

ORDINANCE NO. 2013-47 OF THE CITY COMMISSION OF THE CITY OF LAKE WORTH, FLORIDA, AMENDING CHAPTER 10 "CEMETERIES," TO UPDATE AND CLARIFY CURRENT PROCEDURES, RULES AND REGULATIONS; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City of Lake Worth, Florida (the "City") is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the City has adopted Chapter 10 "Cemeteries" to address how the City's municipal cemeteries operate; and

WHEREAS, Chapter 10 has not been amended since 1956 and requires updating to address the current laws of the State of Florida applicable to cemeteries and to address the City's current cemetery operating procedures, rules, and regulations; and

WHEREAS, in 2004, the City, by referendum, adopted ordinance No. 2004-30 which prohibited the sale of city-owned real property (with a zoning designation of either "public" or "park") without a vote of the electorate; and

WHEREAS, the City's municipal cemeteries are zoned "public"; and

WHEREAS, the purpose and intent of the referendum was not to limit the City's ability to sell its cemetery burial plots, nor to require electorate approval of each sale of an individual burial plot; and

WHEREAS, the City continues to be authorized to sell individual burial plots at its municipal cemeteries; and

WHEREAS, the City Commission has reviewed the recommended amendments and has determined that they serve a valid public purpose and are in the best interest of the public health, safety and general welfare of the City and its residents.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LAKE WORTH, FLORIDA that:

Section 1. Recitals. The foregoing recitals are hereby affirmed and ratified.

Section 2. Chapter 10 "CEMETERIES" shall be amended to read as follows:

Sec. 10-1. – Pinecrest Cemetery; I. A. Banks Memorial Park established, boundaries.

The city owns and operates the following two municipal cemeteries: "Pinecrest Cemetery," located at 1724 12th Avenue South, Lake Worth and "I.A. Banks Memorial Park" (formerly known as "Osborne Cemetery"), located at 1515 Wingfield Street, Lake Worth. The following described real estate, being the property of the city, situate, lying,

~~and being in the City of Lake Worth in the County of Palm Beach and State of Florida, more particularly described as follows:~~

~~Tracts 35 and 42 of the subdivision made by the vendor, according to map or plat recorded in Book 5, at Page 12 of the Public Records of Palm Beach County, of part of the West Half of Section Twenty eight (28), Township Forty-four (44), South of Range Forty three (43) East, containing nine and 20/100 (9.20) acres, more or less, all in Palm Beach County, Florida; and Lots 16 through 30 Block 1 and Lots 17 through 32 Block 2, Lake View Heights, Addition No. 4, as recorded in Plat Book 9, Page 19, in the office of the Clerk of the Circuit Court, Palm Beach County, Florida, be and the same are hereby set aside and established as a cemetery to be known as "Pinecrest Cemetery," and the same is hereby designated the official plat of the grounds for Pinecrest Cemetery.~~

Sec. 10-2. Florida Statutes; definitions~~Osborne Cemetery established, boundaries.~~

~~The following described real estate, being the property of the city, situate, lying and being in the City of Lake Worth in the County of Palm Beach and State of Florida, more particularly described as follows:~~

~~The West 396.0 feet of the East 426.0 feet of the North 550.0 feet of the South Half of the Northeast Quarter of Section 33, Township Forty four (44) South, Range Forty three (43) East, Palm Beach County, Florida; is hereby set aside and established as a cemetery, to be known and designated as "Osborne Cemetery;" and the same is hereby designated the official plat of the ground for Osborne Cemetery.~~

(a) *Florida Statutes.* The provisions of Chapter 497, Florida Statutes do not apply to municipal cemeteries except for sections 497.276(1), 497.152(1)(d), 497.164, 497.2765, 497.278, 497.280, and 497.284, Florida Statutes.

(b) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them herein except where the context clearly indicates a different meaning.

- (1) *Immediate family* means spouse, child, parent, grandparent, grandchild, brother, sister, mother-in-law and father-in-law.
- (2) *Mausoleum* means a structure or building that is exposed above the ground and that is intended to be used for the entombment of human remains.
- (3) *Monument* means any product used for identifying a grave site and cemetery memorials of all types, including monuments, markers, statues, vases, headstones, footstones, and the like.
- (4) *Owner* means any person, firm or corporation who has purchased a plot or interment rights in a municipal cemetery or the heir, personal representative or successors of the owner.

- (5) Vault means an enclosure into which a casket is placed and includes, but is not limited to outer burial cases made of concrete, steel, fiberglass, or copper.

Sec. 10-3. Authority of city commission.

The city commission may from time to time, layout, alter or close such avenues, drives or walks and make such rules and regulations for the government and improvement of Pinecrest Cemetery and Osbornel. A. Banks Memorial ParkCemeteries as they may deem requisite and proper in order to secure and promote their general objects and benefits. Rules and regulations of the city commission shall be adopted by resolution. The city commission reserves and shall have the right to use cemetery property, not sold to individual plot owners, for any public purpose that the commission determines is in the best interest of the city.

Sec. 10-4. Establishment of prices, feesSales of lots; delegation of authority; charges; veterans plots; interments per plot.

- (a) The city commission shall from time to time, by resolution, ~~provide for the sale of lots,~~ fix the price to be charged for the sale of plots therefor and the terms and conditions of such sales, and provide for the conveyance of such plots; and shall fix the schedule of fees to be charged for permits, burials and other services.
- (b) The city commission hereby delegates the authority to sell plots to the city clerk or designee. Documents authorizing the sale shall be executed by the mayor and the city clerk.
- ~~(b)(c)~~ Sections "I," and "V", 32 and 33, Pinecrest Cemetery, and Section 1, I. A. Banks Memorial ParkOsborne Cemetery, are hereby designated as plots for the interment of deceased veterans. Eligibility for interment in the veterans' plots shall be limited to veterans who meet eligibility requirements for burial in a national cemetery. No charge shall be made for burial space in said veterans plots to those qualified veterans who are residents of the city, provided, however, that the usual opening and closing charges shall be paid. A flat marker, not exceeding twenty-four (24) inches long and twelve (12) inches wide, may be placed at the head of a veteran's grave.
- ~~(e)(d)~~ Up to five (5) cremains and a full burial may be interred in a single plot. Only the plot owner's family members, as defined in the rules and regulations, may be interred in the owner's plot.
- (d) ~~Planting of shrubbery or trees in the veterans plots is prohibited. Bouquets, wreaths, potted plants, and such, may be placed on the graves, to be removed at the discretion of the sexton.~~

Sec. 10-5. Interment for remuneration; transfer, assignment, conveyance by owner; disinterment.

The city commission shall from time to time, by resolution, ~~provide for transfer of lots and~~ fix the terms and conditions and method of transfer of plot and interment rights. ~~The~~An owner of a lot shall not allow interments made in his or her plot for remuneration, nor shall any transfer, assignment, or conveyance of any plot so owned, or of any interest therein, be valid without the owner thereof first having complied with the terms and conditions regarding transfer of plots that may from time to time be in effect. No transfer, assignment or conveyance of any plot or of any interest therein can be made after an actual interment in it, except with the consent of the city and the city cannot grant such consent until after the body first therein interred shall be lawfully removed therefrom. No disinterment shall be allowed except by the consent of the city, and further with the written consent or order of the owner of the plot in question. Any lawfully constituted authority may, however, with proper court order ~~from the circuit court,~~ disinter any body so buried in the cemetery for the purpose of investigating crime or for some other lawful purpose.

Sec. 10-6. Rights reserved to city.

The city reserves to itself the right of preventing the removal or the right to remove any erection, enclosure, monument, monument inscription, tree or shrub, or any other improvement which it shall consider injurious to the immediate locality or prejudicial to the general good appearance of the grounds or which it finds to prevent or impede the maintenance of the cemetery or to present an otherwise dangerous condition or as otherwise set forth in the rules and regulations.

Sec. 10-7. Plot restrictions as to enclosures, corner stones, mounds, etc.; workmen under control of city.

All plot enclosures of any kind whatever are hereby prohibited. Corner stones properly numbered and set flush with the surface of the ground shall be allowed. No brickwork shall be allowed above the ground level in any portion of the cemetery. No mounds are permitted over any grave. The grade of all plots shall be determined by the city. A space of not less than eighteen (18) inches shall be reserved on sides of abutting plots so that the graves shall not be contiguous. All workmen employed in the construction of vaults, erection of monuments, or other work, shall be subject to and under the control and direction of the city.

Sec. 10-8. Compensation of workmen.

No money or other compensation shall be paid to any person in the employ of the city for personal services or attention other than the salaries and wages paid by the city.

Sec. 10-9. ~~Excavations~~Interment permits.

To protect the grounds herein described, and especially to protect the improved portions and plots therein from injury, all ~~excavations~~interments shall be made by the

city at the expense of the owners, under the jurisdiction and control of the city. All interments shall require a permit from the city clerk or designee.

Sec. 10-10. ~~Markers, m~~Monuments, vaults, ~~outer burial cases.~~

- (a) ~~Plot~~ owners may erect any proper ~~stones~~, monuments, ~~or sepulchral statuary~~ thereon, subject at all times and in all respects to the approval of the city through its cemetery staff. Headstones shall be placed on a solid foundation of masonry. Footstones more than six (6) inches above the ground shall also be placed upon a solid foundation of masonry; provided, however, that ~~the area described in section 10-2 herein (Osborne Cemetery)~~ I. A. Banks Memorial Park and sections 87 through 24 and H, J, K, P, R, S, T, U, V, W, X, Y, Z and AA of Pinecrest Cemetery (as described in section 10-1 herein) are hereby designated as memorial type burial grounds, requiring all markers to be of flush type.
- (b) No ~~vault~~mausoleum shall be built without the written permission ~~in writing~~ of the city and all parts of ~~vaults~~mausoleums aboveground shall be of marble, granite, cut stone, cement stone or blocks; and shall be of such strength, construction and character as may be approved by the city.
- (c) Concrete or metal ~~vault~~outer burial cases, or high impact plastic ~~vault~~outer burial cases, subject to the city's approval, will be required on all interments in Pinecrest Cemetery and I. A. Banks Memorial Park~~Osborne Cemeteries~~.

Sec. 10-11. "For sale" signs.

No sign or other device indicating that a plot or vault is for sale shall be permitted in or on the grounds above described.

Sec. 10-12. Execution, form of deeds.

The mayor of the city and the clerk thereof shall have full power and authority to issue a deed for the sale of a plot in the cemeteries, when the provisions of this chapter have been complied with by the purchaser thereof, and they have complied in all respects with the rules and regulations established by the city. The deed to be made, executed, and delivered in each such case shall be in a form approved by the city attorney, ~~substantially in the following form:~~

CEMETERY LOT DEED

~~KNOW ALL MEN BY THESE PRESENTS, That the City of Lake Worth, Florida, a municipal corporation organized under and by virtue of the laws of the State of Florida, having its principal place of business in the County of Palm Beach of said State, party of the first part, in consideration of _____, dollars, which is hereby acknowledged to have been paid by _____, party of the second part, of the County of _____, State of _____, doth hereby grant, bargain, sell and convey to the said part _____ of the second part, _____ heirs or assigns, the~~

following described lot or parcel of land in _____ Cemetery, in said County, to wit:

Lot numbered _____ Section _____ according to the plat or plan of said _____ Cemetery on file in the office of the Clerk of the Circuit Court in and for the County of Palm Beach.

TO HAVE AND TO HOLD the same unto the said part _____ of the second part, _____ heirs or assigns, forever, as a burial place, with the sold and exclusive right of burying the dead therein, subject, however, at all times to all the rules, regulations and bylaws of said City, now existing, or that may hereafter be adopted relating to the government, use or management of said cemetery (which are to be considered as incorporated herein) and any law or laws of the State of Florida which may affect the same. Where the title to any lot is vested in more than one person, the signature of any one of the grantees named in the deed of conveyance, heirs or assigns, to an application for burial permit shall be full and sufficient authority to said City for the issuance of such permit and allowing the burial to be made in accordance therewith.

And the said City of Lake Worth does hereby covenant with the said part _____ of the second part, _____ heirs and assigns, that said City is lawfully seized in fee simple of the aforementioned premises and of the ways leading to the same from the highway; that the granted premises are free from all encumbrances and that the City has good right to sell and convey the same to the said part _____ of the second part, in the manner and for the purposes aforesaid, and will warrant and defend the same unto the said part _____ of the second part, _____ heirs and assigns, forever.

IN WITNESS WHEREOF the said City of Lake Worth, a municipal corporation, has caused these presents to be signed by its mayor, attested by its clerk, and sealed with its _____ corporate seal, this _____ day _____ of _____ A.D. 19 _____.

CITY OF LAKE WORTH

By _____
Mayor

Signed, _____ sealed _____ and
delivered in presence of

ATTEST:

Clerk

COUNTY OF PALM BEACH

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ss

STATE OF FLORIDA

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~~Before me personally appeared _____ to me well known as the Mayor of the City of Lake Worth, Florida, a municipal corporation, and acknowledged that he executed the foregoing conveyance as and for the deed of said City, and in his capacity as mayor thereof; and before me also appeared _____ to me well known as the clerk of said City, and acknowledged that he attested, in his capacity as clerk, the execution of the foregoing deed by the mayor aforesaid, and that he affixed the corporate seal of said corporation thereto.~~

~~IN WITNESS WHEREOF I, an officer duly authorized under the laws of Florida to take acknowledgments of deeds, have hereunto set my hand and affixed my seal at Lake Worth, _____ Florida, the _____ day of _____ / _____ / _____ A.D. 19_____.~~

~~Notary Public in and for the State of Florida at Large.
My commission expires _____, 19_____.~~

Sec. 10-13. Payments prerequisite to deed or interment.

No purchaser shall be entitled to a deed to any plot until all accounts relating thereto and due the city are paid and no owner or proprietor of any plot, or any interest therein, shall have the right to bury in his or her plot without first having paid any and all arrearages due the city therefor or for anything relating thereto, including the fees for opening and closing a grave.

Sec. 10-14. Perpetual care; damages.

- (a) Perpetual care. The city shall be solely responsible for the perpetual care and maintenance of its cemeteries. All assets heretofore owned by or credited to the account of Pinecrest Cemetery be and they are hereby transferred to the city and made a part of its General Fund; and those funds or accounts or contributions thereto that may hereafter accrue from the operation of such cemeteries shall be credited to the General Fund of the City of Lake Worth. This chapter shall constitute a contract with all persons owning plots in said cemeteries whereby the city guarantees the perpetual care and maintenance of same as specified herein. The perpetual care and maintenance of the municipal cemeteries includes the cutting and irrigation of the grass at reasonable intervals, the raking and cleaning of the grounds, the pruning of shrubs, trees and other plants installed by the city, and the maintenance of pathways and roadways.
- (b) Perpetual care does not include. Perpetual care and maintenance shall in no case mean the maintenance, repair or replacement of any monument, as defined herein, or other improvement placed or erected upon a gravesite; nor the doing of any special or unusual work in the cemeteries, including, but not limited to, work caused by the impoverishment of soil which can cause the sinking or sagging of monuments or other improvements; nor does it mean the cleaning or reconstruction of any monument or improvement damaged due to normal deterioration caused

by age or damage by the elements, an act of God, thieves, vandals, or unavoidable accidents.

- (c) Damages. The city shall not be liable and disclaims all responsibility from loss or damage to monuments, property, or other improvements arising from causes beyond its reasonable control, including, but not limited to damage caused by the elements, age, an act of God, thieves, vandals or unavoidable accidents, whether the damage be direct or collateral. If the city, in its sole discretion, determines to brace, support, fix or otherwise preserve a monument or other improvement that has been compromised by causes beyond its reasonable control ("Preservation Work"), the city shall not be liable and disclaims all responsibility from any loss or damage caused to the monument or other improvement during the Preservation Work, whether the damage be direct or collateral, except for damages or loss directly caused by the city's negligence.

Section 3. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 4. Repeal of Laws in Conflict. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 5. Codification. The sections of the ordinance may be made a part of the City Code of Laws and ordinances and may be re-numbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section", "division", or any other appropriate word.

Section 6. Effective Date. This ordinance shall take effect ten days after its adoption.

The passage of this Ordinance on first reading was moved by Commissioner McVoy, seconded by Vice Mayor Maxwell, and upon being put to a vote, the vote was as follows:

Mayor Pam Triolo	AYE
Vice Mayor Scott Maxwell	AYE
Commissioner Christopher McVoy	AYE
Commissioner Andy Amoroso	AYE
Commissioner John Szerdi	AYE

The Mayor thereupon declared this Ordinance duly passed on first reading on the 3rd day of September, 2013.

The passage of this Ordinance on second reading was moved by Commissioner Szerdi, seconded by Vice Mayor Maxwell, and upon being put to a vote, the vote was as follows:

Mayor Pam Triolo	AYE
Vice Mayor Scott Maxwell	AYE
Commissioner Christopher McVoy	ABSENT
Commissioner Andy Amoroso	AYE
Commissioner John Szerdi	AYE

The Mayor thereupon declared this Ordinance duly passed and enacted on the 17th day of September, 2013.

LAKE WORTH CITY COMMISSION

By: _____
Pam Triolo, Mayor

ATTEST:

Pamela J. Lopez, City Clerk