

JUN 07 2010

ORDINANCE NO. 2789

**AN ORDINANCE ESTABLISHING A BOARD OF MANAGERS
FOR THE WARDERMAN CEMETERY IN THE CITY OF
COLUMBIA, ILLINOIS AND DETERMINING THEIR RIGHTS,
POWERS AND DUTIES**

J. Ronald Colyer
City Clerk

WHEREAS, the City of Columbia, Illinois (the "City") is in control of a cemetery located within the corporate limits of the City which is commonly known as the Warderman Cemetery (the "Cemetery" or "Warderman Cemetery") and is authorized to operate the same in such manner as the corporate authorities of the City shall deem necessary under and by virtue of Section 11-52-1 of the Act for the Control and Maintenance of Public Graveyards in the Illinois Municipal Code (65 ILCS 5/11-52-1);

WHEREAS, the City as a municipality operating, controlling and managing the Warderman Cemetery is a "Cemetery Authority" under the Illinois Cemetery Care Act (760 ILCS 100/2);

WHEREAS, as a Cemetery Authority which maintains a cemetery using cemetery care funds the City Council of the City (as the Corporate Authority of the City) is required to: (i) provide the care and maintenance of the cemetery; and, (ii) control the opening and closing of all graves, crypts, or niches for human remains in the cemetery (760 ILCS 100/2a (a));

WHEREAS, the Illinois Cemetery Care Act authorizes the City to accept funds for the care of the cemetery; or for the care of lots, graves, crypts or niches in the cemetery; or for special care or any lot, grave, crypt, or niche or family mausoleum or memorial, marker, or monument in the cemetery and to establish a trust fund to hold the same in perpetuity (provided the City shall not hold more than \$500,000 of care funds in the trust without retaining the services of an independent trustee for the amount of the care funds in excess of \$500,000) (760 ILCS 100/3);

WHEREAS, the Columbia City Council adopted Ordinance 2700 in December, 2008, to authorize a Warderman Cemetery Escrow/Trust (the "Trust") to pay for burial of paupers, said interment being funded through a donation from Charles Todd, Jr. of Columbia, Illinois, the principal and income from said gift in trust being restricted to be used and expended as is made and provided for in the Warderman Cemetery Escrow/Trust authorized by said Trust Agreement and Ordinance;

WHEREAS, the Illinois Municipal Code (the "Code") allows and provides that any city controlling a municipal cemetery lying within the corporate limits of the city has the authority to appoint by the city's mayor, with the advice and consent of the city's city council, a board of three (3) persons who shall be known as the "cemetery board of managers" (the "Board" or the "Cemetery Board") to hold office for a period of two (2) years or until their successors are appointed (65 ILCS 5/11-52.1-2);

WHEREAS, the Code further allows and provides, that Cemetery Board may receive in trust from persons interested in the maintenance of the cemetery any gift or legacy of any money or property, either real or personal or mixed, which may be donated to the Board for the use or maintenance of lots or the cemetery (65 ILCS 5/11-52.1-2);

WHEREAS, the Code further allows and provides, that the Board may convert property donated into money and invest the same in the manner provided by Ordinance and apply the income therefrom perpetually for the care of the cemetery lots or the care and maintenance of the cemetery, as shall be specified in the gift or legacy as may be provided by ordinance of the city (65 ILCS 5/11-52.1-2);

WHEREAS, said Cemetery Board is required to meet and organize by selecting one of their number to be president of the Board, another of their number to be the clerk of the board and to select a treasurer of the board, who may but is not required to be one of their number (65 ILCS 5/11-52.1-2);

WHEREAS, the treasurer of the Board is required to execute a bond to the People of the State of Illinois for the use of the Cemetery Board, in a penal sum of not less than double the value of money or property coming into his hands as such treasurer, conditioned for the faithful performance of his duties and for the faithful accounting for all property which, by virtue of his office, comes into his possession (65 ILCS 5/11-52.1-2);

WHEREAS, said treasurer's bond is to be in such form and with such sureties as shall be approved by the city's city council and shall be approved and preserved in the same manner as the bond of the treasurer of the city (65 ILCS 5/11-52.1-2);

WHEREAS, the board treasurer is required to have custody of all money and property entrusted to the Board and to pay out the same only upon the written direction of the Cemetery Board, signed by at least two (2) members of the Board; and is required to keep permanent books of record of all such trust funds and of all receipts and disbursements thereof, and for what purposes received and disbursed (65 ILCS 5/11-52.1-2);

WHEREAS, the board treasurer is required to annually make a written report to the Board, under oath, showing balances, receipts and disbursements, including a statement showing the amount and principal of trust funds on hand and how invested; which report shall be audited by the Board and if found correct shall be delivered to the city's city council at the same time the treasurer of the city is required by law to make his report to the city's city council and shall be preserved in the same manner as the city treasurer's report (65 ILCS 5/11-52.1-2);

WHEREAS, the board clerk is required to keep a permanent record of the proceedings of the Board, signed by the president of the Board and attested by said clerk and shall keep a permanent record of the trust funds (including from what sources

received, the amounts thereof, and for what uses and purposes); and, further, said clerk is required to annually, at the time of the delivery of the treasurer's report to the city's city council, make a written report, under oath, to the city's city council or the Board, stating therein substantially the same matter required to be reported by the board treasurer; and, the clerk's report, if found to be correct, shall be approved and preserved by the city's city council or the Cemetery Board (65 ILCS 5/11-52.1-2);

WHEREAS, the city's city council or the Cemetery Board has the power to remove from office any of the members of the Cemetery Board or the treasurer, for non-performance of duties or for misappropriation or wrongful use of Cemetery Board funds or property and to require a just and proper accounting for the same (65 ILCS 5/11-52.1-2);

WHEREAS, the Board of Managers may from time to time establish the minimum amount which will be received by gift or legacy for the use and maintenance of any lot in the cemetery, subject to approval by the city's city council (65 ILCS 5/11-52.1-4);

WHEREAS, the Columbia City Council has found and determined and does hereby declare that it is necessary and appropriate that a Warderman Cemetery Board of Managers be established by this ordinance, pursuant to the enabling law stated above, to manage the cemetery trust funds received by the city, for and on behalf of the City.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Columbia, Illinois, as follows:

Section 1. The recitals contained above in the preamble of this Ordinance are hereby incorporated herein by reference, the same as if set forth in this Section of this Ordinance verbatim, as findings of the City Council of the City of Columbia, Illinois.

Section 2. There is hereby created the Warderman Cemetery Board of Managers to manage Cemetery Trust Funds of the City in accordance with the statutes and laws aforesaid; said Cemetery Board of Managers to be comprised of three (3) members to be appointed by the Mayor with the advice and consent of the City Council of the City; each of which shall serve for a term of two (2) years and until their successors are appointed and qualified; and, as soon as conveniently possible after their appointment they shall meet and select one of their members as President of said board and another of their members as Clerk of said board and shall select a Treasurer of the board who may, but shall not be required to be, a member of said board.

The Treasurer appointed by said board shall execute a bond to the People of the State of Illinois for the use of said Board of Managers, in a penal sum of not less than double the value of the money and property coming into his hands as such treasurer, conditioned upon the faithful performance of his duties and for the accounting for all property which, by virtue of his office, comes into his possession. The bond shall be in such form and with such sureties as are required for the bond of the treasurer of the City.

The members and officers of the Warderman Board of Managers shall do and perform their duties as such members and officers as is required by the statutes and laws of the State of Illinois set forth above and shall have the powers and authorities made and provided by said laws.

The Warderman Board of Managers may adopt by-laws for the procedures and practices required for the conduct of their meetings and the operation of the board as the board shall see fit and determine; and, said by-laws may be changed and amended, from time to time, as said board shall determine to control the operation and functioning of the board except as shall otherwise be prohibited by law.

Section 3. City of Columbia, Illinois City Ordinance No. 2768, entitled:

“AN ORDINANCE ESTABLISHING A WARDERMAN TRUST COMMISSION IN THE CITY OF COLUMBIA, ILLINOIS AND ADOPTING PROTOCOLS FOR ITS OPERATION”

and City Ordinance No. 2769, entitled:

“AN ORDINANCE TO PROVIDE FOR APPOINTMENT OF MEMBERS OF THE WARDERMAN TRUST COMMISSION OF THE CITY OF COLUMBIA, ILLINOIS FOR THE FISCAL YEAR OF THE CITY COMMENCING MAY 1, 2010 AND ENDING APRIL 30, 2011”

are hereby repealed and rendered of no further force and effect as a result of their being in derogation of the requirements and provisions of the Illinois Cemetery Care Act and the Illinois Perpetual Cemetery Trusts Act pertaining thereto.

Section 5. This ordinance shall be in full force and effect from and after its passage, as provided by law.

Alderman Ebersohl moved the adoption of the above and foregoing Ordinance; the motion was seconded by Alderman Row, and the roll call vote was as follows:

YEAS: Ebersohl, Agne, Niemietz, Row, Hejna, Oberkfell and Roessler.

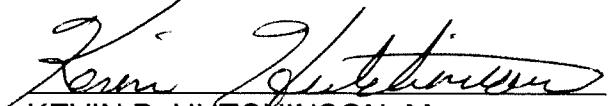
Alderman Stumpf voted Present.

NAYS: None.

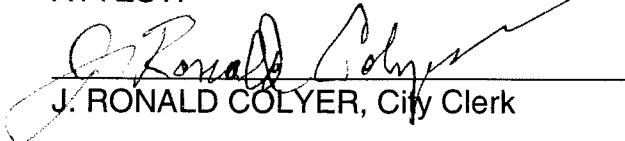
ABSENT: None.

ABSTENTIONS: None.

PASSED by the City Council and APPROVED by the Mayor this 7th day of June, 2010.


KEVIN B. HUTCHINSON, Mayor

ATTEST:


J. RONALD COLYER, City Clerk

(SEAL)