

**3.08 Prairie Home Cemetery Commission** (Rep. & recr. #34-83)(Rep. & recr. #50-01)(Rep. & recr. #11-04)

**(1) Cemetery Commission.**

- (a) Membership, Qualifications.** (Am. #2-06) The Cemetery Commission shall consist of ~~six~~ ~~(6)seven~~ members. ~~Four members, who~~ shall be ~~citizen members~~ appointed by the Mayor and shall have their appointments confirmed by the Common Council. Five shall be non-members of the Common Council, and two shall be members of the Common Council. Preference in appointment of one non-Common Council member shall be given to a person having significant experience operating a business having more than three employees. All members shall have demonstrated an interest in the good of the community.
- (b) Term.** Non-Common Council members shall serve terms of three years. Common Council members shall serve terms of one year. Terms shall commence on the third Tuesday of April, and the terms of non-Common Council members shall be staggered so that no more than one term expires in any year. Members shall serve until their successors are appointed and their successors' terms commence. In the case of vacancies, appointments shall be for the remainder of the unexpired term.
- (c) Conduct of Business.** Four members shall constitute a quorum. Meetings shall be conducted according to Robert's Rules of Order.
- (d) Responsibilities.** The Commission shall be responsible for setting policies for the management and operations of Prairie Home Cemetery, subject to Common Council approval of all policies and subject to the terms of this Section 3.08. Specifically, the Commission is responsible for, and shall set policies for:

  - (i)** Ensuring that the Cemetery provides good service to its customers and the City, in accordance with the accepted and customary practices of the cemetery industry.
  - (ii)** Preparation of a proposed annual budget, according to the requirements and deadlines determined by the City Administrator, to be included in the executive budget for consideration in the final adopted budget.
  - (iii)** Ensuring that the Cemetery complies with its adopted budget.
  - (iv)** Ensuring that the Cemetery is in compliance at all times with all applicable state, federal and local statutes, regulations, ordinances and codes, including those applicable to the management and investment of Cemetery funds.
  - (v)** Management, investment, and accounting of all Cemetery funds.
  - (vi)** Timely payment of all Cemetery debts and obligations.
  - (vii)** Reporting all Cemetery business and financial activity to the Common Council and City Administrator.
  - (viii)** Managing the sales of products and services by the Cemetery to maximize revenues.
  - (ix)** Construction of all necessary improvements to the Cemetery, including roads, buildings and mausoleums.
  - (x)** Necessary maintenance, repair and replacement of all Cemetery property.

(xi) Adequately staffing the Cemetery for the efficient performance of the Commission's responsibilities. All staff shall be City employees, and shall be subject to all City Human Resources policies.

(e) **Contract Authority.** The Commission is not a legal entity separate from the City and has no independent capacity to enter into contracts. The Commission shall comply with City Financial Policy F-6.0 with regard to all contracts for goods or services for Cemetery purposes.

(2) **Cemetery Director.** The responsibility for implementing policies set by the Commission, and for managing the day-to-day operations of the Cemetery, shall be in a Cemetery Director. The Cemetery Director shall be selected according to City Human Resources Policy B-2, and the Cemetery Director's compensation shall be determined according to Human Resources Policy F-2. The City Administrator shall conduct an annual performance review of the Cemetery Director.

(3) **Organizational Level.** The Commission is subordinate to the Common Council, and all policies set by the Commission pursuant to Section (1)(d) shall be subject to approval by the Common Council. The Cemetery Director is subordinate to the City Administrator.

(4) **Finances.**

(a) **General.** The Commission shall set policies for the management of the Cemetery's finances in compliance with Wis. Stats. §157.19, §440.92, and §881.01 (2013-2014), as applicable, or their successors. All Cemetery funds shall be the property of the City, maintained in segregated funds for the benefit of the Cemetery as described below.

(b) **Allocation of Sales Revenues.** Revenues derived from the sale of goods and services by the Cemetery shall be allocated as follows:

(i) The Commission shall establish a percentage of the total proceeds of sales of Cemetery lots, mausoleum spaces, and pre-need sales contracts, not less than the amounts required by Wis. Stats. §157.11(9g)(c), Wis. Stat. §157.12(3)(a), Wis. Stats. §440.92(3)(a)(2013-2014), or successor statutes, and may establish a percentage of the revenues of all other sales of goods or services by the Cemetery, which shall be deposited into the Perpetual Care Trust Fund, Mausoleum Care Trust Fund, or Pre-Need Trust Fund maintained pursuant to Section (4)(c), below, as applicable. This allocation shall be made before any other allocations or deductions from gross revenues.

(ii) The Commission shall determine quarterly, in the Commission's sole discretion, whether the funds in the General Cemetery Account maintained pursuant to Section (4)(c)(i), below, are adequate for general Cemetery operations for the upcoming quarter, taking into account anticipated revenues and a reasonable contingency reserve, and shall determine whether a surplus exists. If a surplus exists, then the Commission may allocate amounts, determined in the Commission's sole discretion, to be deposited into the Cemetery Development Account maintained pursuant to Section (4)(c)(ii), below, and the Cemetery Reserve Account maintained pursuant to Section (1)(a).

(iii) The balance of revenues from sales of all Cemetery goods and services, and all funds allocated to the Cemetery by the City to make up Cemetery budget shortfalls, shall be deposited into the General Cemetery Account maintained pursuant to Section (4)(c)(i), below.

(c) **Accounts.** The following accounts shall be maintained by the City Treasurer for the deposit of Cemetery funds:

- (i) **General Cemetery Account.** The General Cemetery Account shall be an interest-bearing, FDIC-insured account or accounts at a commercial bank. The General Cemetery Account shall be used exclusively for the general operations of the Cemetery.
- (ii) **Cemetery Development Account.** Funds in the Cemetery Development Account may be invested for income as determined by the Commission. The Cemetery Development Account shall be used exclusively for capital improvements to the Cemetery.
- ~~(i)~~(iii) **Perpetual Care Trust Fund.** The Perpetual Care Trust Fund shall be an irrevocable trust, held and administered according to the terms of a trust agreement approved by the Common Council, and ~~two members shall be alderpersons appointed by the Mayor~~the trustee of which shall be an institutional trustee affiliated with a commercial bank determined by the Commission and approved by the Common Council. Funds in the Perpetual Care Trust Fund shall be invested and administered according to the provisions of this Section 3.08, Wis. Stats. §157.19, Wis. Stats. §881.01, their respective successor statutes, and the rules of the Wisconsin Cemetery Board. The income only of the Perpetual Care Trust Fund shall be used for the perpetual care and maintenance of the Cemetery lots and grounds, and if a surplus exists after maintenance of the lots and grounds, then for the perpetual care and maintenance of any other portion of the Cemetery. The principal of the Perpetual Care Trust Fund may not be withdrawn from the fund.
- (iv) **Mausoleum Care Trust Fund.** The Mausoleum Care Trust Fund shall be an irrevocable trust, held and administered according to the terms of a trust agreement approved by the Common Council, and the trustee of which shall be an institutional trustee affiliated with a commercial bank determined by the Commission and approved by the Common Council. Funds in the Mausoleum Care Trust Fund shall be invested and administered according to the provisions of this Section 3.08, Wis. Stats. §157.12(3), Wis. Stats. §881.01, their respective successor statutes, and the rules of the Wisconsin Cemetery Board. The income only of the Mausoleum Care Trust Fund shall be used for the perpetual care and maintenance of the Cemetery mausoleum, and if a surplus exists after maintenance of the mausoleum, then for the perpetual care and maintenance of any other portion of the Cemetery. The principal of the Mausoleum Care Trust Fund may not be withdrawn from the fund.
- (v) **Pre-Need Trust Fund.** The Pre-Need Trust Fund shall be an irrevocable trust, held and administered according to the terms of a trust agreement approved by the Common Council, and the trustee of which shall be an institutional trustee affiliated with a commercial bank determined by the Commission and approved by the Common Council. Funds in the Pre-Need Trust Fund shall be invested and administered according to the provisions of this Section 3.08, Wis. Stats. §440.92(3), their respective successor statutes, and the rules of the Wisconsin Cemetery Board and Department of Safety and Professional Services. Funds in the Pre-Need Trust Fund shall be accounted for, and interest shall accrue, separately by pre-need contract; and funds in the Pre-Need Trust Fund shall be used only for the performance of the terms of pre-need sales contracts, except that income earned from the investment of proceeds of a pre-need sales contract may be used for general Cemetery purposes only after all of the Cemetery's obligations under the pre-need sales contract have been fulfilled.
- (vi) **Endowment Trust Fund.** The Endowment Trust Fund shall be an irrevocable trust, held and administered according to the terms of a trust agreement approved by the Common Council, and the trustee of which shall be an institutional trustee affiliated with a

commercial bank determined by the Commission and approved by the Common Council. The purpose of the Endowment Trust Fund shall be to receive funds donated to the Cemetery for specific, ongoing purposes, as designated by the donors. Funds in the Endowment Trust Fund shall be invested according to the provisions of this Section 3.08, Wis. Stats. §157.19, Wis. Stats. §881.01, their respective successor statutes, and the rules of the Wisconsin Cemetery Board. Funds in the Endowment Trust Fund shall be used only for the purposes designated by the donors.

~~(b) **Cemetery Reserve Account.** The Cemetery Reserve Account shall be an interest-bearing, FDIC-insured account or accounts at a commercial bank. The Cemetery Reserve Account shall be used as a contingency fund for emergency or unforeseen expenses, kept in amounts that are consistent with general prudent business practices in light of the Cemetery's overall budget, and in no case less than 5% of the total of the other accounts and trust funds maintained pursuant to this Section (4)(c) **Term.** Citizen members shall be appointed on the third Tuesday of April of each year to serve for four (4) years. The alderperson shall be appointed on the third Tuesday of April to serve for one year. Members of the Commission shall serve until his/her successor is chosen. In case of vacancies, appointment shall be for the unexpired term.~~

~~(c) **Powers and Duties.** Under the direction of the Common Council, the Commission shall operate and manage the Prairie Home Cemetery. This authority includes:~~

~~(i) The management of the expenditure of monies collected, donated or appropriated for Prairie Home Cemetery and the erection of buildings and mausoleums;~~

~~(ii) The management and care for the custody of all lands, buildings and monies or other properties devised, bequeathed, given or granted to Prairie Home Cemetery;~~

~~(iii) The management of Funds described in subsections (3)-(10) below, and~~

~~(iv) Preparation and presentation of a budget to the City Administrator to be included as part of the Executive Budget.~~

~~(2) **Staff and Compensation.** (Am. #22-04) The administrative staff of the Commission shall consist of a manager, appointed by the Mayor and approved by the Common Council. The manager shall be a person trained and qualified to organize and manage day to day operations of the Cemetery. The manager shall be responsible to the Mayor and Common Council under the direction of the Commission for the operation of the Cemetery. Additional employees shall be appointed by the manager. The Common Council shall affix the compensation for all employees of the Cemetery who may be entitled to compensation. The Mayor shall conduct an annual performance review of the Cemetery manager.~~

~~(3) **Cemetery Development Fund.** The Cemetery Commission shall, subject to Council approval, determine the percentage of money derived from the sale of lots, parts of lots and single graves, private and public crypts, lawn crypts, private and public columbariums, niches and or lawn niches in Prairie Home Cemetery which shall be paid over by the Cemetery Manager to the City Treasurer and which shall be kept as a separate fund to be known as the "Cemetery Development Fund," and the Commission shall, subject to Council approval, determine the expenditures of such fund for the improvement of the Cemetery. Any withdrawals from such fund shall be approved by Council. Money deposited into the Cemetery Development Fund may be invested in any combination of savings accounts, certificates of deposit, money market accounts or trust accounts. The Commission shall not incur any liability nor create any debt which cannot be fully paid and discharged by the "Cemetery Development Fund" then on hand, without first having submitted to the Council full and~~

~~specific approval and secured its authorization therefor. If approved by the Council, the Council may authorize the improvement and may appropriate to the Commission a sum sufficient to meet the necessary expenditures therefor.~~

- ~~(4) **General Cemetery Fund.** All other income derived from the management from the operation of the Cemetery shall be deposited with the City Treasurer. The Treasurer will then deposit it in a non-lapsing account to be known as "General Cemetery Account." Such fund shall be used exclusively for the operation of the Cemetery. Withdrawal therefrom shall be made upon voucher signed by the Cemetery Manager and the President or member of the Commission.~~
- ~~(5) **Perpetual Care Fund.** There shall be established and maintained an irrevocable trust fund for the perpetual care and maintenance of Prairie Home Cemetery. Subject to Common Council approval, the Cemetery Commission shall establish the amount of such perpetual care endowment, but not less than that which is required by current Wisconsin Statutes, which amount shall be a portion of the sale price of lots, graves, private and public crypts, lawn crypts, private and public columbariums, lawn niches and or niches and such fund is to be invested as provided in Ch. 881, Wis. Stats.~~
- ~~(6) **Endowment Trust Fund.** There shall be created a trust fund entitled, "Endowment Trust Fund." Such Fund shall be placed in the possession of the trustee the same as the Perpetual Care Fund and shall be invested as provided in Ch. 881, Wis. Stats. The Fund shall be comprised of money received for special services to gravesites, crypts or niches.~~
- ~~(7) **Cemetery Reserve Fund.** There shall be created a trust fund entitled, "Cemetery Reserve Fund." Such Fund shall be placed in the possession of the trustee the same as the Perpetual Care Fund and shall be invested as provided in Ch. 881, Wis. Stats. The Fund shall be comprised of money determined by the Commission, and approved by the Council, to be in excess of that which is required by Wisconsin Statutes in the Perpetual Care Fund, the Endowment Trust Fund, the Gift Trust Fund and the General Fund.~~
- ~~(8) **Gift Trust Fund.** There shall be created a trust fund entitled, "Gift Trust Fund." Such Fund shall be placed in the possession of the trustee the same as the Perpetual Care Fund and shall be invested as provided in Ch. 881, Wis. Stats. The fund shall be comprised of trust funds bequeathed or given to Prairie Home Cemetery, but will not include special endowments per subsection . Such trust funds shall be managed in accordance with the terms and conditions of the grantor(s) and as determined by the Cemetery Commission. Any interests, dividends and authorized withdrawals received from the Gift Trust Fund shall be placed in the General Cemetery Fund.~~
- ~~(9) **Pre-Need Trust Fund.** There shall be created a trust fund entitled, "Preneed Trust Fund." Such Fund shall be placed in the possession of the trustee the same as the Perpetual Care Fund and shall be invested as provided in Ch. 881, Wis. Stats. The fund shall be comprised of money received for the prepayment of cemetery products and services in advance of immediate need. The Cemetery Commission shall, subject to Council approval, establish the percentage of each advance sale to be deposited in the "Preneed Trust Fund", but in no instance shall such amount be less than the minimum deposit required by then current Wisconsin Statutes. All interest and dividends shall be reinvested, as required by Wisconsin Statutes. Amounts may be withdrawn, as provided by Wisconsin Statutes, at the time of need or as otherwise provided. Amounts withdrawn shall be placed in the General Cemetery Fund. The Preneed Trust Fund may also contain proceeds from the pre-construction sales of products as authorized by Wisconsin Statutes.~~

(vii) . Funds may be expended from the Cemetery Reserve Account only with the prior approval of the Commission.

(d) Account and Fund Withdrawals. All withdrawals and transfers from accounts and funds for their specified purposes shall be to the General Cemetery Account. All Cemetery expenses shall be paid from the General Cemetery Account, and shall not be paid from any other account or fund.

(5) Reporting to Common Council and City Administrator. The Commission shall submit a written report of its activities to the Common Council at each Common Council meeting. The Commission shall present financial reports, including profit-and-loss statements, balance sheets, receivables and payables reports, bank and trustee statements, transfers among accounts and funds, and other reports showing significant financial activity as necessary, to the Common Council and the City Administrator, each calendar-year quarter. The Commission shall present such other reports to the Common Council and City Administrator as they may request.

~~(10) Investment of Funds.~~ Subject to Common Council approval, the following investments and transfers may be undertaken by the Commission:

~~(a) Any interests or dividends received from all trust funds, whether invested separately or as provided herein may, only upon the direction of the Cemetery Commission, be withdrawn on an annual, semi annual or quarterly basis by the Cemetery Commission and placed in the General Cemetery Fund. Otherwise such interests and dividends will be prorated to each trust account separately.~~

~~(b) Upon four fifths (4/5) vote of the Cemetery Commission, the Commission may withdraw money from the Perpetual Care Fund and the Endowment Trust Fund which exceeds that which is required by applicable Wisconsin Statutes and that which the Commission has determined as appropriate. The amount withdrawn shall be placed in the General Cemetery Fund.~~

~~(11)~~(6) Upon four fifths (4/5) vote of the Cemetery Commission, ~~The selection by~~ the Commission may withdraw money from the Gift Trust Fund in accordance with the terms of each trust contained within the Gift Trust Fund and as deemed appropriate by the Cemetery Commission. ~~The amount withdrawn shall be placed in the General Cemetery Fund~~ of banks, institutional trustees, investment vehicles and investment advisors shall be subject to approval by the Finance Committee and Common Council.

~~(a) Upon four fifths (4/5) vote of the Cemetery Commission, the Commission may withdraw money from the Cemetery Reserve Fund as deemed appropriate by the Cemetery Commission. Withdrawal of up to \$50,000 in any calendar year must be budgeted. Withdrawal of amounts in excess of \$50,000 in any calendar year must have Common Council approval. The amount withdrawn shall be placed in the General Cemetery Fund.~~

~~(b) The Perpetual Care Fund, Endowment Fund and Gift Trust Fund, Cemetery Reserve Fund and Development Fund may be combined for investment only and upon the direction of the Cemetery Commission, funds will remain separate for bookkeeping purposes.~~

~~(12)~~(7) Deeds and Purchase Receipts. The ~~Manager~~Cemetery Director shall ~~give~~deliver a deed and written receipt to the purchaser of any lot, part of lot or single grave, crypt and/or niche, legally-identifying the lot, crypt or niche a written receipt for, showing the amount of the purchase money, and showing the amount of money to that will be deposited in the Perpetual Care Trust Fund paid to Mausoleum Care Trust Fund. The deed and receipt shall describe the ~~Manager for~~ such lot, part of lot, single grave, crypt and or niche, describing the same according to the Cemetery plat thereof, and the Cemetery Director shall keep a duplicate copy of such receipt in the ~~Manager's~~Cemetery office in a book provided for that purpose.

~~(13) Deed to Cemetery Lot.~~ The Manager shall have a deed executed by the Mayor and City Clerk to be delivered to any purchaser of a lot or part of a lot, crypt and or niche purchased, which deed shall be under the corporate seal of the City and shall be kept on file by the Manager.

~~(14) Administration of Cemetery Funds.~~ Subject to (10) above, the City Treasurer is delegated the authority by the Common Council to make the final determination on investment decisions of Cemetery funds. The Commission shall recommend to the Mayor, with the approval of the Common Council, the appointment of an institution to assist the Commission with the administration of Cemetery funds. The institution, acting in accordance with Chapter 881, Wisconsin Statutes, shall make recommendations as to the investment of cemetery funds to the Commission and City Treasurer. The Commission shall request bids from interested financial institutions which are subject to Section 221.036 or Chapter 223, Wisconsin Statutes. A contract shall be awarded on the basis of the bid which is most advantageous to the City. The institution shall enter into an agreement with the City for a period of two years. (Am. #3-06)

~~(15)~~**(8) Sale of Certain Items Prohibited.** ~~Notwithstanding sub. (4) above,~~ Prairie Home Cemetery, its ~~Manager, agent, Director, agents, and~~ employees are hereby prohibited from selling or otherwise providing headstones, urns and "outer burial containers," as that term is defined in ~~see Wis. Stats. §157.061(11g), Wis. Stats.,~~ to the public. This prohibition shall not apply to ~~merchandise or goods~~the sale of items associated with the burial of pet remains. (Am. #30-08)

**(9) Amendment to Conform with Statutes and Regulations.** If any term of this Section 3.08 should conflict with any applicable state statute or regulation, then this Section 3.08 shall be deemed amended to comply with such statutes or regulations.