

ORDINANCE NO. 2940-13

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA AMENDING SECTION 34-30, TITLE AND OWNERSHIP OF LOTS AND SPACES IN THE CITY CEMETERIES, TO CLARIFY THE OWNERSHIP INTEREST THAT MAY BE CONFERRED AND TO ADD PROVISION FOR THE CITY TO REGAIN OWNERSHIP OF ABANDONED RIGHTS TO BE BURIED WITHIN A MUNICIPAL CEMETERY; PROVIDING FOR, SEVERABILITY, CODIFICATION, CONFLICTS, AND AN EFFECTIVE DATE.

RECITALS AND LEGISLATIVE FINDINGS

WHEREAS, the City of Winter Park has municipal cemeteries within its jurisdictional boundaries including the Palm and Pineywood Cemeteries; and

WHEREAS, the Palm Cemetery consists of approximately 11 acres and is located at the intersection of New York Avenue and Webster Street, and Pineywood consists of approximately 17 acres located at the intersection of S. Lakemont Avenue and Glenridge; and

WHEREAS, the City Manager reports that these cemeteries have 18,757 grave spaces in total: At the Palm Cemetery only 1,506 open spaces remain, and at Pineywood only 1,455 open spaces remain; and

WHEREAS, the City Manager and his staff have analyzed burial rights which appear to be abandoned and have determined that approximately 378 of the spaces in the Palm Cemetery should be deemed to be abandoned, which would thereby increase the available open spaces of the Palm Cemetery; and

WHEREAS, the available open spaces in the municipal cemeteries are a fixed asset of the City and the City Commission finds that it is in the municipal interest to develop and adopt a fair process by which abandoned gravesites or entitlements should be transferred back to the City so that the spaces are available and open for qualified burial purposes; and

WHEREAS, pursuant to Section 497.260(1)(b), Florida Statutes, the City's cemeteries are exempt generally from the regulations and licensing imposed by Florida law, but, the City's cemeteries are subject to limited state oversight as provided in Section 497.260(3), Florida Statutes, but such oversight does not extend to, nor include regulation of how the City may determine burial rights are abandoned and available for redistribution in accordance with the procedures adopted by the City Commission of the City of Winter Park; and

WHEREAS, Section 497.286, Florida Statutes provides for a procedure by which cemeteries subject to state regulation may take back ownership of abandoned burial rights in a state licensed cemetery; and

WHEREAS, although the City of Winter Park is not subject to state regulation or licensure except to a limited extent with respect to its municipal cemeteries, and the abandonment procedures in Section 497.286, Florida Statutes, are not binding upon the City of Winter Park, it is nonetheless in the municipal interest and consistent with the City's exercise of its home rule authority that the City Commission shall adopt certain provisions contained in Section 497.286, Florida Statutes, and impose those provisions as prerequisites to a determination that burial rights in any of the City's cemeteries have been abandoned, including the presumption that burial rights in a cemetery are abandoned when an owner of unused rights has failed to provide the cemetery with a current residence address for a period of 50 consecutive years and the cemetery is unable to communicate by certified letter with said owner of unused rights regarding the lack of address; and

WHEREAS, the City Commission desires to provide a reasonable and appropriate process to ensure that the lineal descendants and co-owners of burial rights have access to reasonable notice before the burial rights are deemed abandoned back to the ownership of the City of Winter Park; and

WHEREAS, it is within the home rule authority of the City Commission of the City of Winter Park to determine and impose procedures governing the abandonment of burial rights within any municipal cemetery of the City of Winter Park.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, AS FOLLOWS:

Section 1. **Recitals.** The foregoing recitals are hereby adopted and confirmed, and constitute the legislative findings of the City Commission of the City of Winter Park acting in its legislative capacity.

Section 2. Section 34-30. Title and ownership of lots and spaces (in the municipal cemeteries) shall be amended by adding the following language at the end of subsection (a), which new language is shown by underlining, as follows:

“Section 34-30. Title and ownership of lots and spaces.

- (a) Title and ownership of cemetery spaces, lots or blocks shall be evidenced by deeds executed by the mayor or city manager and attested to by the city clerk with the seal of the city affixed. The burial rights conveyed by the city may, depending upon the express language used in an approved form of deed or other document of conveyance, consist only of a right to burial but shall not consist of fee title ownership in the real property comprising a specific plot or burial space.”

Section 3. Section 34-30, Title and ownership of lots and spaces is further amended by adding a new subsection (d) as follows:

“(d) Abandonment of burial rights. There is a presumption that burial rights in any cemetery of the City of Winter Park shall be abandoned and that the city shall thereafter regain all title and rights previously conveyed when an owner of unused burial rights has failed to provide the City of Winter Park or its cemetery with a current residence address for a period of 50 consecutive years, the burial rights are unused for such period of time, and the cemetery is therefore unable to communicate by certified letter with said owner regarding the lack of address. However, in all such cases of abandonment the following procedures shall be followed:

1. Before the city retakes ownership of such rights for reason of abandonment, a certified letter shall be sent to any lineal relative of the owner, if the city has knowledge of the lineal descendant and his or her address. Additionally, the city shall send a certified letter to any person who holds the burial rights in common ownership or any lineal descendant, if known, of such person. In the certified letter, if one may be sent to a known address and known lineal descendant, the cemetery shall set forth the fact that the burial rights shall be deemed abandoned unless the person contacts the designated representative of the city and its cemetery with proof of ownership and intent concerning use of the burial rights.

If a lineal descendant timely contacts in writing the designated representative of the city, then the burial rights shall not be deemed abandoned if such person is able to establish an ownership interest and an intent for a lineal descendant to use the burial rights.

2. The city or its designated representative shall cause to be published one time in a newspaper of general circulation in Orange County the fact that burial rights will be deemed abandoned unless, within 30 days from the date of advertisement, a lineal descendant shall contact the designated city official in writing and establish his or her legal right to the burial rights that will otherwise be abandoned.

If no response is timely received or if a response is inadequate to prove the interest, the ownership or burial rights shall be deemed abandoned and available for resale by the City of Winter Park in accordance with the then existing fee schedule.

In order to better conserve this precious and limited asset of the City of Winter Park, it shall be necessary for all owners of burial rights to either use the rights within 50 years from the date of acquisition of such rights, or through themselves

or a lineal descendant provide notice prior to the expiration of 50 years from date of acquisition of the rights of the then current residence address and identity of the person or persons then entitled to use such burial rights, who may be either the original purchaser or a lineal descendant thereof.

The city will honor a person's right other than a lineal descendant if the person who acquired the original burial rights has bequeathed the right to another and the city is provided a certified copy of a court order conferring the transference of such burial rights."

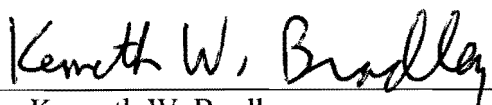
Section 4. Codification and Incorporation Into the Code. This Ordinance shall be incorporated into the Winter Park City Code. Any section, paragraph number, letter and/or any heading may be changed or modified as necessary to effectuate the foregoing. Grammatical, typographical and similar or like errors may be corrected, and additions, alterations and omissions not affecting the construction or meaning of this Ordinance and the City Code may be freely made.

Section 5. Severability. If any section, subsection, sentence, clause, phrase, word or provision of this Ordinance is for any reason held invalid, unlawful or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, facial or other reasons, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

Section 6. Conflicts. All ordinances or parts of ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

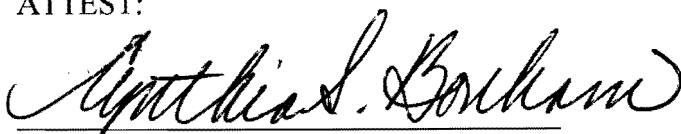
Section 7. Effective Date Of Ordinance. This Ordinance shall become effective immediately upon adoption by the City Commission of the City of Winter Park, Florida.

Adopted by the City Commission of the City of Winter Park, Florida in a regular meeting assembled on the 14th day of October, 2013.



Mayor Kenneth W. Bradley

ATTEST:



Cynthia S. Bonham, City Clerk