

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: _____

Meeting Type: Regular

Meeting Date: Jun 9, 2016

Action Requested By: Landscape Management

Agenda Type: Ordinance

Subject Matter:

Introduction of an Ordinance amending Chapter 9, Cemeteries, of the Code of Ordinances of the City of Huntsville, Alabama."

Exact Wording for the Agenda:

Introduction of an Ordinance amending Chapter 9, Cemeteries, of the Code of Ordinances of the City of Huntsville, Alabama."

Note: If amendment, Please state title and number of the original

Item to be considered for: Introduction

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what council action will provide, allow and accomplish and; any other information that might be helpful.

Introduction of an Ordinance amending Chapter 9, Cemeteries, of the Code of Ordinances of the City of Huntsville, Alabama."

Associated Cost: _____

Budgeted Item: _____

MAYOR RECOMMENDS OR CONCURS: _____

Department Head: Jay Huckle

Date: 6-1-2016

ORDINANCE NO. 16-_____

BE IT ORDAINED by the City Council of the City of Huntsville, Alabama that Chapter 9, Cemeteries, of the Code of Ordinances of the City of Huntsville, Alabama, is hereby amended as follows:

Section 1. Chapter 9, Cemeteries, of the Code of Ordinances, City of Huntsville, Alabama shall be amended to read as follows:

ARTICLE I. - IN GENERAL

Sec. 9-1. - Compliance with zoning ordinance.

Both the location of a cemetery and the extension of the boundaries of an existing cemetery, whether public or private, are subject to the terms and requirements of the zoning ordinance of the city and must comply with that ordinance before such location or extension of the cemetery shall be approved by the mayor and council.

(Ord. No. 86-783, § 8-3.2, 1-8-1987)

Secs. 9-2-9-30. - Reserved.

ARTICLE II. - CITY CEMETERIES

Sec. 9-31. - Director of cemeteries.

(a) There shall be a director of cemeteries who shall be appointed by the mayor subject to the approval of the city council as provided by law. He shall hold office for such period of time as the mayor and city council shall deem necessary and desirable, or until the expiration of the term of the mayor making the appointment.

(b) The director of cemeteries shall:

- (1) Exercise general supervision over the cemetery department and its employees under the direction and control of the mayor.
- (2) Have all the grounds, walks, drives, fences and gates of the city cemeteries kept in good order and repair.
- (3) Maintain and care for all shrubbery, flowers and ornamentals.
- (4) Protect all the graves, tombs, tombstones, monuments, fixtures.
- (5) Attend to the opening of all graves, depositing the dead and closing the graves.
- (6) Attend to the opening of all tombs and vaults, depositing the dead and closing tombs and vaults.
- (7) Keep a register of all burials, giving the name, place of death, place of burial or disposal and the name and address of the funeral director of each, and shall require in each case a burial permit or receipt for burial before interment and shall

furnish the city clerk-treasurer, once a month, a copy of such register.

(8) Establish rules and regulations regarding anything that affects the orderly operation and maintenance of city cemeteries including, but not limited to, the size, type and method of placement of tombstones, markers and monuments, placement of flowers and personal items on gravesites.

(Code 1982, §§ 8-1, 8-2)

Sec. 9-32. - Designation of city cemeteries.

The grounds, lots, parcels of land, fences, walls and gates surrounding the properties known and designated as Maple Hill Cemetery, Northside Cemetery, Brandontown Cemetery, Nickels-Martin Cemetery (Brandontown #2), Sivley Cemetery, Merrimack Cemetery, Dallas Mill Cemetery, Glenwood Cemetery, and #4 Hall Cemetery are designated and officially named city cemeteries.

(Code 1982, § 8-3; Ord. No. 86-783, § 8-3, 1-8-1987)

Sec. 9-33. - Lots to be under control and regulation of city.

The city shall, at all times, regulate and control the lots, as well as other properties in the city cemeteries, in order that all properties in such cemeteries shall be properly maintained as such.

(Code 1982, § 8-4)

Sec. 9-34. - Reserved

Sec. 9-35. - Lots set aside for memorial; provision of funds.

Lots 7, 8, 9, 23 and 24 of block 36 of Maple Hill Cemetery according to the map on file in the office of the city clerk-treasurer are set aside and reserved for the erection of a suitable memorial to the memory of county veterans who have made or will make the supreme sacrifice overseas, the funds for such memorial to be provided for by the organization of American Legion and Veterans of Foreign Wars, together with public subscriptions to be raised and distributed by such organizations.

(Code 1982, § 8-6)

Sec. 9-36. - Lots set aside for veterans.

(a) Lots 1-6, 10-21, 25-28, 35-52, 69-76, 78, 79, 80-82, 99, 100-112, 129-142, and 159-165 in block 36 of Maple Hill Cemetery and lots 4-

14 in block 9 in Northside Cemetery are set aside and reserved for the interment of the remains of Huntsville veterans who gave their lives on foreign soil while serving in the United States Armed Forces and who will be returned to the city for interment, with two spaces being set aside and reserved for the remains of each such veteran.

- (b) After the interment of the remains of any veteran in any of the spaces described in this section, the immediate family of such veteran shall have and is given the right to use the remaining space for the interment of members of the veteran's family.
- (c) It shall be unlawful for any person to sell or use any of the lots in block 36 of Maple Hill Cemetery or block 9 in Northside Cemetery except in accordance with the provisions of this section.

(Code 1982, §§ 8-7-8-9; Ord. No. 14-726, § 1, 10-9-2014)

Sec. 9-37. - Authorization for final disposition.

It shall be unlawful for any person to bury or permit to be buried within the city any body without first presenting to the director of cemeteries an authorization for final disposition.

(Code 1982, § 8-15)

State Law reference— Authorization for disposition of dead body, Code of Ala. 1975, § 22-9A-16.

Sec. 9-38. - Authorization for final disposition and application for interment.

It shall be unlawful for any person acting in the capacity of undertaker to conduct a funeral or attempt to bury a body within the city without first obtaining an authorization for final disposition and filing with the cemetery department an application for interment (burial). It shall be the duty of any relative or friend of the deceased person who is in possession of any facts or information required by the state to furnish the authorization upon request, to the undertaker. It shall be the duty of every physician or professional adviser, who has been present at the death of any person, or has attended any person at last illness, to, upon request of the undertaker, write in the death certificate such statements regarding the deceased as are required or prescribed by state law. If no physician was in attendance, the appropriate officer under state law shall make out a certificate of death based on the data obtainable unless he has reason to suspect foul play.

(Code 1982, § 8-16)

State Law reference- Authorization for disposition of dead body, Code of Ala. 1975, § 22-9A-16.

Sec. 9-39. - Time for burials.

No interment of human bodies shall be made in the cemeteries of the city after sundown or before sunrise without the written application for permission duly submitted to and approved by the mayor.

(Code 1982, § 8-17)

Sec. 9-40. - Depth of graves.

No grave for the interment of human bodies in the cemeteries of the city shall be less than four feet deep.

(Code 1982, § 8-18)

Sec. 9-41. - Monument Guidelines

(a) No monument shall be erected in any city cemetery without the prior approval of the Director of Cemeteries. The following guidelines shall apply to all monuments:

- Ledgers and coping will not be allowed.
- Wording/icons on monuments shall be at the discretion of the Director.

(b) Monuments in Blocks 41 through 46 of Maple Hill Cemetery shall be subject to the following restrictions in addition to those set forth in Section 9-50 of this ordinance:

Flat monument guidelines/restrictions:

- **Foot markers-** shall be flat and shall not exceed 24"length, 12"width, 4"height
- **Single flat monuments-** shall not exceed 36"length, 16"wide, 4"height
- **Double flat monuments -** shall not exceed 48" length, 16"wide, 4"height

NOTE: All flat monuments will run with the slope of the ground and no foundation will be required. Flat monuments will be placed on a dry mixture of sand and rock mixture. Flat bronze monuments will be required to be placed on a piece of granite.

Upright monument guidelines/restrictions:

- **Foot markers** - shall be flat and shall not exceed 24"length, 12"width, 4"height
- **Single upright Markers** - shall not exceed 36"length, 16"wide, 36" height, including base
- **Double upright Markers** - shall not exceed 72" length x 16"width x 36" height, including base
- Family monuments shall not exceed 72" length x 16"width x 36" height, including base and shall be placed at the head of the grave/graves.
- No benches are allowed.

Corner Markers

Corner markers are not allowed

(c) Columbariums are allowed; however, they are restricted to two cremains per columbarium. The size of the columbarium is subject to the approval of the Director of Cemeteries.

Sec. 9-42. - Construction of monument foundation by city.

The service charge for the construction of a monument foundation by the cemetery department is fixed and established at \$0.50 per square inch computed on the size of the monument base, and such service charge shall be payable at the office of the director of cemeteries. The director shall, upon such payment, receipt the payment and perform the services.

(Code 1982, § 8-21)

Sec. 9-43. - Curbing.

No curbing shall be permitted to be placed in any city cemetery.

(Code 1982, § 8-22)

Sec. 9-44. - Cemetery service fees.

The fees for cemetery services shall be as follows:

- (1) Interment of a casket (weekdays prior to 3:00 p.m.)\$750.00
- (2) Interment of a casket (arriving at cemetery after 3:00 p.m. weekdays)850.00
- (3) Interment of a casket (Saturdays)850.00
- (4) Interment of a casket (Sundays)1,000.00
- (5) Interment of cremains (weekdays arriving at the cemetery prior to 3:00 p.m.)450.00

- (6) Interment of cremains (Saturdays and weekdays arriving at the cemetery after 3:00 p.m.)550.00
- (7) Interment of cremains (Sundays)650.00
- (8) Disinterment of a casket (non-lawn crypt) (allowable on weekdays only)1,800.00*
- (9) Disinterment of a bottom lawn crypt3,600.00
- (10) Disinterment of a top lawn crypt1,800.00
- (11) Disinterment of cremains500.00
- (12) Installation of a corner marker (per marker)5.00
- (13) Marker foundation fee (per square inch)0.50
(minimum charge \$100.00)
- (14) Sounding fee \$10.00 for first space, \$5.00 for each additional space (no charge if in connection with burial)
- (15) Property transfer fee 50.00 for the first space and \$25.00 per each additional space
- (16) Excavation to determine vacancy of a burial space\$200.00
- (17) Mail fees \$20.00 overnight and \$6.00 for certified

*All disinterments are subject to the approval of the cemetery director.

(Ord. No. 81-388, § 1, 11-24-1981; Code 1982, § 8-24; Ord. No. 87-560, § 1, 12-22-1987; Ord. No. 14-726, § 2, 10-9-2014)

Sec. 9-45. - Payment of charges for opening graves; erection of monuments.

The charges for lots or services in city cemeteries shall be payable at the office of the director of cemeteries in advance; and he shall, upon such payment, receipt for payment and shall open the grave. No grave shall be opened without such payment. No monument shall be erected on a lot until full payment has been made.

(Code 1982, § 8-25)

Sec. 9-46. - Entrance and exit at gates only.

It shall be unlawful for any person to climb over or go through or under any wall, fence, hedge or similar barrier enclosing any city cemetery, or to enter or leave the cemetery at any place, except at a regularly established gateway or entrance.

(Code 1982, § 8-26)

Sec. 9-47. - Selling of merchandise and commodities.

It shall be unlawful for any person to borrow, sell, offer to sell, trade or offer trade or solicit orders for any merchandise or commodity on the grounds or within the enclosure of the grounds of any city cemetery during any period of the day or night.

(Code 1982, § 8-27)

Sec. 9-48. - Loitering at night.

It shall be unlawful for any person to be on the grounds or within the enclosure of the grounds of the premises of any city cemetery during the period from one-half hour after sunset to one-half hour before sunrise without first having obtained the express permission of the director of cemeteries.

(Code 1982, § 8-28)

Sec. 9-49. - Animals.

It shall be unlawful for any person to permit or allow any animal, other than service animals, to be on the grounds of any city cemetery.

(Code 1982, § 8-30)

Sec. 9-50. - Price of spaces in Maple Hill Cemetery.

(a) The price of a single burial space (approximate size 40" x 10') available for sale by the city in Maple Hill Cemetery shall be \$3,000.00 except for the following spaces, the price of which shall be \$2,500.00:

<u>Block</u>	<u>Lot</u>	<u>Spaces</u>
41	1 thru 51	ALL spaces in block 41 to be flat markers only
42	1	9, 10
42	5	1,2,7
42	6	12
42	7	5,6,9,10
42	11	1,11,12
42	13	7,
42	14	1,2, 12
42	20	1,2,7
42	21	12
42	22	5,6,9,10
42	29	6,12
42	30	1,2,7

42	31	3,4,8,9
42	38	1,2,7
42	39	6c,12
42	40	5,6,11,12
42	41	1,7
42	47	11
42	48	1,
42	49	2,3,7
42	55	1,7
42	56	5,6,11,12
42	57	6
42	58	1
42	63	5,6,10
42	64	1,2
42	65	12
42	70	4
43	1	8
43	3	7
43	5	1
43	6	11,12
43	7	4,8c,9
43	10	5,11
43	12	2
43	13	11
43	15	2,7,8
43	16	12
43	17	1,7
43	18	11,12
43	19	7
43	20	3,4,8,9
43	21	1,7
43	22	6,12
44	1	10,11,12
44	2	4,10
44	5	1,2,7,8

44	6	11,12
44	7	6
44	8	1,2,7,8
44	11	4,9
44	12	1,2,7
44	15	1,2,7,8
44	16	1,2,7,8
44	18	12
44	19	<u>1</u>
44	20	4,5,10
44	22	1,2,7,8
44	23	1,2,7,8
44	25	3,9
44	26	1,2,7
44	28	1,2,7,8
45	1	9
45	2	9
45	3	1,2
45	4	12
45	5	5,6,9
45	6	10,11
45	7	1
45	8	5,10
45	9	2,3,7,8
45	11	<u>1</u>
45	12	10,11
45	13	11,12
45	14	4
45	17	1,7
45	18	5,6,11,12
45	21	2,3,7,8,9
45	22	2,3,9
45	25	5,6,11,12
46	1	10,11
46	2	5,6,11,12

46	3	9
46	4	6,9
46	6	5,6,11,12
46	7	5,6,11,12
46	9	1,2,7,8
46	10	1,2,7,8
46	12	5,6,11,12
46	13	5,6,11,12
46	15	1,2
46	16	11,12
46	17	12
46	18	3,4,5,6,7,8,9,10,11,12
46	21	5,6,11c,11c1,12c
46	23	7,8,9
46	24	2,3,4,5,6,8,9,10,11,12
46	25	2,3,4,5,6

Monuments in the spaces for which the price is \$2,500.00 are limited to flat markers only.

(b) The price of a single space for an infant burial or interment of cremains (approximate size 40" x 4') available for sale by the city in Maple Hill Cemetery shall be \$1,250.00. The maximum size of a casket/vault for an infant burial is 18" x 36".

(c) All burial spaces and cremation spaces available for sale in Maple Hill Cemetery shall be sold on a first come basis. Payment must be made in full at the time of purchase.

(Ord. No. 05-658, 8-23-2005; Ord. No. 14-726, § 3, 10-9-2014)

Sec. 9-51. - Purchase of spaces-Form of agreement.

(a) Any person desiring to purchase a burial space in Maple Hill Cemetery shall execute an agreement with the city in the following form:

"AGREEMENT" between City of Huntsville, herein referred to as "the city," and _____/_____/_____, herein referred to as "the Purchaser."

WITNESSETH:

The City does hereby agree to sell to the Purchaser, and the Purchaser does hereby agree to purchase from the City Block _____, Lot _____, Space _____ according to the plan and survey of Maple Hill Cemetery in the City of Huntsville, Alabama, a map of the said cemetery being on file in the Office of the City Clerk-Treasurer upon the conditions herein set out for the purchase price of \$_____ Dollars (\$_____), to be paid contemporaneously with the execution hereof.

The said space is sold subject to the following conditions which are agreed to by the parties hereto:

- (1) The said space shall be used for burial of a human body or cremains and such use shall at all times be subject to the rules, regulations, and laws of the city now or hereafter in force.
- (2) In the event Purchaser pays the purchase price by check or bank draft and said draft is not paid due to insufficient funds then City may, at its option, declare this contract terminated in which all of the rights of the Purchaser shall cease and the city may, and is hereby authorized to, disinter and remove from the said space any human body or remains thereof then buried in said space and bury the same at such other place or places as it may select.
- (3) In the event the Purchaser pays the purchase price contemporaneously with the execution of this Agreement, and complies with all rules, regulations, and laws of the city relating to the aforementioned burial space, the city will thereupon convey the same to Purchaser, such conveyance to contain a provision that the said space shall be used only for burial of a human body, and use thereof shall at all times be subject to the rules, regulations, and laws of the city then or thereafter in force.
- (4) No person, organization, corporation, or other entity who purchases a space in Maple Hill Cemetery following the date of adoption of this ordinance, shall sell, transfer, or convey such space to another person, organization, corporation, or other entity, for a sum greater than the original purchase price, as established under this Article, without first having offered such space to the City of Huntsville for re-purchase at the original purchase price. If the City of Huntsville fails to exercise its "right of first refusal" within sixty days (60) of receipt of a space owner's written "Intent to sell, transfer or convey for a price greater than the original purchase price," then the "right of first refusal" shall be deemed "waived" by the city and the space owner shall be allowed to sell, transfer, or convey, the space without any price limitation or restriction.
- (5) The maximum size of a casket/vault that may be accommodated in a single space is Thirty-eight (38) inches. Interment of

larger casket/vaults shall require the purchase of two adjoining spaces.

(6) Restrictions:

- () Lot Size
- () Flat Markers
- () Other: _____

This Agreement shall be binding upon and shall ensure to the benefit of the respective successors, personal representatives, heirs and assigns of the parties hereto. Reference to the Purchaser shall be construed to include those whose names are above given as Purchasers, whether one or more individuals or a corporation or other legal entity.

WITNESS the signatures and seals of the parties, in duplicate, this _____ the _____ day of _____, 20____.

PURCHASER	CITY OF HUNTSVILLE
_____	By: _____
	Its: Director of Cemeteries

(b) Any person desiring to purchase a cremation space in Maple Hill Cemetery shall execute an agreement with the city in the following form:

"AGREEMENT" between City of Huntsville, herein referred to as "the city," and _____/_____/_____, herein referred to as "the Purchaser."

WITNESSETH:

The City does hereby agree to sell to the Purchaser, and the Purchaser does hereby agree to purchase from the City Block _____, Lot _____, Space _____ according to the plan and survey of Maple Hill Cemetery in the City of Huntsville, Alabama, a map of the said cemetery being on file in the Office of the City Clerk-Treasurer upon the conditions herein set out for the purchase price of \$_____ Dollars (\$_____), to be paid contemporaneously with the execution hereof.

The said space is sold subject to the following conditions which are agreed to by the parties hereto:

- (1) The said space shall be used for burial of human cremains and such use shall at all times be subject to the rules, regulations, and laws of the city now or hereafter in force.
- (2) In the event Purchaser pays the purchase price by check or bank draft and said draft is not paid due to insufficient funds then City may, at its option, declare this contract terminated in which all of the rights of the Purchaser shall cease and the city may, and is hereby authorized to, disinter and remove from the said space any human cremains then buried in said space and bury the same at such other place or places as it may select.
- (3) In the event the Purchaser pays the purchase price contemporaneously with the execution of this Agreement, and complies with all rules, regulations, and laws of the city relating to the aforementioned burial space, the city will thereupon convey the same to Purchaser, such conveyance to contain a provision that the said space shall be used only for burial of human cremains, and use thereof shall at all times be subject to the rules, regulations, and laws of the city then or thereafter in force.
- (4) No person, organization, corporation, or other entity who purchases a space in Maple Hill Cemetery following the date of adoption of this ordinance, shall sell, transfer, or convey such space to another person, organization, corporation, or other entity, for a sum greater than the original purchase price, as established under this Article, without first having offered such space to the City of Huntsville for re-purchase at the original purchase price. If the City of Huntsville fails to exercise its "right of first refusal" within sixty days (60) of receipt of a space owner's written "Intent to sell, transfer or convey for a price greater than the original purchase price," then the "right of first refusal" shall be deemed "waived" by the city and the space owner shall be allowed to sell, transfer, or convey, the space without any price limitation or restriction.

(5) Restrictions:

- () Lot Size
- () Flat Markers
- () Other: _____

This Agreement shall be binding upon and shall ensure to the benefit of the respective successors, personal representatives, heirs and assigns of the parties hereto. Reference to the Purchaser shall be construed to include those whose names are above given as Purchasers, whether one or more individuals or a corporation or other legal entity.

WITNESS the signatures and seals of the parties, in duplicate, this the _____ day of _____, 20____.

PURCHASER	CITY OF HUNTSVILLE
_____	By: _____
	Its: Director of Cemeteries

(c) The city director of cemeteries is authorized to execute, for and on behalf of the city of purchasers, such agreements.

(Ord. No. 05-658, 8-23-2005; Ord. No. 10-359, § 1, 5-27-2010)

Sec.9-52 - Limitation of Number of Spaces That May Be Purchased

A maximum of twelve (12) spaces may be purchased by a single person or entity, and spaces may not be reserved for future purchase.

Sec. 9-53. - Conveyance to purchasers.

(a) After receipt of payment in full for burial space, said burial space being available for sale and listed in section 9-50(a), the mayor and city clerk treasurer, for and on behalf of the city, shall make a conveyance to the purchaser, the same to be in substantially in the following form:

"IN CONSIDERATION of the sum of (\$ _____) Dollars, the City of Huntsville, a municipal corporation, does hereby grant to _____, the following described burial space in Maple Hill Cemetery, to wit:

BLOCK _____, LOT _____, SPACE _____

TO HAVE AND TO HOLD unto the said and unto heirs and assigns, with the perpetual right and authority to use the same for burial of a human body. The City of Huntsville, however, reserves the right from time to time to regulate and control the hereinabove granted premises, as well as other properties in Maple Hill Cemetery, in order that all properties in said cemetery shall be properly maintained as a City cemetery. The said burial space shall at all times be subject to the rules, regulations, and laws of the City of Huntsville now or hereafter in force, including the City of Huntsville's "right of first refusal" as provided in Section 9-51 of the city's Code of Ordinances, as amended.

IN WITNESS WHEREOF, this instrument has been signed by the Mayor of the City of Huntsville, Alabama, and attested by its Clerk-

Treasurer as and for the act of said Corporation on this day of this _____ day of _____/_____/_____, _____."

(b) After receipt of payment in full for cremation space for burial of human cremains only, said cremation space being available for sale and listed in section 9-50(b), the Mayor and City Clerk Treasurer, for and on behalf of the city, shall make a conveyance to the purchaser, the same to be in substantially in the following form:

"IN CONSIDERATION of the sum of (\$_____) Dollars, the City of Huntsville, a municipal corporation, does hereby grant to _____, the following described burial space in Maple Hill Cemetery, to wit:

BLOCK _____, LOT _____, SPACE _____

TO HAVE AND TO HOLD unto the said and unto heirs and assigns, with the perpetual right and authority to use the same for burial of human cremains only. The City of Huntsville, however, reserves the right from time to time to regulate and control the hereinabove granted premises, as well as other properties in Maple Hill Cemetery, in order that all properties in said cemetery shall be properly maintained as a City cemetery. The said burial space shall at all times be subject to the rules, regulations, and laws of the City of Huntsville now or hereafter in force, including the City of Huntsville's "right of first refusal" as provided in section 9-51 of the city's Code of Ordinances, as amended.

IN WITNESS WHEREOF, this instrument has been signed by the Mayor of the City of Huntsville, Alabama, and attested by its Clerk-Treasurer as and for the act of said Corporation on this day of this _____ day of _____/_____/_____, _____."

(Ord. No. 05-658, 8-23-2005; Ord. No. 10-359, § 2, 5-27-2010)

Sec. 9-54 - Right of survivorship among multiple purchasers

If conveyance of cemetery spaces is made to multiple purchasers, the conveyance may, at the discretion of the purchasers, include a right of survivorship among the purchasers.

Section 2. With the exception of amendments made herein, all other portions of Chapter 9 of the Code of Ordinances, City of Huntsville, Alabama shall remain in full force and effect.

Section 3. Severability. The severability provisions of section 1-8 of the Code of Ordinances, City of Huntsville, Alabama shall apply to this ordinance.

Section 4. Effective Date. This ordinance shall become effective upon its adoption and approval.

ADOPTED on this the ____ day of _____, 2016.

President of the City Council of
the City of Huntsville, Alabama

APPROVED on this the ____ day of _____, 2016.

Mayor of the City of Huntsville,
Alabama