

**ORDINANCE NO. 1291**

**AN ORDINANCE OF THE CITY OF DAVENPORT, FLORIDA; AMENDING ORDINANCE NO. 689 BY MODIFYING SECTIONS 8 & 9 WITHIN ARTICLE II, CHAPTER 5.5, CODE OF ORDINANCES, CITY OF DAVENPORT, FLORIDA (“CITY CODE”); AMENDING §§ 5.5-32 & 5.5-33, CITY CODE, TO INCREASE THE FEES APPLICABLE TO LOT & SPACE SALES; PROVIDING FINDINGS; ADOPTING BUSINESS IMPACT ESTIMATE PROCEDURES, REQUIREMENTS, & EXEMPTIONS; PROVIDING FOR SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.**

**NOW, THEREFORE, BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF DAVENPORT, FLORIDA, AS FOLLOWS:**

**SECTION 1. FINDINGS.** In adopting this Ordinance, the City Commission of the City of Davenport, Florida (the “City”) hereby makes and expresses the following findings, purposes, and intent:

(1) The City has been conferred broad legislative powers to enact ordinances to perform governmental functions and exercise power to promote the health, welfare, safety, and quality of life of a local government’s residents by both the Florida Constitution and the Florida Legislature.

(2) The procedures for adopting municipal ordinances are set forth in Section 166.041, Florida Statutes.

(3) The Florida Constitution grants cities broad authority to take actions furthering citizens’ health, welfare, safety, and quality of life called “home rule,” and this authority includes legislative powers to enact local laws.

(4) Florida cities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide municipal services, and exercise any power for municipal purposes, except as otherwise provided by law.

(5) These home rule powers have been liberally construed when reviewed by courts.

(6) The City Commission of the City of Davenport previously acquired the "Evergreen Cemetery" located at 1917 County Road 547 (Old Dixie Highway) near Davenport, in Polk County, Florida for the purpose of providing to area residents human burial spaces and the rendition of municipal services related thereto pursuant to a publicly noticed meeting of the Commission.

(7) As a result of said purchase, and upon the effective date of this Ordinance, the Cemetery shall become known as the "Davenport Evergreen

Cemetery" (hereinafter referred to as the "Cemetery"), and the City of Davenport became responsible for the ownership, care, operation and maintenance of the Cemetery.

(8) In an effort to provide the proper care, operation, maintenance and protection of the Cemetery, the City Commission believes that it is necessary to promulgate and establish certain rules to ensure proper City administration of the Cemetery, to set forth fees and costs, to provide for an appropriate financial fund and to establish operational rules and policies.

(9) Following public hearing and receipt of competent, substantial evidence into the record, the City Commission determines that the cemetery lot, space, and crematory fees must be increased to recover necessary operating costs.

(10) The City Commission finds that the regulations, charges, rates and fees adopted by this Ordinance are in the best interest of and for the health, safety and welfare of the citizens of the City of Davenport and users of the City utility system.

(11) These fees have been established by the City and the City desires to ratify and incorporate these fees into the Code of Ordinances for better transparency.

(12) The City has scheduled, advertised, and held the appropriate hearings required by Chapter 166, Florida Statutes, and has received and considered all City staff, City consultant, and public written and oral comments and other competent, substantial evidence.

(13) The City has performed a business impact estimate pursuant to § 166.041(4)(c), and determined that adoption of this ordinance:

- (1) serves a public purpose by serving the public health, safety, morals, and welfare of the City,
- (2) has no direct negative economic impact on private, for-profit businesses in the city in that all those who use the City's Evergreen Cemetery will be treated non-discriminatorily and in accordance with Florida rate-making principals in use for over a century,
- (3) will not result in direct compliance costs by businesses,
- (5) does not impose any new charge or fee on businesses for which businesses will be financially responsible but rather modifies existing user fees, and,
- (6) does not create any additional municipal regulatory cost which is not recovered appropriately and lawfully by the City.

(14) The City Commission has provided all necessary public notice and held the requisite public hearings and accepted testimony and other competent, substantial evidence from the public for purposes of making these findings and determining to adopt this ordinance.

**SECTION 2. AMENDMENT TO SECTION 5.5-32, CODE OF ORDINANCES.** Section 5.5-32 of the Code of Ordinances of the City of Davenport, Florida (hereafter “the Code”) is amended to read as follows:

**“Sec. 5.5-32. - Lot and space sales.**

- (a) The clerk may refuse to sell any lot or space to any person or corporation when such sale may be detrimental to the cemetery, or such sale would violate state law prohibiting speculation in cemetery property.
- (b) The deed of ownership of any cemetery lot or space will not be delivered to any purchaser until the full purchase price of the lot or space has been paid to the clerk.
- (c) No cemetery lot or space shall be initially sold or conveyed except by the city.
- (d) The resale, transfer or conveyance of any lot or space in the cemetery by the owner to another party shall be subject to approval by the city and a payment by the seller to the city of a ~~ten~~ one hundred twenty-five dollar (~~\$10.00~~125.00) fee per space being conveyed to cover administrative costs. No space shall be resold for an amount greater than the current price of renewing spaces in the cemetery.”

**SECTION 3. AMENDMENT TO SECTION 5.5-33, CODE OF ORDINANCES.** Section 5.5-33 of the Code of Ordinances of the City of Davenport, Florida (hereafter “the Code”) is amended to read as follows:

**“Sec. 5.5-33. – Fee Schedule.**

The commission hereby establishes the fees for cemetery lots, spaces, cremorial niche and mausoleum crypt as follows:

- (a) *Cemetery lot (8 spaces).*

Resident: ~~Three~~ Four thousand ~~five~~ two hundred dollars (~~\$3,500~~4,200).

Nonresident: ~~Four~~ Five thousand ~~nine~~ six hundred dollars (~~\$4,900~~5,600).

- (b) *Cemetery space.*

City resident: ~~Five~~ Six hundred dollars (~~\$500~~600).

Nonresident: ~~Seven~~ Eight hundred dollars (~~\$700~~800).

(c) *Cremorial space.*

City resident: ~~Two~~ Three hundred ~~fifty~~ dollars (\$~~250~~300.00).

Nonresident: ~~Three~~ hundred ~~fifty~~ dollars (\$~~350~~400.00).

(d) *Mausoleum crypt.*

City resident: One thousand five hundred dollars (\$1,500.00).

Nonresident: Three thousand dollars (\$3,000.00).

The above fees represent the price for single interment only. Double interment is not permitted.

If it is deemed necessary to change or otherwise amend one (1) or more of the above-referenced fee schedules, then such change or amendment shall only be effective pursuant to a duly enacted ordinance which specifically sets forth the adjusted fee rate or schedule.”

**SECTION 4. BUSINESS IMPACT ESTIMATE.** Pursuant to Section 166.041(4), Florida Statutes, the City of Davenport is required to prepare a business impact estimate for certain proposed ordinances. This proposed ordinance modifies existing cemetery lot and space fees for use of the City’s Evergreen Cemetery the use of which is purely voluntary for all persons, firms, and corporations who purchase the lots and spaces. Such modified user charges (1) serves a public purpose by serving the public health, safety, morals, and welfare of the City, (2) have no direct negative economic impact on private, for-profit businesses in the city in that all those who use the City’s Evergreen Cemetery will be treated non-discriminatorily and in accordance with Florida rate-making principals in use for over a century, (3) will benefit residents by providing a final resting place that may be used by all citizens, (4) will not result in direct compliance costs by businesses, (5) does not impose any new charge or fee or businesses for which businesses will be financially responsible but rather modifies existing user fees, and (6) does not create any additional municipal regulatory cost which is not recovered appropriately and lawfully by the City. Thus, it is estimated that neither residents nor any business will incur additional costs beyond the costs of prudently operating the Evergreen Cemetery which is recognized by Florida courts as voluntary. The City does not seek to impose any additional user or regulatory fees or charges beyond those costs necessary to operate the Evergreen Cemetery that are lawful to recover under long-standing Florida law, nor are any direct compliance costs expected. The Business Impact Estimate form for this ordinance is on file with the City Clerk.

**SECTION 5. SEVERABILITY.** If any provision or portion of this Ordinance is declared by any court of competent jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and portions of this Ordinance shall remain in full effect.

**SECTION 6. CONFLICTS.** Should any provision contained in this Ordinance conflict with any prior provision of the Code or any City ordinance, then the provisions of this ordinance shall control.

**SECTION 7. CODIFICATION.** The City Commission hereby directs that the provisions of this Ordinance be codified in the Code of Ordinances of the City of Davenport, Florida.

**SECTION 8. EFFECTIVE DATE.** This Ordinance shall take effect upon its approval and publication as required by law.

**INTRODUCED, PASSED AND DULY ADOPTED ON FIRST READING** by the City Commission of Davenport, Florida, meeting in Regular Session this \_\_\_\_ day of \_\_\_\_ 2024.

**CITY OF DAVENPORT, FLORIDA**

(SEAL)

By: \_\_\_\_\_  
Brynn Summerlin, Mayor

Attest:

\_\_\_\_\_  
Raquel Castillo, City Clerk

**INTRODUCED, PASSED AND ENACTED ON SECOND READING**, by the City Commission of the City of Davenport, Florida, meeting in Regular Session, this \_\_\_\_ day of \_\_\_\_\_, 2024.

**CITY OF DAVENPORT,  
FLORIDA**

(SEAL)

By: \_\_\_\_\_  
Brynn Summerlin, Mayor

Attest:

\_\_\_\_\_  
Raquel Castillo, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Thomas Cloud, City Attorney



## **Business Impact Estimate**

*This form should be included in the agenda packet for the item under which the proposed ordinance is to be considered and must be posted on the City of Davenport's website by the time notice of the proposed ordinance is published.*

AN ORDINANCE OF THE CITY OF DAVENPORT, FLORIDA; AMENDING ORDINANCE NO. 689 BY MODIFYING SECTIONS 8 & 9 WITHIN ARTICLE II, CHAPTER 5.5, CODE OF ORDINANCES, CITY OF DAVENPORT, FLORIDA ("CITY CODE"); AMENDING §§ 5.5-32 & 5.5-33, CITY CODE, TO INCREASE THE FEES APPLICABLE TO LOT & SPACE SALES; PROVIDING FINDINGS; ADOPTING BUSINESS IMPACT ESTIMATE PROCEDURES, REQUIREMENTS, & EXEMPTIONS; PROVIDING FOR SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.

This Business Impact Estimate is provided in accordance with section 166.041(4), Florida Statutes. If one or more boxes are checked below, this means the City of Davenport is of the view that a business impact estimate is not required by state law<sup>1</sup> for the proposed ordinance, but the City of Davenport is, nevertheless, providing this Business Impact Estimate as a courtesy and to avoid any procedural issues that could impact the enactment of the proposed ordinance. This Business Impact Estimate may be revised following its initial posting.

- The proposed ordinance is required for compliance with Federal or State law or regulation;
- The proposed ordinance relates to the issuance or refinancing of debt;
- The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant or other financial assistance accepted by the municipal government;
- The proposed ordinance is an emergency ordinance;
- The ordinance relates to procurement; or
- The proposed ordinance is enacted to implement the following:
  - a. Part II of Chapter 163, Florida Statutes, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements and development permits;

---

<sup>1</sup> See Section 166.041(4)(c), Florida Statutes.

- b. Sections 190.005 and 190.046, Florida Statutes, regarding community development districts;
- c. Section 553.73, Florida Statutes, relating to the Florida Building Code; or
- d. Section 633.202, Florida Statutes, relating to the Florida Fire Prevention Code.

In accordance with the provisions of controlling law, even notwithstanding the fact that an exemption noted above may apply, the City of Davenport hereby publishes the following information:

1. Summary of the proposed ordinance (must include a statement of the public purpose, such as serving the public health, safety, morals and welfare):

This proposed ordinance modifies existing cemetery lot and space fees for use of the City's Evergreen Cemetery the use of which is purely voluntary for all persons, firms, and corporations who purchase the lots and spaces. Such modified user charges serve a public purpose by serving the public health, safety, morals, and welfare of the City.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the City of Davenport, if any:
  - (a) An estimate of direct compliance costs that businesses may reasonably incur;
  - (b) Any new charge or fee imposed by the proposed ordinance or for which businesses will be financially responsible; and
  - (c) An estimate of the City of Davenport's regulatory costs, including estimated revenues from any new charges or fees to cover such costs.

*Will have no direct negative economic impact on private, for-profit businesses in the city in that all those who use the City's Evergreen Cemetery will be treated non-discriminatorily and in accordance with Florida rate-making principals in use for over a century, will benefit residents by providing a final resting place that may be used by all citizens.*

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance:

*Will not result in direct compliance costs by businesses and does not impose any new charge or fee or businesses for which businesses will be financially responsible but rather modifies existing user fees.*

4. Additional information the governing body deems useful (if any):

*The City does not seek to impose any additional user or regulatory fees or charges beyond those costs necessary to operate the Evergreen Cemetery that are lawful to recover under long-standing Florida law, nor are any direct compliance costs expected. Does not create any additional municipal regulatory cost which is not recovered appropriately and lawfully by the City. Thus, it is estimated that neither residents nor any business will incur additional costs beyond the costs of prudently operating the Evergreen Cemetery which is recognized by Florida courts as voluntary.*

*City solicited comments from businesses and residents in the City of Davenport as to the potential impact of the proposed ordinance by advertisement, public workshop, etc.*