ORDINANCE NO. 83- 1

AN ORDINANCE ESTABLISHING A CEMETERY COMMISSION FOR THE CITY OF ATKINS, ESTABLISHING RULES AND REGULATIONS FOR THE USE AND OPERATION OF THE CEMETERY AND PERTAINING TO THE OWNERSHIP OF LOTS AND INTERMENT THEREIN, ESTABLISHING A PERPETUAL CARE TRUST FUND, AND FOR OTHER PURPOSES.

WHEREAS, the City of Atkins presently owns four separate tracts of land comprising the Atkins Cemetery, and,

WHEREAS, the sale of cemetery lots and the handling of funds for each separate tract of land comprising the Atkins Cemetery is being handled by different people, and,

WHEREAS, there is a need to establish a Cemetery Commission for the City of Atkins to provide for a more effective handling of sales of lots, management of funds, solicitation of donations, and enforcement of rules and regulations for the whole cemetery,

NOW, THEREFORE, be it ordained by the City Council of the City of Atkins as follows:

SECTION 1: Establishment of Cemetery Commission.

A. There is hereby established a Cemetery Commission to be composed of three citizens who are qualified electors of the City of Atkins, provided, however, that the City Council may increase the membership of the Cemetery Commission by two additional members, if the City Council determines that an enlarged commission could better serve the citizens of the City of Atkins.

B. The Commissioners shall be appointed by the Mayor and confirmed by a majority vote of the duly elected and qualified members of the City Council and shall hold office for a term of three years, provided, however, that those Commissioners first appointed and confirmed after the passing of this Ordinance shall serve for terms of one, two and three years each, to be designated by the Mayor and City Council, and thereafter, upon the expiration of their respective terms, Commissioners appointed by the Mayor and approved by a

majority vote of the City Council shall be appointed for a term of three years. In the event of a vacancy occurring on the Commission it shall be filled by appointment by the Mayor subject to the approval of a majority vote of the duly elected and qualified members of the City Council. Each Commissioner shall file the oath required by the State of Arkansas for public officials. Provided, however, that in the event the City Council votes to increase the membership of the Cemetery Commission from three to five members, then in said event, the two additional members of the Commission shall be appointed in the manner provided hereinabove, and shall serve terms of three years. Provided further, however, that the first additional members appointed to the Commission shall determine by lot their respective terms in order that the term of one member shall be for one year and the term of the other member shall be for three years. Their successors shall be appointed for three year terms. Such members shall qualify in the same manner as provided hereinabove for other Commission members, and vacancies in either of such additional member positions shall be filled in the manner provided hereinabove.

C. Any Commissioner appointed by the provisions of this Ordinance may be removed for cause by a two-thirds vote of the duly elected qualified members of the City Council.

D. The Commissioners hereinunder appointed shall have full and complete authority to deal, manage, operate, maintain, and keep in a good state of repairs any municipal buildings and grounds deemed necessary to carry on the operation of the Atkins Cemetery for the City of Atkins. The Commission shall have full and complete charge of such buildings and grounds, including the right to control and permit, or refuse to permit such public gatherings or other meetings or affairs as the Commissioners shall see fit and deem to be in the best interest of the City. The Commissioners shall have

the right to employ or remove professionals, janitors, grounds keepers and other employees of whatsoever nature, kind or character, and to fix, regulate and pay their salaries, it being the intention of the ordinance to vest in the Commissioners authority to build, operate, manage, maintain and control all muncipal improvements located in the Atkins Cemetery, and have full and complete charge thereof, provided Commissioners shall not have authority or power to sell, mortgage, or encumber such property, unless otherwise authorized by the City Council.

E. The property presently comprising the Atkins Cemetery is described as follows:

TRACT ONE:
Beginning at the Southwest Corner of the Northwest Quarter (NW¼) of the Southeast Quarter (SE¼) of Section 20, Township 7 North, Range 18 West, and running North 417 feet; thence East 33 feet; thence in a Southeasterly direction to the South line of said forty acre tract at a point 85 feet East of the Southwest Corner; thence West to place of beginning.

TRACT TWO:
Block Six (6) in the Matthews Addition to the Town of Atkins, Arkansas.

TRACT THREE:
Lots Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Sixteen (16),Seventeen (17), Eighteen (18), Nineteen (19) and Twenty (20), all in Block Five (5), Matthews Addition to the Town of Atkins, Arkansas.

TRACT FOUR:
All that part of the West Half (W½) of Block Two (2) of the Matthews Addition to the Town of Atkins, Arkansas, lying South of the ditch running approximately East and West across said block. The tract of land above described is approximately 200 feet North and South and 140 feet East and West.
ALL lying in Pope County, Arkansas.

F. The Commissioners hereunder shall have in addition to all other powers enumerated herein the exclusive right and power to make purchases of all supplies, apparatus and other property and things requisite and necessary for the management and operation of the Atkins Cemetery, including the construction of same and repairs and additions thereto, provided the Commissioners shall not have authority or power to sell, mortgage or encumber such property unless otherwise

authorized by the City Council.

G. The Commissioners may propose from time to time to the City Council for adoption any alterations, changes or amendments to this Ordinance as they may deem necessary and expedient for the proper operation and management of the Atkins Cemetery.

H. The Commissioners shall submit quarterly reports beginning three months after they take their oath of office and each three months thereafter reporting in full on the operations of the Atkins Cemetery, including providing an accounting of receipts and disbursements to the Mayor and City Council and furnishing such other and further reports, data and information as may be requested by the Mayor and City Council. The quarterly report to the Mayor and City Council with respect to receipts and disbursements shall be certified by the Commissioners as correct, and the Commissioners shall further submit an annual audit of the operations of the Atkins Cemetery to the Mayor and City Council.

I. Upon each quarterly report being made to the Mayor and City Council by the Commissioners, the City Council may appropriate funds from the general revenue fund of the city or from such other funds as the city may have available to make up any deficit or to provide such funds as may be necessary to carry on the operations of the Atkins Cemetery. The City Council may at any time other than when a quarterly report is filed, appropriate such funds, as it deems necessary, from the general revenue fund or such other funds as the city may have available for the purpose of maintaining and operating the Atkins Cemetery.

J. The price of cemetery lots shall be set in an amount to be determined by the Cemetery Commission and may be changed from time to time by the Commissioners. The fee for opening and closing a grave shall be set by the Cemetery Commission and may be changed from time to time by the Commissioners.

K. The Commissioners shall elect from their number, a chairman, vice chairman and secretary-treasurer. It shall be the duty of the chairman to preside at all meetings of the Cemetery Commission. The vice chairman shall preside in the absence of the chairman. It shall be the duty of the secretary-treasurer to keep a record of the minutes of all meetings, to file and record in the books of the Cemetery Commission all instruments of sale or transfer of a lot; to record all deposits to the perpetual care trust fund; to record all disbursements made from the income derived from the principal of said fund, and to record all deposits and withdrawals from the checking account in the name of the Cemetery Commission.

L. The Commissioners shall receive no salary for their services, but shall be reimbursed for actual expenses incurred in the performance of their duties.

M. All members of the Cemetery Commission shall be notified of the time and place of all Cemetery Commission meetings. No business in any Cemetery Commission meeting shall be conducted unless a quorum of the membership shall be present. A quorum shall consist of a majority of the Cemetery Commission membership. No measure may be voted on, and no action may be taken by the Cemetery Commission unless approved by a majority of the duly appointed Commissioners.

SECTION 2: Cemetery Revenues and Establishment of Accounts:

A. The Commissioners hereunder appointed shall have the authority to utilize all revenues derived from the operation of the Atkins Cemetery. All funds derived from the operation of the Atkins Cemetery shall be used exclusively in the operation and the maintenance of the Atkins Cemetery by the Commissioners, and such funds shall not be mingled with other funds of the City.

B. The Commissioners shall furnish the City a surety bond in the sum of $ Twenty-five thousand Dollars ($25,000) for each Commissioner to insure the City against any misappropriation or mishandling of funds by the Commissioners. The surety on such bond shall be a reputable surety corporation. The premiums of the bonds shall be paid for from monies derived from the operation of the Atkins Cemetery or from monies appropriated for such purposes by the City Council from the general revenue fund of the City.

C. No one other than the Commissioners shall have authority to withdraw funds from any of the accounts or funds containing revenues derived from the operation of the Atkins Cemetery. Withdrawals from any of such accounts or funds shall be made only upon the signature of any Two (2) of the Commissioners whose names appear on the signature cards for said accounts or funds. The Commissioners shall establish two accounts or funds with the revenues derived from the operation of the Atkins Cemetery. One account shall be known as the Atkins Cemetery Operation and Maintenance Account, which shall be a checking account to be used for paying day-to-day expenses incurred in the operation of the Atkins Cemetery. The second fund or account shall be known as the Atkins Cemetery Perpetual Care Trust Fund hereinafter referred to as the Perpetual Care Fund to be established, used and operated under the following terms and conditions: Not less than fifty % of the gross revenues derived from the operation of the Atkins Cemetery shall be placed in an account or accounts bearing interest or invested in a manner deemed prudent and advisable by the Commissioners. Any monies not deposited in the Perpetual Care Fund shall be deposited in the Operation and Maintenance Account. In no event shall the principal of the Perpetual Care Fund be withdrawn. The income from the Perpetual Care Fund shall be used for the purpose of maintaining and preserving the Atkins Cemetery.

D. In order to accomplish the foregoing purposes the Commissioners shall have the following powers:

To receive and administer funds and properties of all kinds for the above purposes, and to that end to take and hold by bequest, devise, gift, purchase, loan or lease, either absolutely or in trust, for said purposes or any of them, any property, real, personal or mixed, without limitations as to amount of value, except such limitations, if any, as

may be imposed by law or by the provisions of this Ordinance; to sell, convey, and dispose of any such property and to invest and reinvest the principal thereof, and to deal with and expend such principal or the income therefrom for any of the purposes of the Cemetery Commission, either by direct action of the Cemetery Commission or by means of trusts created by it, without limitation, except such limitation, if any, as may be contained in the instrument under which such funds or property are received; to receive any property, real, personal, or mixed, in trust, under the terms of any deed, will, deed of trust, or other trust instrument for the purposes of the Cemetery Commission, and in administering the same, to carry out the directions and exercise the powers contained in the instrument under which the property is received, including the expenditure of the principal as well as the income for one or more of such purposes, if authorized or directed in the instrument under which it is received; to receive, take title to, hold and use the proceeds and income of real estate, personal estate, stocks, bonds, obligations, or other securities of any person or persons, corporation or corporations, domestic or foreign, for the purposes of the Cemetery Commission, and in general to exercise such other powers as the Commissioners may deem requisite to promote the purposes of the Cemetery Commission, and as are permitted by law to Commissions of its class, and to have all other powers with which such Cemetery Commissions are endowed.

To employ such assistants, including professional personnel, as may be reasonable and necessary to discharge their duties in managing, preserving and properly using the fund.

To do all and everything necessary and proper for the accomplishment of the purposes enumerated hereinabove, or any amendment hereto, or necessary and incidental to the protection and benefit of the Atkins Cemetery and in general to carry on any lawful business necessary or incidental to the attainment of the objectives and purposes of the Cemetery Commission.

SECTION 3: Ownership of Lots and Interment.

A. When a lot has once been purchased within the Atkins Cemetery it cannot be taken for debt or sold for secular purposes and the grounds cannot be encroached upon for any purpose other than as provided in this Ordinance or any amendment thereto.

B. A lot in Tracts One and Two shall measure five feet in width and ten feet in length. A lot in Tracts Three and Four shall measure 5 feet in width and 12 feet in length. Heretofore, a lot in Tracts One and Two has consisted of eight grave spaces. Hereafter, each grave space in Tracts One and Two shall be renumbered using the original lot number and a consecutive letter of the alphabet, beginning with the letter "A". For instance, Lot One shall be renumbered to be Lot One-A, Lot One-B, Lot One-C, Lot One-D, Lot One-E, Lot One-F, Lot One-G and Lot One-H. Heretofore, a lot in Tracts Three and Four has consisted of two grave spaces. Hereafter, each grave space in Tracts Three and Four shall be renumbered, using the Section in which the grave spaces are located, the original lot number and a consecutive letter of the alphabet beginning with the letter "A". For instance, Section A, Lot One shall be renumbered to be Section A, Lot One-A, and Section A, Lot One-B. Henceforth, in Tracts One and Two, no less than Two consecutively numbered lots which must have the same numerical beginning may be purchased by any person

or persons, and in Tracts Three and Four no less than Two consecutively numbered lots, which must have the same numerical beginning may be purchased by any person or persons. Ownership of a lot may be obtained by paying the lot price as set by the Cemetery Commission. Ownership of a lot includes the right of interment. The lot can be used for no other purpose and cannot be divided into smaller lots. Should a lot owner die without devising said lot, or without any known kindred, said lot shall revert to the City of Atkins after five years after the death of the lot owner, unless application is made for a change in the ownership as otherwise provided in this Ordinance within the five year period.

C. A deed or certificate of ownership shall be issued to each lot holder on full payment of the purchase price for said lot or lots. The deed or certificate of ownership shall be signed by the Mayor of the City of Atkins and attested to by the City Clerk. Every lot and lot owner shall be subject to the ordinances of the City of Atkins and the rules and regulations of the Cemetery Commission, pertaining to the governing of lot owners, visitors to the cemetery, ownership of lots and burial of the dead.

D. It shall be the duty of the lot owner to notify the Cemetery Commission of any change in the lot owner's address. Any notice sent to a lot owner at the lot owner's last known address on file in the office of the secretary of the Cemetery Commission shall be considered sufficient and proper legal notification. The certificate of ownership or deed and this Ordinance and any amendments thereto shall constitute the sole agreement between the City of Atkins and the lot owner.

E. No easement or right of interment is granted to any lot owner in any road, drive, alley or walk within the cemetery, but such road, drive, alley or walk may be used as a means of access to the cemetery or buildings in the cemetery as long as the City of Atkins devotes it to that purpose.

F. In the event of error involving the interment of the remains of any person in the wrong lot, the Cemetery Commission reserves and shall have the right to remove and reinter the remains in such other lot of equal value in a similar location as may be substituted and conveyed in lieu of the mistaken lot.

G. The owner of any lot may sell such lot if the owner first shall have offered its transfer in writing to the Cemetery Commission at the purchase price then being charged by the Cemetery Commission for similar lots, and the Cemetery Commission shall have refused such offer within thirty days after the offer has been made. Such conveyances shall be signed by the Mayor of the City of Atkins and the City Clerk after the surrender or cancellation of the original certificate of ownership or cemetery deed.

H. The Cemetery Commission may refuse to consent to a sale or the transfer of a lot as long as there is any indebtedness due the Cemetery Commission from the record lot owner.

I. Removal by the heirs of a body or cremated remains so that the lot may be sold for profit, or removal contrary to the expressed or implied wishes of the original lot owner, is absolutely forbidden, without first obtaining a Court order from a Court of record permitting such removal.

J. A plot shall exist when one owner owns more than one individual lot and said lots are adjacent to or bordering each other in succession, unless separated by an alley, walkway or road, in which event the lots so separated shall be considered adjacent to or bordering each other. The total of all said lots shall constitute a plot.

K. The spouse of an owner of any plot which contains more than one interment space has a vested right of interment of his or her remains in the plot, and any person thereafter becoming the spouse of the owner has a vested right of interment of his or her remains in the plot if more than one interment space is unoccupied at the time the person becomes

the spouse of the owner. Provided, however, a final decree of divorce between the spouse and the lot owner terminates the vested right of interment of the spouse unless otherwise provided in the decree.

L. No conveyance or other action of the owner without the written consent or joinder of the spouse of the owner shall divest the spouse of the vested right of interment except that a final decree of divorce between them terminates the vested right of the interment of the spouse unless otherwise provided in the decree.

M. If no interment is made in an interment lot which has been transferred by deed or certificate of ownership to an individual owner or if all remains previously interred are lawfully removed, upon the death of the owner, unless he has disposed of the lot either in his will or by a specific devise or by a written declaration filed and recorded in the office of the Cemetery Commission, the lot descends to the heirs-at-law of the owner subject to the rights of interment of the decedent and surviving spouse. Subject to these rights, the heirs may be interred in the order of their death.

N. As soon as possible after the death of the owner of the lot the Cemetery Commission shall be given the name and address of the new owner together with satisfactory evidence of the new ownership, or if the original owner or subsequent owner died intestate, then an acknowledged statement by someone satisfactory to the Cemetery Commission should be given to the Commission giving the names and addresses of all the lot holders, heirs and next of kin. A new deed or certificate of ownership may then be issued, signed by the Mayor and City Clerk upon the surrender or cancellation of the prior certificate of ownership or cemetery deed to the Cemetery Commission. The provisions of this paragraph are subject to the other provisions of this Ordinance concerning the rights of heirs and spouses rights of interment.

O. A vested right of interment may be waived and is terminated upon the interment elsewhere of the remains of the person in whom vested.

P. Not more than one body or the remains of more than one body shall be interred in one lot.

Q. When the instructions from the lot owner regarding the location of an interment lot in a plot cannot be obtained, or are indefinite, or when for any reason the interment lot cannot be opened or specified, the Commissioners may, in their discretion, open a lot in such location in the plot as they deem best and proper so as not to delay the funeral, and the Cemetery Commission and the City of Atkins shall not be liable for damages for any error so made.

R. The Cemetery Commission and the City of Atkins shall not be held responsible for any order given by telephone or any mistake occurring from the want of precise and proper instructions as to a particular lot in a plot where interment is desired.

S. No disinterment from any lot shall be made except on the express permission of the Cemetery Commission.

T. The Cemetery Commission shall exercise due care in making a disinterment and removal but neither the Cemetery Commission nor the City of Atkins shall assume any liability for damage to a casket or burial case or urn incurred in making a disinterment or removal. All interments, disinterments and removals must be made at the time and in the manner and subject to the payment of such charges as may be fixed from time to time by the Commissioners. No interment, disinterment or removal may be effected without first obtaining a permit from the Cemetery Commission for such purpose. The permit shall indicate the lot owner's name, the name of the person to be interred, disinterred or removed, the lot number and the time and date of the interment, disinterment or removal.

U. The Cemetery Commission shall maintain a map of the cemetery indicating the names of all persons known to be buried in the Atkins Cemetery, and the Commissioners shall maintain a separate list showing the names and addresses of all lot owners.

SECTION 4: Headstones and Other Structures.

A. All markers, headstones and other structures in the Atkins Cemetery shall be put up in a proper and substantial manner under the direction and supervision of the Cemetery Commission.

B. The Cemetery Commissioners have the right to correct any errors made by placing an improper inscription, including an incorrect name or date, on the memorial or on the container for cremated remains.

C. Every person to be interred may designate the type of marker or headstone he or she desires. No marker or headstone may be placed above ground level, provided, however, a family monument may be erected on lots purchased by a lot owner if the monument and the location of the monument are approved by the Cemetery Commission. Any installation of such a monument shall be under the direction and supervision of the Cemetery Commission.

SECTION 5: Care, Maintenance, Improvements and Operations.

A. The owners and proprietors of lots are prohibited from raising or depressing the surface of the same above or below the surrounding ground without first obtaining the consent of the Cemetery Commission.

B. All improvements or alterations of individual lots in the cemetery shall be under the direction of and subject to the written consent and approval of the Cemetery Commission. Should any such improvements or alterations be made without first obtaining the written consent and approval of the Cemetery Commission, the Commissioners shall have the right to remove, alter or change such improvements or alterations at the expense of the lot owner.

C. The Cemetery Commission reserves the right to prevent the removal of any flowers, floral designs, trees, shrubs, plants, or herbage of any kind unless it gives its consent.

D. The Cemetery Commission shall have authority to remove all floral designs, flowers, weeds, trees, shrubs, plants, or herbage of any kind in the cemetery as soon as in the judgment of the Commissioners they become unsightly, dangerous, detrimental or diseased, or when they do not conform to the standards otherwise maintained in the cemetery. Neither the Cemetery Commission nor the City of Atkins shall be liable for floral pieces, baskets or frames in which or to which such floral pieces are attached.

SECTION 6: General Rules and Regulations and Enforcement.

A. No signs, notices or advertisements of any kind shall be allowed in the cemetery unless placed by the Cemetery Commission or the City of Atkins.

B. Motor vehicles and bicycles shall not be driven through the cemetery grounds at a speed greater than fifteen miles per hour, and must always be kept on the right-hand side of the cemetery roadway. Motor vehicles and bicycles shall not come to a full stop in front of an open grave unless the operators of such motor vehicles or bicycles are in attendance at a funeral at the grave site.

C. No bicycles or motorcycles shall be admitted to the Atkins Cemetery except such as may be in attendance at funerals or on business.

D. No firearms shall be permitted within the cemetery except on special permit from the City of Atkins or those worn by duly constituted law enforcement authorities.

E. Boisterous or unseemly conduct will not be permitted in the cemetery or any of the buildings.

F. No person will be permitted to loiter in the cemetery or any of the buildings.

G. The throwing of rubbish on the drives or paths or on any part of the grounds or in the buildings of the cemetery is prohibited.

H. The Cemetery Commissioners shall have charge of the cemetery grounds and buildings, and at all times shall have supervision and control of all persons in the cemetery.

I. The Commissioners and such other employees as the Cemetery Commission shall designate are hereby empowered to enforce this Ordinance and all amendments thereto or other laws pertaining to the operation and maintenance of the Atkins Cemetery through lawful means and to exclude from the Atkins Cemetery any person violating the same.

J. Any violation of Section 6 of this Ordinance shall constitute a misdemeanor and shall be punishable by a fine not to exceed $1,000.00 or imprisonment in the county jail for a period of time not to exceed one year, or both.

SECTION 7: All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 8: Emergency. This Ordinance being necessary for the public peace, health, welfare and safety, an emergency is hereby declared to exist and this Ordinance shall be in effect from and after its passage this 8th day of February, 1983.

Dallas L. Swain
DALLAS L. SWAIN, MAYOR

ATTEST:

Syble Marple
SYBLE MARPLE, CITY CLERK