereto.
- (10) Approve, consistent with this chapter, all special care agreements.
- (11) Prevent improper assemblages and call upon the police department for aid in enforcing this chapter.
- (12) Exclude from the cemetery any person violating this chapter.
- (13) Take care of and supervise the grounds of the cemetery and the buildings located thereon inclusive of authority to remove floral designs or flowers or other items that have become unsightly and do not conform to the cemetery rules and regulations.
- (14) Have authority to regulate and to supervise consistent with this chapter and the cemetery rules and regulations all persons in the cemetery, including the scheduling and conduct of all work performed within the city cemeteries, including funerals on reaching the cemetery, traffic, owners and visitors.
- (15) Reject any plan or design for any memorial which, on account of size, design, inscription, kind or quality of stone or otherwise, is not in compliance with the requirements set forth in this chapter and cemetery rules and regulations. Such rejection by the parks and recreation director shall be in writing, giving the reason therefor and informing the owner of the right to appeal the rejection to the parks and recreation board as set forth in subsection 34-32(4) of this article.
- (16) Stop any work of any nature whenever in his or her opinion proper preparations therefor have not been made, when tools and machinery are insufficient or defective, when work is being executed in such a manner as to threaten life or property, when the monument dealer has been guilty of misrepresentation, when work is not being executed according to specifications, or when any person employed on the work violates any section of this chapter.

**Sec. 34-34. Fees.**

*Fees.* Pursuant to sections 34-32 and 34-33, the parks and recreation department is authorized to charge fees for cemetery services, including, without limitation, fees for interment, disinterment, foundation charges, extra work/special care, records research, grave spaces, monument lots, rentals and incidental products. Cemetery fees for residents and nonresidents shall be in the amounts set in the schedule of fees adopted by the city council by resolution.

**Sec. 34-35. Employee gratuities or commissions.**

No person while employed by the city in the parks and recreation department in connection with any cemetery shall receive any fee, gratuity or commission, either directly or indirectly, under penalty of immediate dismissal.

**ARTICLE III. SALE OF INTERMENT RIGHTS**

**Sec. 34-61. Sale of rights of interment.**

- (1) The city parks and recreation department on behalf of the city is authorized to sell the right of interment.
- (2) 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.
- (3) Fees for the right of interment must be paid at the time of arrangement for interment regardless of any prior agreement as to method of payment.
- (4) The parks and recreation director or his or her designee is authorized to execute all right of interment documents.

**Sec. 34-62. Transfer of ownership of right of interment.**

All transfers of ownership of rights of interment shall be subject to a fee, to be determined by the parks and recreation board subject to approval of the city council, which shall be paid to the city when the transfer is requested and recorded. The city may refuse to consent to a transfer or to an assignment of a right of interment cemetery interment space or plot as long as there is any indebtedness due the city for the interment space or plot from the recorded owner. No transfer or assignment of any right of interment to an interment space or plot or interest therein shall be valid without the consent in writing of the parks and recreation director first endorsed upon such a transfer or assignment and thereafter being recorded on the books of the parks and recreation department. Upon such consent, a new right of interment document is issued.

**Sec. 34-63. Interment rights of owners.**

- (a) All interment spaces and plots shall be presumed to be under the control for purposes of interment of the person named as the grantee or the grantee's surviving spouse, or transferee in the right of interment document.
- (b) The surviving spouse shall have a vested right to inter the deceased spouse's remains in any interment space or plot in which the deceased spouse was the owner of a right of interment, which right shall continue as long as the surviving spouse shall remain the spouse of the right of interment owner or shall be the spouse at the time of the owner's demise. No conveyance or other action, without the joinder therein or by written consent attached thereto, shall divest the spouse of this vested right of interment; provided, however, that a final decree of divorce or annulment between them shall terminate it unless it shall be otherwise provided by the decree of divorce.
- (c) Where a right of interment is conveyed to two or more persons to an interment space or plot, such owners shall be considered as joint tenants. Each joint tenant shall have a vested right of interment of his or her remains in the burial space or plot conveyed. Upon the death of a joint tenant the right of interment in the burial space or plot theretofore held in joint tenancy immediately vests in the survivor, subject to the vested right of interment for the remains of the deceased joint tenant owner.
- (d) Whenever an interment is made in an interment plot that has been transferred by a right of interment document to an individual owner by the city and is held as a separate plot, it shall be indivisible, and the whole plot thereby becomes inalienable and shall be held as the family plot of the owner. One grave, niche or crypt may be used for the owner's interment, one for the surviving spouse, if any, of the owner who, by law, has a vested right of interment therein, and in those remaining, if any, the parents or children of the deceased owner may be interred, in the order of need, without the consent of any person claiming any interest therein unless each interment space is specifically reserved in the right of interment document and not waived by the designated party.
  - (1) If there shall be no parent or child surviving the deceased person, the right of interment therein shall go to the next heirs at law of the deceased owner as specified by the statutes of descent. (See I.C. § 633.1 et seq.)
  - (2) Any surviving spouse or any parent, child or heir of the deceased owner may waive his or her right to interment in the plot in favor of any other relative of the deceased owner. Upon such waiver, the body of the person in whose favor the waiver is made may be interred therein, provided that such written waiver is filed in the office of the cemetery manager.
- (e) If no interment has been made in an interment space or plot which has been transferred by a right of interment document to an individual owner by the city or if all the remains have been lawfully removed therefrom, in the absence of the specific disposition thereof by the owner's last will and testament, the whole of such plot, except the one grave, niche or crypt which must be reserved to the surviving spouse of the owner, shall, upon the death of the owner, descend in regular line of succession to the heirs at law of the owner for 100 years after the last interment. If no interment is made for a period of one hundred or more years after the date of the last interment or if no interment is made for at least one hundred years from the date of issuance of the right of interment document, all rights to such space or plot

shall automatically revert to the city and no rights to such space or plot shall remain with the purchaser, transferee, or any heirs thereof.

**Sec. 34-64. Termination of rights of interment.**

- (a) A vested right of interment, as provided in section 34-63 of this article, may be waived and shall be terminated or shall revert to the city upon interment elsewhere of the remains of a person entitled thereto, or upon removal of the remains from a single interment space, unless notice to the contrary is given to the city within 90 days after death. The vested right of interment shall be restricted and limited by the provisions of section 34-103 of this chapter.
- (b) A family burial plot or restricted burial plot may be deemed abandoned and vested rights of interment terminated if no interment has occurred therein for a period of 100 years. All interment spaces remaining in the family burial plot or other plot shall revert to the city upon the city giving notice to the recorded owner or, if the recorded owner is deceased or his or her whereabouts unknown, to the heirs of such deceased stating that such interment spaces are deemed abandoned. The notice may be served personally on the owner or the owner's heirs or may be served by the mailing of the notice by certified mail to the owner or the owner's heirs, as the case may be, to their last known address. If the address of the owner or the owner's heirs cannot be ascertained, notice of such abandonment shall be by one publication in a newspaper of general circulation in the county. If such notice is not responded to within 90 days from the date of service, mailing or publication, the interment spaces shall be deemed abandoned, and all right therein reverts to the city.
- (c) When remains are removed from an interment space, the vacant space shall revert to the city.

**Sec. 34-65. Restrictions in right of interment.**

All sales of right of interment in burial spaces, lots and plots in the city cemeteries shall be subject to the restrictions provided for in this chapter and in the cemetery rules.

**Sec. 34-66. Ownership agreement.**

The right of interment document and the sections of this chapter and cemetery rules approved by the city council and any amendments thereto shall be the sole agreement between the city and the owner.

**Sec. 34-67. Notice.**

Notice sent to an owner of a right to interment at the last address on file in the office of the parks and recreation department shall be considered sufficient and proper legal notification except as otherwise provided in this chapter.



**Sec. 34-68. Access roads.**

Any road, drive, alley or walk in the cemetery may be used as a means of access to the cemetery or buildings as long as the parks and recreation department maintains it to that purpose. No easement or other designated right is granted to any owner of a right of interment in any road, drive, alley or walk within the cemetery.

**Sec. 34-69. Repealed by Ord. No. 15,801**

**ARTICLE IV. INTERMENTS AND DISINTERMENTS**

**Sec. 34-96. Standards for in-ground burial receptacles.**

- (a) Permanent burial receptacles used in all city cemeteries, except cremation receptacles, receptacles for use in infant burial areas, and as provided in subsection (b) of this section, shall meet the following standards:
  - (1) Design life: 50 years supporting at surrounding soil's six-foot bottom burial.
  - (2) Receptacles shall meet the industry standard of 5,000 PSI of the center of the top lid and side walls.

The individual, company, partnership or other legal entity desiring to market or use burial receptacles for burial use in the city must submit to the parks and recreation department certified copies of tests performed by the National Concrete Burial vault Association (NCBVA) meeting the above described standards. Upon acceptance of the test results by the parks and recreation director, the director shall give written notification to the applicant submitting the test results that the proposed burial receptacle is certified to be used in the city. Thereafter, any change in design, construction or constituting materials used in the manufacture of the specific burial receptacle shall necessitate submission of revised testing results. Approval of one type of burial receptacle of a manufacturer or retailer does not qualify for certification, any other type produced or sold by such party.

- (b) Burials of persons for whom such a receptacle would violate an established religious custom, rule or practice, need not be in a receptacle as described above, but must comply with other requirements established by the parks and recreation board for such burials.

**Sec. 34-97. Interments subject to law; interment in places other than cemeteries.**

All interments, disinterments and removals shall be made subject to the orders and laws of the properly constituted authorities of the city, county and state and to the provisions of this chapter and all rules and regulations of the parks and recreation board. No interment shall be made anywhere other than in cemeteries established in accordance with city ordinances or state laws.

**Sec. 34-98. Application for interment.**

- (a) At the time of interment in any interment space or plot, written application by the owner of record or by the owner's authorized representative, including a designee pursuant to declaration under Iowa Code Chapter 144C must be made on forms provided by the parks and recreation department and filed in the office of the cemetery manager. For multiple

owners of an interment space or plot, the written authorization of any one owner may be deemed sufficient if the deceased is a member of the immediate family of the person so authorizing. No other person may be interred in any plot without the written consent of all the owners of the interment space or plot who are recorded as owners on the records of the parks and recreation department or their heirs.

- (b) All orders must be completed on order forms provided by the cemetery office. The parks and recreation board or the city shall not be held responsible for any mistake occurring from the lack of precise and proper instructions on such order form, such as to the burial space or as to the particular space, size and location in a space or plot where interment is desired.
- (c) The city shall not be responsible for the interment permit nor for the identity of the person sought to be interred.
- (d) The city shall not be liable for any delay in the interment of a body if a protest to the interment has been made or this chapter has not been complied with. The city shall be under no duty to recognize any protests of interment unless they are in writing and filed in the office of the parks and recreation department.
- (e) If instruction regarding the location of an interment space cannot be obtained or is indefinite or if for any reason the interment space cannot be opened where specified, the cemetery manager may, in his or her discretion, open an interment space at such location as he or she deems best and proper so as not to delay the funeral, and the city shall not be liable in damages for any error so made.
- (f) Application for interment, commonly referred to as a “burial order”, must be filed with the cemetery office at least twenty four business hours prior to any interment; application for disinterment with the proper permit, as required by state statute, attached thereto must be filed with the cemetery office at least one week prior to any disinterment.
- (g) The charges for the cemetery services must be paid at the time of the issuance of the order for interment or disinterment and removal, except that, upon the approval of the parks and recreation director based upon a determination of no current owing balances within the city cemeteries, no history of delinquent payments, and operation in business at least one year, funeral homes within the greater Des Moines metropolitan area may be billed monthly.

#### **Sec. 34-99. Reservation of right to correct errors.**

The city reserves and shall have the right to correct any errors that may be made by it either in making interments, disinterments or removals or in the description, transfer or conveyance of any interment space, either by canceling such conveyance and substituting therefor and conveying in lieu thereof other interment space of equal value and similar location, as far as possible, or as may be selected by the city, in the sole discretion of the city. If such error shall involve the interment of the remains of any person in such interment space, the city reserves and shall have the right subject to state statutes to remove and transfer the remains so interred to such other interment space.

#### **Sec. 34-100. Interment prohibited without payment for burial space.**

No interment shall be permitted or memorial placed in or on any interment space or plot not fully paid for.

**Sec. 34-101. Interment of more than one body or cremation urn.**

Not more than one body shall be interred in one grave, except for the coincident deaths of a mother and infant or multiple born children. Multiple burials, not to exceed four, may occur of cremated remains on one grave, crypt or niche. An interment plot may contain the non-cremated remains of one person plus up to the cremated remains of three persons. The cremated remains of persons who have donated their bodies for scientific, medical, or educational purposes may be con-mingled with other cremated remains and interred in specially designated locations for such interments. All statutes, ordinances, cemetery rules and regulations pertaining to the recording of the deceased persons' names in the cemetery records and the use of acceptable memorials shall apply.

**Sec. 34-102. Subdivision of plots.**

The subdivision of interment plots is not allowed.

**Sec. 34-103. Interment in restricted burial plot.**

If a right of interment document or other document or agreement regarding an area in a city cemetery has been granted to an association, organization, brotherhood or sisterhood, religious group, denomination or similar entity exclusive of a family plot or veterans' plot, interments shall be limited to the actual members of that entity, to their spouses and to immediate members or families of members. All interments shall be governed by the particular laws and rules and regulations of the particular entity owning the right of interment unless in conflict with this chapter or the rules and regulations of the parks and recreation department, except that this shall not operate to restrict any right to free exercise of religion unless inconsistent with public health or safety.

**Sec. 34-104. Disturbing caskets.**

Once a casket or memorial urn containing human remains is within the confines of the cemetery, no funeral director or his or her embalmer, assistant, employee or agent shall be permitted to open the casket or urn or to touch the remains without the consent of the designated family member or authorized representative of the deceased or without a court order.

**Sec. 34-105. Niches or crypts.**

Only one memorial urn may be placed in a niche or crypt in the cemetery unless the niche or crypt has been purchased with the written agreement that more than one urn may be placed therein or was purchased prior to December 8, 1941. All remains placed in niches and mausoleums or burial in-ground must be sealed in metal containers.

**Sec. 34-106. Sealing of casket.**

When an interment is made in a mausoleum, the casket must be metal lined and the crypt must be hermetically sealed, unless the body has been embalmed.

**Sec. 34-107. Repealed by Ord. No. 15,801.**

**ARTICLE V. MEMORIALS**

**Sec. 34-136. Standards for erection.**

- (a) For the purpose of this chapter, memorial dealers shall be required to furnish to the cemetery manager for approval a blueprint or sketch of the proposed memorial or markers, specifying the size, location in lot, inscription, quality of stone and name of the producer furnishing the stone. Such approval is also required for any alterations made after the erection of the memorial. Monument dimensions must be in conformance with the dimensions designated in the cemetery rules or regulations.
- (b) Persons engaged in erecting memorials or other structures are prohibited from attaching ropes to other memorials, trees and shrubs or from scattering their material over adjoining burial spaces, lots or plots or from blocking avenues or pathways or from leaving their material on the grounds longer than is absolutely necessary. They must do as little injury to the grounds, grass, trees and shrubs as possible and must remove all debris and restore the ground and sod to its original condition. Work shall proceed promptly and once initiated shall be continuous until completed.
- (c) No material, machinery or other thing for the construction of memorials may be brought into the cemetery until required for immediate use. Such material shall not be placed on lots adjoining the one on which such a structure is to be erected without special permission from the cemetery manager.
- (d) No memorial shall be erected in a cemetery in the proximity of a graveside or interment service that is to take place during the progress of the work or on Sundays, city holidays, or after sundown. Installation/erection work shall be done during the cemetery's normal weekday hours or at such other times as may be arranged with the cemetery manager.
- (e) Damage done to interment spaces, plots, walks, drives, grounds, trees, shrubs or other property by dealers or contractors or their agents, other than normal use during installation of memorials, shall be repaired at the direction of and to the satisfaction of the cemetery manager. The cost of repair shall be charged to the dealer or the dealer's contractor.
- (f) The cemetery manager has the right to inspect the installation of a memorial or other structure at any time and if the determination is made that cemetery rules are not being followed during the installation, or if the workmanship in placing or erecting a memorial or other structure results in such memorial or other structure not being stable or not sufficiently upright or not sitting at a ninety degree angle for uprights, the cemetery manager may order the installation to stop until the infraction is corrected and may require a corrected installation. The cemetery manager may require a flush monument to be at the same grade as the surrounding grounds and to be leveled. The cemetery manager shall provide a written notice to the installer as soon as possible if any of the following have occurred: (a) the memorial has not been installed correctly; (b) the installer has damaged the property at the cemetery; or (c) other cemetery requirements for installation, including removal of debris or equipment, have not been met. If a memorial sinks, tilts, or becomes misaligned within twelve months of its installation and the cemetery manager believes the cause is faulty installation, the installer shall be given written notification that the installer is responsible to correct the damage, unless the damage is caused by inadequate written

specifications and instructions from the cemetery or acts of the cemetery and its agents and employees, including but not limited to running a backhoe over the memorial, carrying a vault or other heavy equipment over the memorial, or opening or closing an interment space adjacent to the memorial.

- (g) Engravers and memorial cleaners and all other persons must procure a permit from the cemetery manager before any work in the cemetery is commenced. To secure such a permit the applicant must submit satisfactory evidence of his or her ability to perform properly the work for which he or she has been engaged. The name or inscription on each memorial must correspond with the name and record in the office of the cemetery manager. After being inscribed, no changes shall be made except upon request of the memorial owner or such heirs and by permission of the cemetery manager. No double inscription shall be permitted on the face of a crypt, niche or single marker except for multiple burials as provided in section 34-101 of this chapter.
- (h) Plans or diagrams for any foundation necessary for installation of any memorial shall be submitted to the cemetery manager for approval before installation. A permit for installation by a private party shall be obtained no later than ten business days before any work is undertaken. If any party desires that the foundation for any memorial be installed by the parks and recreation department, an application for installation of the foundation shall be signed by the owner of the burial space or plot or his or her agent, giving his or her name, address and the number of the burial space or plot on an application to be furnished by the parks and recreation department. Charges for such work shall be paid for in advance, except that, upon the approval of the parks and recreation director based upon a determination of no current owing balances within the city cemeteries, no history of delinquent payments, and operation in business at least one year, memorial dealers within the greater Des Moines metropolitan area may be billed monthly for foundations installed on their behalf and at their request after completion of setting.
- (i) Completed work of erection of memorials is subject to the approval of the cemetery manager who shall report any unsatisfactory erection of a memorial to the parks and recreation director. If the completed work is unsatisfactory and not according to previously approved plans and specifications it may be removed by decision of the parks and recreation director. Memorials showing drill or tool marks or stain from removal of the rubber mat used for sand engraving may be considered as unsatisfactory.

### **Sec. 34-137. Materials.**

Structures, other than memorials, columbariums, or mausoleums, either wholly or partially aboveground, shall be constructed only in burial areas so designated by cemetery rules and regulation. Such structures must be made of first-grade granite verified as such by the retailer or manufacturer and must be greater than one foot in height or greater than fifteen square feet and greater than one thousand pounds. Plans, specifications, and design of such structures are subject to the approval of the parks and recreation director or the cemetery manager. Such structures may include remains of one or more persons if the structure is permanently and hermetically sealed to prevent access.

**Sec. 34-138. Guarantee by retail dealers.**

- (a) Retail dealers of memorials shall sell memorials consisting of first-grade granite and shall guarantee the memorial to be executed in first-grade workmanship. If faults develop within five years due to the setting, treatment or handling of the memorial by the memorial dealer, the memorial will be replaced by the memorial dealer without cost to the city or the owner or the estate of the deceased or any heirs, assignees or successors in interest thereof.
- (b) A retail dealer who violates this chapter shall be removed from the list of approved retail dealers.

**Sec. 34-139. Flush marker blocks and sections.**

In all blocks and sections of the cemetery designated as flush marker blocks and sections, only memorials in the form of bronze tablets or granite markers set level with the ground at the head of each grave shall be allowed. Marker dimensions shall be as designated in the cemetery rules and regulations.

**Sec. 34-140. Removal.**

No memorial shall be removed from the cemetery except by the consent and order of the parks and recreation director and with the written order of the owner or the owner's agent of the interment space. If any memorial, mausoleum or structure becomes unsightly, dilapidated or potentially injurious to the health or safety of the public or cemetery personnel, the parks and recreation director shall have the right either to direct the correction of the condition or to cause the removal of the memorial, mausoleum or structure at the expense of the heirs, assignees or successors in interest or the estate of the deceased if such can be reasonably located or ascertained.

**ARTICLE VI. MAINTENANCE**

**Sec. 34-166. Perpetual care cemetery fund and trusteeship.**

- (a) The "perpetual cemetery maintenance fund", also designated and known as the "Permanent Cemetery Maintenance Fund", as established by Ordinance 2202, 7453, 11,316 and 15,096, for the perpetual care of the cemeteries shall be maintained for the municipal cemeteries operating as perpetual cemeteries in accordance with Iowa Code Chapter 523I, the Iowa Cemetery Act. Such Fund shall be a perpetual trust fund which shall be funded by the deposit of an amount equal to or greater than 20 percent of the gross selling price, or \$50.00, whichever is more, for each sale of all rights of interment within the cemeteries. 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. 34-167. Repealed by Ord. No. 15,801.**

**Sec. 34-168. Use of accumulated interest of permanent cemetery maintenance fund.**

The interest accumulation from the permanent cemetery maintenance fund may be used for perpetual care of the cemeteries. Use of funds from the permanent cemetery maintenance fund shall be limited absolutely to the income received from the investment of the permanent cemetery maintenance fund for perpetual care. No part of the principal of such fund shall be voluntarily expended, except as specifically permitted by the Iowa Cemetery Act and applicable administrative regulations.

**Sec. 34-169. Use of funds from sale of interment rights and other cemetery fees deposited in temporary maintenance fund.**

The remaining sums from the sale of rights of interment, after deducting the portion indicated in section 34-166 of this article, shall be consolidated with all other receipts from the cemeteries and shall be placed in a separate fund to be known and designated as the "temporary cemetery maintenance fund," which shall be used solely for the purpose of acquiring additional land for cemetery purposes and for the ordinary care and maintenance of cemeteries. 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. 34-170. Deposit of funds.**

It is understood and agreed between the purchasers of rights of interment and the city that all of the funds paid for such interment spaces may be deposited with other such funds, so that the income shall be used in the general improvement and perpetual care. Funds remaining after deducting the portion indicated in section 34-166 of this chapter and the deposit of such funds shall not be construed as a contract to provide any care for any interment space plot mausoleum or columbarium other than as provided as perpetual care defined in this chapter.

**Sec. 34-171. Acceptance and use of gifts and investment of gift or special care funds.**

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, and all such funds and such care as may be provided from these funds shall be considered for the general good of the cemetery and of the right of interment owners therein.

**Sec. 34-172. Private mausoleums or columbariums.**

No private mausoleums or columbariums shall be erected in the municipal cemeteries after January 1, 2019 unless, the owner has deposited with the city a sum of money estimated by the parks and recreation director in an amount sufficient to yield an income for the proper care of such structure in perpetuity and is in a location approved by the parks and recreation director. Such deposit shall be in accordance with Iowa Code Section 523I.503.

**Sec. 34-173. Improvements or alterations of spaces or plots.**

- (a) *Direction and approval.* All improvements or alterations of burial spaces, lots or plots in the cemetery shall be under the direction of and subject to the consent, satisfaction and approval of the parks and recreation director subject to the cemetery rules and regulations.
- (b) *Removal.* If improvements or alterations of burial spaces or plots are made without the written consent of the parks and recreation director, the parks and recreation director shall have the right to order them removed, altered or changed at the expense of the owner.

**Sec. 34-174. Adornments and arrangements of crypts and niches.**

All fittings, adornments, urns, inscriptions, and arrangements of crypts or niches in the cemetery shall be subject to the approval and control of and acceptance or rejection by the parks and recreation director subject to the cemetery rules and regulations.

**ARTICLE VII. PUBLIC CONDUCT**

**Sec. 34-201. Use of walks and grounds.**

- (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 parks 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.**

The city cemeteries are open to the public from 6:00 a.m. to 8:00 p.m. year round. No person shall remain in the cemeteries at other times without authorization from the parks and recreation director.

#### **Sec. 34-203. Disturbing flowers, trees and animal life.**

No person shall remove or injure flowers, either wild or cultivated, or remove, injure or prune trees, shrubbery or plants, except when tending to privately planted flowers, plants, trees or shrubs on a space or plot with permission of the owner. No person shall feed, disturb, or remove the birds, fish or other animal life in the cemetery.

#### **Sec. 34-204. Refreshments.**

No refreshments, food or drink shall be consumed within the cemetery in the proximity of, and during the time of, graveside or other interment services.

#### **Sec. 34-205. Automobiles, motorcycles and bicycles.**

Vehicles and bicycles shall not be driven through the grounds of the cemetery at greater speed than 15 miles per hour, and such vehicles and bicycles must always be driven on the righthand side of the cemetery roadway. 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.**

No person shall solicit the sale of any commodity, including but not limited to memorial business or service, within the confines of the cemetery without authorization from the parks and recreation director.

**Sec. 34-207. Firearms and weapons.**

No firearms or other weapons shall be used within the cemetery, unless permitted under section 70-86 of this Code. No person shall carry firearms or weapons within the cemetery except pursuant to a valid permit to carry weapons.

**Sec. 34-208. Signs, notices and advertisements.**

No signs, notices or advertisements of any kind shall be allowed in the cemetery, except as authorized by the parks and recreation director.

**Sec. 34-209. Smoking prohibited.**

- (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.**

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.

Section 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:

Ann DiDonato, Assistant City Attorney

T. M. Franklin Cownie, Mayor

Attest: I, Diane Rauh, City Clerk of the City of Des Moines, Iowa, hereby certify that the above and foregoing is a true copy of an ordinance (Roll Call No. 19-1427), passed by the City Council of said City at a meeting held September 9, 2019 signed by the Mayor on September 9, 2019 and

published and provided by law in the Business Record on September 27, 2019. Authorized by  
Publication Order No. 10791.

Diane Rauh, City Clerk