

ORDINANCE 1999-03

AN ORDINANCE ESTABLISHING AND REGULATING THE MUNICIPAL CEMETERY; PROVIDING FOR CHARGES FOR SERVICES PROVIDED BY THE CEMETERY AND THE SALE OF LOTS AND PERPETUAL CARE; AND DEFINING THE DAMAGING OF CEMETERY PROPERTY OR OTHER ACTS INIMICAL TO CEMETERY OPERATIONS AS MISDEMEANORS.

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SHENANDOAH, IOWA:

SECTION 1. ESTABLISHMENT. The cemetery ground (presently existing and known as the Rose Hill Cemetery) and all additions thereto is hereby established as a municipal cemetery of the City of Shenandoah, Iowa.

SECTION 2. PURPOSE. The purpose of this Ordinance is to provide rules and regulations for the care and management of the cemetery grounds owned or operated by the City.

SECTION 3. CEMETERY TRUSTEES. The Board of Trustees of the Municipal Cemetery of the City of Shenandoah, Iowa, hereinafter referred to as the Board shall consist of seven (7) persons.

SECTION 4. BOARD APPOINTMENT. The Mayor, by and with the consent of the City Council, shall appoint five (5) members who are residents of Shenandoah. The Mayor, with the consent of the City Council, shall appoint two (2) members who are residents of the unincorporated area of Page and/or Fremont County

SECTION 5. TERMS OF OFFICE. The members of the Board shall be appointed and hold office as follows: Two to be appointed for one (1) year, three to be appointed for two (2) years, and two to be appointed for three (3) years. Members thereafter appointed or reappointed shall hold office for a term of three years from the date of their appointments. No person shall be a member of the Board for more than six (6) consecutive years. The members of the Board shall serve without compensation.

SECTION 6. VACANCIES. The position of any Board Member shall be vacant if the member moves permanently from the City or County or if the member is absent from (6) consecutive regular meetings of the Board, except in the case of sickness or temporary absence from the City or County. Vacancies in the Board shall be filled in the same manner as the appointment of the original Board. The new Board Member shall fill out the unexpired term for which the appointment is made.

SECTION 7. ORGANIZATION OF BOARD. A majority of the members of the Board shall constitute a quorum for the transaction of business, and they may hold general or special meetings at such times and at such places as they may by order direct, and they may make and establish such reasonable bylaws, rules and regulations as may be necessary for their own government and for the full and complete execution of their powers and duties. Meetings of the Board shall be subject to the open meeting provisions of Chapter 21, Code of Iowa. The Board shall provide the City Clerk with a copy of the minutes of all meetings. The Board shall organize, selecting one of their number to be Chairperson. The City Manager shall advise the Board but shall not be a member and shall not have a vote.

SECTION 8. POWERS AND DUTIES OF BOARD.

1. The Board shall recommend policy for the operation of the Municipal Cemetery in accordance with such rules and regulations as may be adopted by the City Council. The Board shall consult with the City Manager on all matters relating to the care and maintenance of the cemetery. The Board, shall from time to time to, recommend to the City Council for consideration, adoption and amendment, rules and regulations governing the general operation of the cemetery. The Board shall render an annual report to the Mayor and Council.

2. The Board shall develop a five (5) year maintenance and improvement plan for the cemetery, which shall be updated each year. The plan shall be presented to the Mayor and Council for approval annually.
3. The Board shall have charge, control and supervision of the cemetery, to include fixtures, buildings which shall include the Chapel and maintenance equipment. The Board shall consult with the Chapel Board regarding matters relating to the Chapel and the Chapel Board shall act in an advisory capacity.
4. All gifts to the Chapel Fund shall be maintained in a Chapel Trust Fund and used only for Chapel maintenance and improvements.
5. With the approval of the City Council and City Manager, the Board may employ a Sexton and authorize the sexton to employ an assistant and other employees as may be necessary for proper management of the cemetery, and recommend their compensation, provided however, that prior to such employment, the compensation of the Sexton, assistant and other employees shall have been recommended by a majority of the members of the Board voting in favor thereof, and approved by the City Council.
6. The Board, with and only with the approval of the City Manager, may remove the Sexton for incompetence or inattention to duty by a two-thirds vote of the Board. The Sexton shall develop procedures for the removal of the assistant and other employees and these procedures shall be approved by the Board.
7. The Board shall each year at a time specified by the City Council prepare a budget for the operation of the cemetery for the coming year. The budget shall be presented to the City Council for their consideration and approval.
8. The Board shall have exclusive control of the expenditures of all funds budgeted for cemetery purposes by the City Council
9. The Board shall authorize the Sexton to select and purchase materials and equipment for the cemetery within budgetary limits set by the Board after approval by a majority of the Board members.
10. The Board shall make and adopt, amend, modify or repeal rules and regulations, not inconsistent with this Ordinance, for the care, use, government and management of the cemetery and the business of the Board.
11. The Board shall enforce the performance of conditions of monetary gifts and devises accepted by the City on behalf of the Cemetery and Chapel.
12. The Board shall, with approval of the Council, establish the Burial Charges for the cemetery, these charges shall be established by separate resolution and reviewed yearly.

SECTION 9. RULES - GENERAL OPERATION. The following rules shall govern general operations of the cemetery:

1. Persons within the cemetery shall at all times maintain decorum of speech and action, including avoidance of loud talking or other noise within earshot of graveside ceremonies if not part of the group participating in the ceremonies, and workers shall suspend their work when near such ceremonies.
2. No person shall drive any vehicle faster than 5 miles per hour or in a careless manner upon the cemetery roads nor drive anywhere except upon such roads unless authorized by the sexton. For the purpose of this Ordinance, "vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, and shall include vehicles designed and constructed with special features for off-road operation.
3. No person upon roller skates, roller blades or a skateboard, or similar device, shall go upon any roadway, path or and other part of the cemetery.

4. No person shall deface or otherwise damage any marker, headstone, monument, cemetery fence, or any other cemetery structure
5. The hours when the cemetery may be closed shall be set by Council resolution.
6. No person except an authorized City employee shall cut, remove, or carry away any flowers, trees, shrubs, plants or vines from any lot. However, the owner of a lot may remove and carry away any flowers, plants or vines that he has placed upon said lot. No person other than the owner of the lot or City employees in the performance of their duties shall remove, carry away or destroy any vases, flower pots, urns or other objects which have been placed upon any lot.
7. No person may consume or possess liquors or alcoholic beverages of any kind on the cemetery grounds.
8. No person shall allow any dog or other animal in the City cemetery, or any part thereof, except a guide dog or seeing-eye dog when in use by its master.
9. No persons other than law enforcement officers and persons engaged in military funerals or like ceremonies whose functions require the carrying of fire arms may carry any firearm in or upon the City cemetery grounds.
10. All persons using the cemetery grounds shall deposit their rubbish and trash in the receptacles placed in the cemetery for that purpose.

SECTION 10. RULES - BURIALS. The following rules shall apply to burials within the City cemetery. The Council, by Resolution, may adopt further regulations not in conflict herewith with regard to burials.

1. Undertakers must furnish the sexton with the proper permits before any burial will be permitted.
2. Lot owners are forbidden to allow interments to be made in their lot for a remuneration.
3. On lots owned by churches or benevolent societies, burials may be made upon receiving written consent of the trustees of such church or society.
4. All graves shall be dug by City employees or an independent contractor under contract to the City, and no filling, sodding, boxing, mounding, or other work upon single graves or lot graves shall be done except by such employees or such independent contractor.
5. No interment of any body other than a human being shall be permitted or made in the City cemetery, nor shall there be more than one body per grave. Any exception to this Section must be made by the City Council. Interment of parent and infant child, or twin children, or two children buried at the same time, will be permitted in one grave. Interment of the remains of not more than four bodies will be permitted in one grave space.
6. Arrangements for interments shall be made by the owner of the burial space, by a member or members of the family acting and authorized by law to act for the owner, or by an authorized undertaker, or other authorized agent of the owner.
7. Notice of interment must be given to the sexton at least 48 hours in advance of burial. A longer time may be required by resolution-adopted rule for winter burials. The sexton or other authorized employee of the City must be present at all interments and have full charge of opening, closing and sodding of all graves
8. The City shall in no manner be liable for any delay in the interment of a body where a protest to the interment has been made or where the rules and regulations of the cemetery have not been complied with. The City shall be under no duty to recognize any protest of interment unless it be in writing and filed with the City Clerk. The City shall not be responsible for errors

resulting from orders or instructions given by telephone and the Clerk and cemetery sexton may require such orders to be in writing before finalizing any action.

9. The City shall not be liable for the interment permit nor for the identity of the body sought to be interred.

10. Disinterments shall be governed by the above rules 1,4,5,6,7,8, and 9.

11. Cemetery employees shall exercise reasonable care in making a removal but neither they nor the City shall assume any liability for damages to any casket or burial case or urn incurred in making the removal.

12. No interments shall be permitted on Saturdays after 12:00 noon, on Sundays or on City holidays, except by order of the local Board of Health.

13. At the time of interment, an adult burial space shall contain any of the following outside burial containers: a concrete sealed vault; a concrete air sealed vault; a metal air sealed vault; a concrete box; a concrete grave liner; a fiberglass vault; a fiberglass box for burial of a casket. NO wood or wood composition burial container is permitted for the burial or a casket within.

SECTION 11. RULES-MARKERS AND DECORATIONS. The following rules shall apply to the erection of markers within the City cemetery. The Council, by Resolution, may adopt further regulations not in conflict herewith with regard to markers.

1. Monument and grave markers of every description shall have suitable foundations, adequate to prevent tipping, sinking, breaking or chipping. Such foundations shall be of concrete, installed by the company furnishing the monument or grave marker, and shall be at the owner's expense.

2. Foundations shall be of poured concrete, in an area at least six (6) inches larger on all four sides than the bottom base or first masonry course above ground of the structure to be erected, and of adequate depth, which shall be not less than sixteen (16) inches of poured concrete. Any excess cement not required for construction of the base not as a structure of the base, shall be removed from the cemetery by the contractor. The four (4) inch "pre-pad" or precast base shall not be considered a part of the sixteen (16) inch poured concrete foundation. The four (4) inch "pre-pad" or precast base shall be guaranteed by the contractor or manufacturer.

3. Location of a marker shall be determined by the sexton, in accordance with this Ordinance and any requirements as set forth in the cemetery rules.

4. Commercial monuments shall be of bronze, marble or granite containing no discoloration, flaws, or weak spots. No monument or grave marker for a single grave space shall exceed the width of the single grave space nor be longer than 36 inches within the 48 inch width of a grave lot.

5. Slabs of any kind will not be permitted as coverings for graves. Surface vaults will not be permitted.

6. If any vault, tomb, mausoleum or like structure in which bodies are entombed in the cemetery shall fall into a state of dilapidation or decay, or shall be determined by the City Council, board, or Sexton to be offensive or in any way injurious to the appearance of the cemetery, no adequate provisions having been made by the owner for repair and preservation of such structure, the City shall have the right to remove the said offensive or objectionable structure and to inter any body or bodies contained therein, in the earth upon the lot on which such structure was located, maintaining such lot thereafter in good and similar condition as done with other lots in the cemetery.

7. No fences or enclosures around lots shall be permitted.

8. Lot owners shall have the right to cultivate plants within the limit of a one-foot radius of any monument, which plants must not be detrimental to the cemetery or adjoining lots. Owners of lots shall not change the grade of any lot, nor interfere in any way with the general plan of landscaping of the cemetery.
9. The sexton or other authorized employees of the City may enter upon any lot and remove any shrub, plant, ornament, trees or other object which is deemed detrimental to the cemetery or adjoining lots and for the purpose of making any improvements deemed to be advantageous to the cemetery grounds.
10. Lot owners and others are prohibited from placing on lots or graves, other than grave markers permitted by this Ordinance, any toys, cases, boxes, globes, shells, cans, jugs, bottles, bric-a-brac of every description, benches, chairs, settees, head-boards or wooden articles of any kind, other than monuments or grave markers permitted by this Ordinance. Any such articles found on the cemetery grounds may be removed at the owners expense.
11. In that part of the cemetery added in the year 1948 and which is described as follows:
Blocks One (1), Two (2), Three (3), Four (4), and Five (5) of the survey plat dated July, 1949, known as Memorial Park Addition;
- All markers for marking graves shall be of stone or bronze, and they must be set and maintained so that the top of the marker shall not exceed six (6) inches above the grade of the surrounding lot.
12. In that part of the cemetery which is the irregular diamond shaped park East of the Chapel and known as the Rose Hill Park Addition, all markers for marking graves shall be of stone or bronze laid flush with the ground.
13. Monuments and grave markers set after the effective date of this Ordinance shall be located at the North end of the North-South burial spaces, and at the West end of East-West burial spaces, except as otherwise provided in Section 11, Subsection 14 of this Ordinance.
14. Monuments and grave markers set after the effective date of this Ordinance on the following described lots in Southview Addition to Rose Hill Cemetery shall be located on the respective burial spaces, as follows:

BLOCK NUMBER	LOT NUMBER	BURIAL SPACE LOCATION	MONUMENT OR MARKER LOCATION
1	97 thru 109	South/West	South/West
1	97 thru 109	North/East	North/East
1	91 thru 96	West/North	West/North
1	91 thru 96	East/South	East/South
2	51 thru 60	North	North
2	51 thru 60	South	South
2	61 thru 68	North/West	North/West
2	61 thru 68	South/East	South/East
3	1 thru 8	North/East	North/East
3	1 thru 8	South/West	South/West
3	9 thru 18	North	North
3	9 thru 18	South	South
4	10 thru 17	East/North	East/North
4	10 thru 17	West/South	West/South
4	1 thru 9	East/North	East/North
4	1 thru 9	West/South	West/South
5	1 thru 13	West/North	West/North
5	1 thru 13	East/South	East/South
5	14 thru 18	North	North
5	14 thru 18	South	South

6	1 thru 5	North	North
6	1 thru 5	South	South
6	6 thru 21	North/East	North/East
6	6 thru 21	South/West	South/West
7	1 thru 6	East/South	East/South
7	1 thru 6	West/North	West/North
7	7 thru 13	North/West	North/West
7	7 thru 13	South/East	South/East
7	14 thru 18	South	South
7	14 thru 18	North	North
8	1 thru 5	South	South
8	1 thru 5	North	North
8	6 thru 12	South/West	South/West
8	6 thru 12	North/East	North/East
8	13 thru 18	West/South	West/South
8	13 thru 18	East/North	East/North

15. No monuments or grave markers shall be erected or installed on Saturdays, Sundays or Legal Holidays. For the purpose of this Ordinance, the following are Legal Holidays: New Year's Day, Lincoln's Birthday, Washington's Birthday, memorial Day, Fourth of July, Labor Day, Veteran's Day, Thanksgiving Day and Christmas Day, each year, which may be changed by Council Resolution. When any of the foregoing holidays fall on a Sunday the following Monday shall be considered a holiday. Monuments or grave markers shall be erected or installed, on days as permitted by this Ordinance, between the hours of 8:00 A.M. and 5:00 P.M..

16. All temporary grave markers shall be set by the Sexton. Temporary grave markers set after the effective date of this Ordinance shall be removed not later than six (6) months after interment if a permanent marker has been erected. Any temporary grave markers removed shall be removed by the Sexton. When arrangements have not been made by the lot owner to have the temporary grave markers removed as required by this Subsection the Sexton may remove such temporary markers.

17. Prior to setting any monument or grave marker, the contractor shall contact the Cemetery Sexton and complete the appropriate application form, which shall be provided by the Sexton. The Cemetery Sexton shall inspect and measure the foundation excavation prior to pouring any cement.

18. Lot owners and other person shall not remove survey pins or markers.

19. On any grave space where there is interment of cremains, all markers for marking graves shall be laid flush with the ground.

SECTION 12. BURIAL CHARGES. See Section 9, Subsection 10.

SECTION 13. SALE OF LOTS, PERPETUAL CARE.

1. Purchasers of burial space in the City cemetery whether by lots or parts thereof, shall be entitled upon payment of the full purchase price and the perpetual care charge to a deed for the space purchased, said deed to be signed by the Mayor and countersigned by the City Clerk, and specifying that said deed vests in the purchaser, the heirs, or the assigns of said purchaser, a right in fee simple to such lots, lot, or part thereof for the sole purpose of sepulcher alone, for human bodies only, subject to the rules and regulations and ordinances governing the cemetery as they exist at the time of interment, and that the City reserves the control of said lots, lot or part of lot in the cemetery in order to properly maintain the cemetery. No deed shall be delivered until the purchaser has made final payment of the full fee for purchase plus the payment required for perpetual care. Any deed granted prior to the requirement for perpetual care shall be subject to any annual fee that the Council has set for care. The City Council shall permit the conversion of

the annual care requirement to perpetual care upon payment of the owner or another person in his behalf of the amount that would be required for such lots for perpetual care if purchased at the time of such conversion. Thereafter such owner or his heirs and assigns shall be relieved of any annual liability for a care fee.

2. Any unoccupied lot will be presumed abandoned under the conditions set out in state law for reversions, and the City may sell such reverted lot, the proceeds for which shall be deposited in the perpetual care fund to provide for the care of any occupied area of the reverted property or if there be no occupied portion, the proceeds from the sale portion may be invested, and the interest thereon be used wherever deemed useful for the care of the cemetery.
3. The cost of all lots in all additions of the cemetery shall be established from time to time by resolution adopted by the City Council. No graves in any part of the cemetery are to be sold without payment for perpetual care. The proceeds from the sale portion shall be deposited in the general fund.
4. The City reserves and shall have the right to correct any errors that may be made in making either interments, disinterments, or removals, or in the description, transfer or conveyance of any interment property, either by canceling such conveyance and substituting and conveying in lieu thereof other interment property of equal value and similar location as far as possible, or as may be selected by the City or in the sole discretion of the City, by refunding the amount of money paid on account of said purchase. In the event such error shall involve the interment of the remains of any person in such property, the City reserves the right to remove and transfer such remains to such other property of equal value and similar location as far as reasonably possible may be substituted and conveyed in lieu thereof.

SECTION 14. LONG-TERM CARE OF LOTS.

1. In addition to the purchase price for each single grave lot, purchasers of burial space shall pay a perpetual care charge. The charge for perpetual care of graves shall be the sum equal to 25 percent of the cost of the lot as determined under Section 9, Subsection 10.
2. The City Clerk shall deposit such amount into a Cemetery Perpetual Care Fund. The City Council, by Resolution, may accept gifts or donations of land, money or investment assets to be placed to the credit of the perpetual care fund. The assets of the perpetual care fund shall be invested by the Treasurer as permitted by State Law for municipal cemetery investments. The City shall use the income from such investments in caring for the property of the donor, or as provided in the terms of such gift or donation, or as agreed in the instrument for sale and purchase of a cemetery lot. Nothing herein required shall be construed as destroying any vested right as to investments heretofore made prior to the date that the City acquired title to the cemetery or said fund, but such investments may be continued until their maturity and then reinvested according to the provisions of this section.

SECTION 15. RECORDS.

1. The City shall keep a lot record and each lot record shall consist of an individual page or card for each lot, arranged by blocks according to lot number. Each page or card shall contain a record of the name and address, as nearly as possible, or each lot owner, the lot and block number, the purchase receipt number, date of purchase and space for recording transfers. A diagram of the lot shall be drawn on the page, numbering and showing the location of each grave. A space is to be provided to record the name and grave number of each person buried in the lot.
2. An interment register shall be maintained by the City showing a complete record of interments. This shall be in book form, the columns of which shall provide space for recording each burial, the date of interment, the deceased's full name, place of death, name of funeral director, lot and block where buried, size of grave, and location of grave in the lot measured in terms of feet from designated boundaries. (Example: "one foot from the North lot line, three feet from the West lot line.")
3. The City shall keep a burial record for each body buried, arranged alphabetically by last name of deceased, giving name, date of burial, and the lot and block number. This record will supplement the interment register and provide a starting point when only the name of the deceased is known.

SECTION 16. LIABILITY. The City shall take reasonable precautions to protect plot owners and the property rights of plot owners within the cemetery from loss or damage, but it expressly shall not be liable for loss or damage beyond its control, and particularly, from damage caused by the elements, an Act of God, common enemy, thieves, vandals, strikers, malicious mischief makers, explosions, unavoidable civil disorder, whether the damage be direct or consequential.

SECTION 17. PLATTING.

1. It is hereby made the duty of the City Manager, or upon recommendation of the Board of Trustees, to survey, plat, grade, fence, ornament and improve all of the cemetery grounds and the avenues leading thereto, from time to time, as in the opinion of the City Manager and Council may be necessary and advisable. The City Manager may use the sexton, professional engineers or registered land surveyors and other labor and help to accomplish the aforementioned duties.

2. Before any new block of a city-owned cemetery is opened for sale of lots, the City Council shall cause it to be platted and recorded in the office of the County Recorder. A copy of the plat map shall be deposited with the sexton and one or more copies with the City Clerk. The plat shall be so designed as to provide direct access to each lot from either a road or a walkway or foot path.

SECTION 18. POWERS OF CITY COUNCIL. The Mayor and City Council shall have the power to remove from office any or all of said Board of Trustees for nonperformance of duties, as defined in this Ordinance.

SECTION 19. EXCEPTIONS FROM APPLICATION OF ORDINANCE.

1. The City Council may authorize in specific cases such variance from the terms of this Ordinance, and any regulations adopted pursuant to this Ordinance, as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the Ordinance or regulations will result in unnecessary hardship, and so that the spirit of the Ordinance shall be observed and substantial justice done.

2. No variance or exception shall be authorized unless the City Council finds that:

- (a) The strict application of the Ordinance or regulation would produce undue hardship.
- (b) The hardship is not shared generally by other lots or grave spaces within the cemetery.
- (c) The authorization of such variance will not be a substantial detriment to the cemetery.
- (d) The granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice.
- (e) The condition or situation concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this Ordinance.

3. Before any variance is granted, the City Council shall hold a public hearing thereon, after a notice has been published in the official newspaper in the manner provided by Iowa Code Section 362.3.

SECTION 20. REGULATIONS ADOPTED. The rules and regulations of the municipal cemetery as adopted and amended from time to time by the City Council are hereby made a part of this Ordinance. Copies of these rules and regulation shall be maintained on file in the office of the City Clerk and may be obtained upon request at such office.

SECTION 21. PENALTIES. Any person found guilty of violating any of the provisions of this Ordinance shall, upon conviction, be subject to imprisonment not exceeding thirty (30) days, or a fine not exceeding \$100.00.

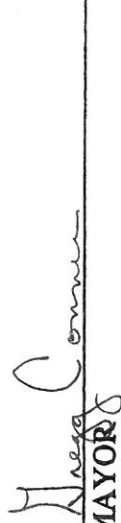
SECTION 22. REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed. These are: Ordinance 1994-02; Ordinance 1996-05; and Ordinance 1997-02.

SECTION 23. SEVERABILITY CLAUSE. If any section, provision or part of this Ordinance shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the Ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

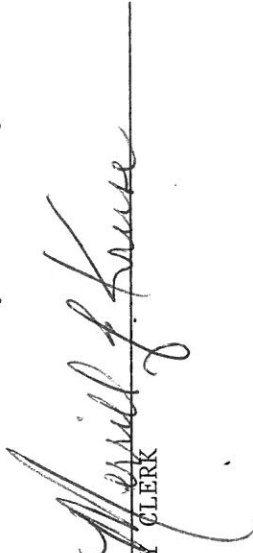
SECTION 24. EFFECTIVE DATE. This Ordinance shall be in effect after its final passage, approval and publication in accordance with law.

PASSED BY THE Council on the 27th day of July, 1999, and APPROVED this 27th day of July, 1999.


CITY CLERK


MAYOR

I, Merrill J. Kruse, City Clerk of the City of Shenandoah, Iowa, do hereby certify that the above ordinance was duly passed and adopted by the City Council on the 7th day of July, 1999; authenticated by the City Clerk on the 7th day of July, 1999; and published in the Valley News Today on the 11th day of August, 1999.


CITY CLERK

