

ORDINANCE NO. 1031

AN ORDINANCE REPEALING ORDINANCE NO. 876A, CONFIRMING AND RATIFYING ALL ACTIONS OF AND CONVEYANCES BY THE CEMETERY COMMISSION CREATED BY VIRTUE OF SAID ORDINANCE NO. 876A, PRIOR TO THE EFFECTIVE DATE OF THIS ORDINANCE, CREATING A CITY CEMETERY COMMISSION, PROVIDING FOR THE QUALIFICATIONS, APPOINTMENT AND TERMS OF OFFICE OF THE MEMBERS THEREOF, DEFINING THE POWERS AND DUTIES OF THE COMMISSION, AND ESTABLISHING THE CEMETERY TRUST FUND.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EUREKA SPRINGS, ARKANSAS:

SECTION 1. Repeal of Ordinance No. 876A.

Ordinance No. 876A, passed by the City Commission on September 6, 1966, and all amendatory ordinances, resolutions and minute orders with respect thereto, are each hereby repealed.

SECTION 2. Cemetery Commission Created by Virtue of Ordinance No. 876A Dissolved and Abolished.

The Cemetery Commission created by virtue of Ordinance No. 876A is hereby dissolved and abolished, as of the effective date of this Ordinance, provided, all lawful and proper actions of and lawful and proper conveyances by said Cemetery Commission prior to the effective date of this Ordinance are hereby confirmed and ratified.

SECTION 3. Creation of City Cemetery Commission.

The City Cemetery Commission of the City of Eureka Springs, Arkansas, is hereby created, and is referred to hereinafter as "the Commission".

(a) The Commission shall consist of five (5) members, nominated by the Mayor and confirmed by the affirmative vote of a majority of members elected to the City Council, at a regular meeting of said City Council. Each member shall serve without salary, compensation, or other material gain by virtue of being a member of the Commission.

(b) Each member of the Commission shall be at least eighteen (18) years of age and a qualified elector and resident of the City of Eureka Springs, Arkansas.

(c) Each member of the Commission shall be so appointed for a term of three (3) years, except that the first members so appointed by virtue of this Ordinance shall be appointed to staggered terms, to be determined by <sup>Mayor</sup> ~~let at the first meeting of the Commission~~, of three (3) years for two (2) members, two (2) years for two (2) members, and one (1) year for the remaining member.

(d) At the first meeting of the Commission, the members shall elect a Chairman, a Vice-Chairman, a Secretary-Treasurer, and an Assistant Secretary-Treasurer, each of whom shall serve in such office for a term expiring at 12:00 o'clock midnight on January 15, 1979. The Commission members shall meet between January 1st and January 15th of each year, beginning in 1979, for the purpose of electing a member to each of the aforesaid offices for a term of one (1) year. No member shall be elected to serve in more than one (1) office at any time.

(e) The Vice-Chairman and the Assistant Secretary-Treasurer shall perform the respective duties and exercise the respective authority of the Chairman and the Secretary-Treasurer, respectively, in the absence or incapacity of the Chairman and/or Secretary-Treasurer, as the case may be.

(f) Three (3) members of the Commission shall constitute a quorum for the transaction of business, provided, the affirmative vote of a majority of all members shall be required in each instance to bind the Commission. The Secretary-Treasurer shall record the minutes of each meeting, and the same shall be public records.

(g) All meetings of the Commission shall be public meetings, and the time, date and place of each meeting shall be disseminated to the public prior to each meeting via the local news media, provided, such dissemination may be as a news item and need not be in the form of a legal notice. The Commission shall meet regularly at least every three (3) months.

(h) All minutes, records, rules, regulations, maps and plats of the Commission shall be kept in the Office of the City Clerk-Treasurer of the City of Eureka Springs, Arkansas, who shall be the custodian thereof, and the same shall be deemed to be public records.

(i) The Commission shall adopt rules, regulations and guidelines for the conduct of its affairs not inconsistent with this Ordinance and any amendments hereto, and the same shall be reduced to writing and shall comprise a part of the official public records of the Commission.

(j) The Secretary-Treasurer shall maintain accurate and current written records of all acquisitions, conveyances, disbursements, expenditures and transactions of the Commission, including an accurate and current statement of all funds invested and/or deposited.

(k) The members shall conduct the temporal and fiscal affairs of the Commission in a prudent and businesslike manner at all times.

(l) A vacancy will be deemed to exist when a member dies, or resigns, or ceases to possess the qualifications for membership, or is removed from the Commission by a vote of a majority of the members of the City Council at a regular meeting of the City Council upon a finding by such majority that such removal is in the best interest of the City. Such a vacancy shall be filled in the manner provided in paragraph (a) of this Section, with the member filling such vacancy serving the balance of the term of the former member creating the vacancy.

(m) The Secretary-Treasurer and the Assistant Secretary-Treasurer of the Commission, one (1) of whom shall deposit all funds received by the Commission and shall countersign, with the Chairman or Vice-Chairman of the Commission, all checks or "negotiable withdrawal authorizations" representing expenditures and/or disbursements of the Commission, shall each furnish to the City of Eureka Springs, Arkansas, a Five Thousand and No/100 Dollars (\$5,000.00) surety bond that will serve to insure the City against misappropriation or mishandling of funds, provided, the premiums for such bonds shall be paid out of the income of the Commission. Any employee of the Commission handling funds of the Commission shall also be bonded in like amount and in the same manner.

#### SECTION 4. Additional Powers and Duties of the Commission.

In addition to the heretofore stated powers and duties of the Commission, its members and its officers, the following additional powers and duties are hereby conferred and imposed:

(a) The Commission shall have the authority to employ, in its discretion, caretakers, gardeners, registered engineers and surveyors, and clerks, and, where there is no elected City Attorney, licensed attorneys, all for the purpose of assisting the Commission in the proper performance of its duties and exercise of its authority. The salaries, fees, or other monetary compensation of such employed persons shall be paid by the Commission from its administrative, operational and maintenance fund.

(b) The Commission may, in its discretion, incur additional reasonable expenses for materials, supplies, equipment and the like, consistent with the proper performance of its duties and exercise of its authority.

(c) The Commission shall be responsible for the development, maintenance and general operation of the Eureka Springs City Cemetery, as it is presently located, and for the development, maintenance and operation of any real property hereafter acquired by the City for use as a cemetery or cemeteries.

X (d) The Commission shall, through its Chairman (or Vice-Chairman) and Secretary-Treasurer (or Assistant Secretary-Treasurer) have the authority to ~~grant, bargain,~~ sell and convey burial lots, plots or parts thereof to the general public, ~~for cash, but in no event for credit or consideration other than cash in United States currency,~~ and to prepare (or cause to be prepared), execute, acknowledge and deliver proper instruments of conveyance to such purchasers. The Commission shall establish the <sup>purchase</sup> price of all available lots and plots at a regular meeting, and the same shall remain in effect until changed at a subsequent regular meeting.

(e) The Commission shall determine whether the existing individual ownership records, plats and maps of the Eureka Springs City Cemetery are accurate and complete, and if the Commission finds that the same are not accurate and complete, it shall, without delay, take such actions as shall be necessary to correct and eliminate any and all deficiencies therein.

(f) Upon the acquisition by the City of additional real property for use as a cemetery or cemeteries, the Commission shall, without delay, cause such real property to be surveyed and shall cause a complete plat to be

prepared, based on such survey.

(g) The Commission shall make quarterly written reports to the Mayor and City Council, beginning three (3) months after the effective date of the appointment of the first members to the Commission, reporting in full on the operations of the Commission, including an accounting of receipts, disbursements and conveyances of burial lots or plots, and shall, upon request by the City Council, furnish such other and further reports and data as may be required.

(h) The Commission shall select a certified public accountant, or a firm of certified public accountants, to submit an annual audit of the operations of the Commission to the Mayor and City Council.

SECTION 5. Cemetery Trust Fund Established.

(a) The Permanent Maintenance Trust Fund established by Section 6 of Ordinance No. 876A is hereby declared to be terminated, subject to any contractual obligations with respect to such funds and third parties, whether such third parties shall be banks, investment firms, trust companies and/or savings and loan associations. The principal of said Permanent Maintenance Trust Fund, shall, upon the effective date of this Ordinance, be available to the Commission for reallocation, as the Commission shall deem to be in the best interest of the City, subject to the aforesaid existing contractual obligations.

(b) The Cemetery Trust Fund is hereby established, hereinafter referred to as "the Fund".

(c) The Commission is hereby authorized to determine, and to redetermine, from time-to-time, what portion of all money lawfully received by the Commission through sales of burial lots and plots, gifts, testamentary bequests, and other sources, whether public or private, shall be credited to the Fund. The principal of the Fund shall be inviolate, and only the income derived therefrom shall be available for the actual operational and maintenance functions of the Commission.

(d) The principal of the Fund shall be invested and reinvested, for maximum return, in such securities, interest-bearing accounts, certificates of deposit and trust funds permitted by the laws of Arkansas for the

investment of policy reserves of life insurance companies, and in interest-bearing accounts and/or certificates of deposit of chartered banks, trust companies and/or savings and loan associations.

(e) The quarterly reports required by paragraph (g) of Section 4 shall include an accurate and complete statement of the status of the Fund, as of the date of each quarterly return.

(f) All income from the Fund, together with money otherwise lawfully received by the Commission but not credited to the Fund pursuant to paragraph (c) of this Section, shall be deposited in a regular checking account at a chartered bank, or in an interest-bearing "negotiable withdrawal authorization" account at a bank, trust company or savings and loan association offering such accounts to depositors, and such account shall constitute the depository for all funds available for the actual administrative, operational and maintenance activities of the Commission.

(g) In the event that the Commission shall request that the City, or any of its departments, render services for the benefit of the Commission with respect to its authority and duties, the City shall be entitled to payment for such services rendered, as would any other party rendering such services.

(h) The Commission shall, on a quarterly basis, analyze the current status of its available administrative, operational and maintenance funds to determine if any part of the same may, in keeping with prudent business principals and practices, be transferred to the City's ordinary or general fund. If such determination is in the affirmative, the amount so determined shall be so transferred without unnecessary delay. All such determinations shall be duly noted in the records of the Commission, whether they be affirmative or otherwise.

#### SECTION 6. Severability.

The provisions of this Ordinance are hereby declared to be severable. In the event that any part of this Ordinance shall be held to be unenforceable or invalid by a Court of competent jurisdiction, such holding shall not render the remainder of this Ordinance to be unenforceable or invalid.

SECTION 7. Repeal.

All ordinances and parts of ordinances, resolutions and parts of resolutions and minute orders in conflict with this Ordinance are hereby repealed.

PASSED AND ORDAINED BY THE CITY COUNCIL OF THE CITY OF EUREKA SPRINGS, ARKANSAS, ON THIS 11<sup>th</sup> DAY OF FEBRUARY, 1978.

APPROVED:

Charles F. Robertson  
CHARLES F. ROBERTSON, MAYOR

ATTEST:

June I. Moncravie  
JUNE I. MONCRAVIE, CITY CLERK-TREASURER

(SEAL OF THE CITY)

EMERGENCY DECLARED

~~The City Council of the City of Eureka Springs, Arkansas, has found it to be essential to the health, safety and welfare of the City that Ordinance No. \_\_\_\_\_ take force and effect without delay. Therefore, an emergency is declared to exist, and Ordinance No. \_\_\_\_\_ shall be in full force and effect upon its publication according to law.~~

~~PASSED AND DECLARED BY THE CITY COUNCIL OF THE CITY OF EUREKA SPRINGS, ARKANSAS, ON THIS \_\_\_\_\_ DAY OF FEBRUARY, 1978.~~

~~APPROVED:~~

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~~CHARLES F. ROBERTSON, MAYOR~~

ATTEST:

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~~JUNE I. MONCRAVIE, CITY CLERK-TREASURER~~

(SEAL OF THE CITY)