

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF BAXLEY TO ESTABLISH RULES AND REGULATIONS REGARDING OMEGA CEMETERY; TO PROVIDE PENALTIES FOR VIOLATION OF SAID ORDINANCE; TO PROVIDE FOR THE REPEAL OF CONFLICTING ORDINANCES OR PARTS OF ORDINANCES; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the City of Baxley owns certain property located in Land Lot No. 388 and 389 of the Second Land District of Appling County, Georgia, used for burial purposes and known as Omega Cemetery; and

WHEREAS, Omega Cemetery has been used for many years and the City has extensive but incomplete records of lot sales and burials; and

WHEREAS, no ordinance or other official guidelines have been formally adopted regarding the use of Omega Cemetery; and

WHEREAS, the Mayor and Council of the City of Baxley deem it appropriate for the protection of the public health, safety and general welfare by establishing rules and regulations relating to the operation, control, and management of Omega Cemetery address the situation regarding Omega Cemetery and adopt rules and regulations;

NOW THEREFORE, the Mayor and Council of the City of Baxley, in regular meeting duly assembled, do ordain that the Code of Ordinances of the City of Baxley shall be amended as follows:

1.

A new Chapter 16 shall be added to the Code of Ordinances as follows:

Chapter 16.

**OMEGA CEMETERY**

**Sec. 16-1. Title.**

(a) This ordinance shall be known and cited as the City of Baxley Omega Cemetery Ordinance.

**Sec. 16-2. Definitions.**

(a) *Cemetery* shall mean Omega Cemetery, owned by the City in Land Lots No. 388 and 389 of the Second Land District of Appling County, Georgia.

(b) *City* shall mean the City of Baxley, Georgia.

(c) *Remains* shall mean the ashes of a cremated person.

(d) A Cemetery *Lot* shall consist of parcel of land 5 feet wide by 11 feet long, and identified as designated on the City's Cemetery maps.

(e) *Mayor and Council* shall mean the duly serving Mayor and members of the City Council of the City of Baxley, Georgia.

- (f) A *memorial* is any type of grave cover, monument, coping, marker, slab or other stone or hard-surfaced material placed within or around the boundaries of a Cemetery Lot.
- (g) A *monument* shall have the same meaning as a memorial.
- (h) An *Owner* is a person who purchases a Cemetery Lot or Lots for the benefit of himself/ herself or members of his/her own immediate family members.
- (i) A *person* is an individual human being or legally recognized entity.
- (j) *Remains* shall mean the body of a deceased individual person.

**Sec. 16-3. Lot Sales and Transfers.**

- (a) All rights to Cemetery Lots shall be sold by the City through the office of the City Clerk. A "Cemetery Deed" to the Lot will be issued by the City upon receipt of full payment. A deed to a Cemetery Lot grants a right of burial only and does not convey any other title to the Lot or the Cemetery. Any deed shall be subject to the provisions of this Ordinance, other applicable ordinances of the City of Baxley, and such additional rules, regulations and restrictions as may hereafter be adopted by the Mayor and Council. It shall be the responsibility of the purchaser to file the Cemetery Deed with the office of the Clerk of Superior Court of Appling County.
- (b) A Lot shall be purchased by or on behalf of the intended Owner only. Lots shall not be purchased by any person with intent to sell or transfer ownership to any other person.
- (c) A Lot may not be sold or otherwise transferred by the Owner to any other person without having been first offered to the City for repurchase at the current rate for Lot purchases at the time of the offer. The City shall either repurchase the Lot or decline to repurchase within five (5) days after the Owner offers it for repurchase. Any Lot sold, given or otherwise conveyed by any Owner without following the City right of repurchase procedure shall be an invalid transfer and shall not be recognized by the City for any purpose. Provided, however, Lots may be freely transferred among immediate family members without regard to the City's repurchase right.
- (d) The purchase price for rights to Lots will be set by resolution the City Council and shall be periodically altered to accommodate increased costs and needed reserve funds for Cemetery maintenance, acquisition and other related purposes. The price to non-residents of the City shall be double the price to City residents. Proof of residence within the City limits must be provided. No City resident shall purchase a Lot at the City resident price for the benefit of a non-resident.
- (e) It is the responsibility of Lot Owners to keep the City Clerk informed as to their correct mailing address. Notices or other correspondence mailed to Owners or their legal representatives or heirs to the address on file with the City Clerk shall constitute actual delivery and notification.

#### **Sec. 16-4. Administrative Rules and Regulations.**

(a) The City Clerk, at the direction of the Mayor and Council and subject to oversight by the City Manager, is responsible for the administration of the Cemetery and for the enforcement of all rules, regulations, policies, and procedures approved by the Mayor and Council.

(b) Omega Cemetery is not a perpetual care cemetery and the City is under no obligation to maintain any set standard for its care and upkeep, although the City does currently provide for general maintenance and care of the Cemetery grounds.

(c) Only human remains and cremains may be interred in the Cemetery.

(d) The City shall not be held liable for errors or damages which may occur as a result of improper or misinterpretation of instructions from Lot Owners, their heirs, family members, legal representatives, funeral directors, grave excavators, vault installers, memorial and monument dealers, or others acting on behalf of any Lot Owner. The City has the right, without prior approval of the Lot Owner or legal representative, to correct errors made in good faith in any phase of Cemetery administration, operation, or maintenance, without incurring liability of any kind whatsoever.

(e) The City has the right to change, modify, replat or reconfigure in any manner any part of the Cemetery.

(f) The City shall take reasonable precaution to protect Lot Owners and the burial rights of Owners within the Cemetery. However, the City disclaims and shall not be liable or responsible for any loss or damage caused by flooding, fire, windstorm, other causes deemed an Act of God, thieves, vandals, malicious mischief makers, explosions, or unavoidable accidents, whether the damage be direct or collateral.

(g) City employees are not permitted to do any work for Lot Owners except at the direction of the City Manager or Clerk, and are prohibited from receiving tips or gratuities.

(h) Special cases may arise in which the literal enforcement of a rule or regulation may impose unnecessary hardship. The City reserves the right to make exceptions, suspensions or modifications of any of these rules and regulations without notice when, in the judgment of the City, exercised in the discretion of the City Manger or City Clerk, such action appears necessary. Any such temporary exception, suspension, or modification shall in no way be construed as affecting the general application of these rules and regulations, and shall not act as a waiver of any of the provisions herein.

(i) The City reserves the right to adopt, amend or suspend any Cemetery rules and/or regulations, at any time, without notification to any Owner.

#### **Sec. 16-5. Conduct Within The Cemetery.**

(a) Cemetery grounds are considered sacred and a strict observance of accepted decorum shall be required at all times. Visitors will use the walks and roads provided at

their own risk. The City shall not be liable for any injury or damage incurred by any person or property upon the Cemetery grounds.

(b) No pets, food, firearms (other than those carried by certified law enforcement officers or military honor officers duly authorized) shall be permitted in the Cemetery at any time.

(c) It shall be unlawful for any person to interfere with the proper conduct of a funeral or with the burying or exhuming of a body or the remains or cremains thereof in the Cemetery, unless specifically authorized by order of a court of competent jurisdiction.

(d) No person shall drive any vehicle within the Cemetery except upon the driveways prepared and designated for that purpose, and such vehicles shall not be operated in excess of the lower of the posted speed limit or 15 mph.

(e) It shall be unlawful for any person to desecrate or injure the Cemetery, or any Lot, grave, tomb, gravestone, monument, fence, tree, shrubbery or other improvement, fixture or item therein, or to injure or disturb any wildlife within the Cemetery.

(f) No sale or solicitation of any type on shall be permitted on Cemetery property unless authorized by the City Manager or City Clerk.

#### **Sec. 16-6. Cemetery Care.**

(a) The Cemetery is not a perpetual care facility. However, general care is assumed by the City and includes the cutting of grass, debris removal, and periodic pruning of shrubs and trees in the common areas, but not within the area of any Lot. Lot Owners are expected to and shall maintain their Lots. The City is under no obligation to maintain any set standard for care and upkeep of Cemetery grounds.

(b) The City shall not be responsible for the loss of any plantings or decorations or any damage to memorials by any cause whatsoever.

(c) The City reserves the right to make any changes deemed necessary as to grading, roads, utility lines and such similar work without notice or approval of any Owner; and to remove or trim any tree, plant or shrub within the Cemetery in the interest of maintaining safety and proper appearance and use of the Cemetery.

#### **Sec. 16-7. Interments and Disinterments.**

(a) All interments, disinterments and removals are subject to the orders and laws of the properly constituted authorities of the City of Baxley, County of Appling, and State of Georgia.

(b) All earth interments shall be in a liner or vault of concrete, steel, fiberglass or other type of material approved for use by the Mayor and Council. All cremains must be securely placed in at least the minimum urn approved by the State Crematory Board, or similar regulatory board or agency, before being interred. All cremains must be interred. No cremains may be scattered in the Cemetery without the express approval of the Mayor and Council.

(c) Construction of any mausoleum or other type of above-ground interment chamber must be approved in advance by the Mayor and Council.

(d) No more than the remains or cremains of one body can be interred in any one Lot, except in the case of a mother and stillborn child.

(e) Caskets containing remains, once interred, shall not be opened or removed without an order from a court of competent jurisdiction. The City shall not be liable for any damages of any type -- physical, emotional or otherwise -- that may result from a disinterment or removal.

(f) Funeral processions entering the Cemetery shall be under the control of the funeral home in charge of the burial. At least one licensed funeral director shall be present throughout any burial/interment service.

(g) The City Clerk or the Clerk's designated staff member must be given at least twenty-four (24) hours advance notice prior to any interment or monument installation. One week's advance notice will be given for disinterment or removal. City staff must locate the Lot before interment, monument installation or disinterment/removal.

#### **Sec. 16-8. Memorials.**

(a) All occupied Lots are required to have a minimum of a 2'x1'x4" pillow marker with the name of the deceased, date of birth and date of death. All grave markers in the Cemetery shall be of granite, marble, bronze or other material approved by the Mayor and Council, and shall be installed under the direction of a licensed memorial dealer. The City Clerk staff will provide reasonable assistance to licensed memorial dealers in locating Lots. Memorial dealers shall be responsible and pay for any damages that may occur in the course of monument installation.

(b) All stones or markers in the Cemetery are required to have a concrete foundation, which shall be poured under the direction of a licensed memorial dealer. All stones, markers, slabs, coping, etc. shall not exceed the boundaries of the Owner's Lot(s), unless specifically approved in writing by the City.

(c) Slabs and coping are permitted. However, the City is not liable for any damages which may occur to such slabs or coping in the regular maintenance of the Cemetery. The City shall not be responsible in any manner for the preservation and care of any memorials installed at the Cemetery.

#### **Sec. 16-9. Records**

(a) The City Clerk will maintain a record of all known Owners of Lots in the Cemetery.

(b) A record of the person buried in each Lot will be kept beginning the day this Ordinance is adopted. Funeral home staff shall cooperate with the City Clerk in obtaining any information deemed necessary by the Clerk.

**Sec. 16-10. Enforcement Procedures.**

(a) The City may prosecute any violations of this Ordinance by issuance of a City ordinance citation, in which case the penalty for a violation shall be as set forth in Section 1-8 of the City's Code of Ordinances.

(b) Upon issuance of any such citation, the City Manager or Clerk shall be authorized to delay any planned funeral or burial service or the installation of any monument, memorial or other material pending final court determination of the violation.

(c) In addition to or in lieu of issuing any fine and/or imprisonment as provided in the said Section 1-8, the Municipal Court Judge may issue an order requiring immediate abatement, injunction or termination of any action in violation of this Ordinance.

(d) No provision of this Section shall be construed to impair any common law or statutory cause of action or legal remedy against any person for injury or damage arising from any violation of this Ordinance or from other law.

2.

Should any Section or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the Ordinance as a whole nor any part thereof other than the part so declared to be invalid or unconstitutional, and the remainder shall continue in full force and effect.

3.

All Ordinances and parts of Ordinances in conflict herewith are hereby repealed.

4.

This Ordinance shall become effective immediately upon execution by the Mayor and City Council.

READ at a regular meeting of the Mayor and Council of the City of Baxley held on the 26<sup>th</sup> day of February, 2008.

DULY ADOPTED by the Mayor and Council of the City of Baxley, after second reading, at a regular meeting held on the 11<sup>th</sup> day of March, 2008.

\_\_\_\_\_(L.S.)  
Steve Rigdon, Mayor

Attest: \_\_\_\_\_  
Von Spell, Clerk

(CITY SEAL)