

Authority: Item 9, Public Works Committee
Report 12-008 (PW12052)
CM: June 27, 2012

Bill No. 151

CITY OF HAMILTON

BY-LAW NO. 12-151

**A BY-LAW RESPECTING THE CITY OF HAMILTON'S CEMETERIES
and REPEALING By-law 81-91 Town of Ancaster; By-law 4459-98 Town of Dundas;
By-law 91-16-C Town of Flamborough; By-law 500-94 Township of Glanbrook;
By-law 95-125 City of Hamilton; By-law 4402-96 City of Stoney Creek**

WHEREAS the City of Hamilton owns cemeteries as identified in Part 2 for the benefit of its residents;

AND WHEREAS the *Funeral, Burial and Cremation Services Act, 2002* and its regulations imparts responsibility to the owners of cemeteries for their management, operation and care;

AND WHEREAS section 150(1) of Ontario Regulation 30/11 under the *Funeral, Burial and Cremation Services Act, 2002* provides that the owners of cemeteries may make by-laws affecting the operation of the cemeteries;

AND WHEREAS sections 8, 9 and 10 of the *Municipal Act, 2001*, authorize the City of Hamilton to pass by-laws necessary and desirable for municipal purposes, and in particular paragraphs 5 through 7 of subsection 10(2) authorize by-laws respecting: the economic, social and environmental well-being of the municipality; the health, safety and well-being of persons; and the provision of any service or thing that it considers necessary or desirable for the public.

AND WHEREAS section 425 of the *Municipal Act, 2001*, authorizes the City of Hamilton pass by-laws providing that a person who contravenes a by-law of the City of Hamilton passed under that Act is guilty of an offence;

AND WHEREAS the *Municipal Act, 2001*, further authorizes the City of Hamilton amongst other things, to delegate its authority;

AND WHEREAS the *City of Hamilton Act, 1999*, did incorporate, as of January 1st, 2001, the municipality "City of Hamilton";

AND WHEREAS the City of Hamilton is successor to the following former area municipalities: The Corporation of the Town of Ancaster, The Corporation of the Town of Dundas, The Corporation of the Town of Flamborough, The Corporation of the Township of Glanbrook, The Corporation of the City of Hamilton and The Corporation of the City of Stoney Creek; and the successor to the former Regional Municipality of Hamilton Wentworth;

AND WHEREAS the *City of Hamilton Act, 1999*, provides that the by-laws of the former area municipalities and the former Regional Municipality of Hamilton Wentworth continue in force in the City of Hamilton until subsequently amended or repealed by the Council of the City of Hamilton;

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

A BY-LAW RESPECTING THE CITY OF HAMILTON'S CEMETERIES
 and REPEALING By-law 81-91 Town of Ancaster; By-law 4459-98 Town of Dundas; By-law 91-16-C
 Town of Flamborough; By-law 500-94 Township of Glanbrook; By-law 95-125 City of Hamilton; By-law
 4402-96 City of Stoney Creek

Part 1 - Preamble

The Council of the City of Hamilton passes and enacts this By-law for the operation of cemeteries owned by the City of Hamilton to keep them attractive and respectful places for the interment of the deceased.

Part 2 - List of Cemeteries Owned and Operated by Hamilton Municipal Cemeteries

	Name	Location
Ancaster:		
	Bethel Cemetery	Lot 1, Concession 1, Ancaster
	Book/Parkin Cemetery	Lot 46, Concession 4, Ancaster
	Bowman United Church	Lot 50/51, Concession 4, Ancaster
	Copetown Cemetery	Lot 32, North of Concession 1, Ancaster
	Dyment Cemetery	Lot 23, Concession 1, Ancaster
	File/Patterson Cemetery	Lot 20, Concession 4, Ancaster
	Garners Corners	Lot 47, Concession 3, Ancaster
	Jerseyville Cemetery	Lot 19, Concession 2, Ancaster
	Lynden Cemetery	Lot 13, Concession 1, Ancaster
	Myers/Bradshaw	Lot 24, Concession 5, Ancaster
Dundas:		
	Binkley Hollow Cemetery	Desjardins Avenue, Dundas
	Grove Cemetery	129 ½ York Road, Dundas
	Harkur Lyon's Cemetery	Forestview Drive, Dundas
	Hopkins Cemetery	York Rd. near Old Guelph Rd., Dundas
	Union Cemetery	Osler Drive, Dundas
Flamborough:		
	Carlisle Anglican Church Cem.	Carlisle Rd., S/S 9 th Concession W/of Beaumont
	Flamborough (Rockton) Cem.	Old Highway 8, Rockton Village, Beverly Twnshp
	Garden Lane Cemetery	181-7 th Conc., west of Garden Lane, E. Flam
	Lamb Cemetery	W/S Hwy 8, bet. Cooper/Seaton, W. Flamborough
	Mount Zion Cemetery	Hwy 52 & 2 nd Concession, Copetown
	Nisbet-Van Sickle Cemetery	W/S Lynden Rd., between Hwy 99 & 2 nd Conc
	Sheffield Cemetery	E/S Seaton Road, West Flamborough
	St. Albans Cemetery	#27 Rockton Road – No 8 Highway, Beverly
	Troy Cemetery	N/S Hwy 5, west of Lynden Road, W. Flam
	Union Cemetery	Margaret Street from Highway 5, Waterdown
	W. Flamborough Presbyterian	Hwy 8/Middletown Rd., Christie's Corner, W. Flam
	West Flamborough Cemetery	Bullock's Corners, Hwy 8, West Flamborough
	Westover United Church Cem.	S/S 6 th Concession, west of Westover W. Flam
Glanbrook:		
	Auld Kirk Cemetery	Kirk Road, Binbrook
	Binbrook Baptist Cemetery	Binbrook Road, Binbrook
	Binbrook United Cemetery	Highway 56, Binbrook
	Blackheath United Cemetery	Haldibrook Road, Binbrook
	Christ Church Woodburn Cem.	Woodburn Road
	Glanbrook Cemetery	Binbrook Road between Fletcher & Trinity Church
	Knox Presbyterian Cemetery	Binbrook Road, Binbrook

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 4402-96 City of Stoney Creek

	North Glanford Cemetery	Dickenson Road
	Salem Cemetery	Salem Road, Glanford
	St. Paul's Anglican Cemetery	2869 Highway 6 South
	Swayze Cemetery	Highway #56 North of #380 Highway #56
	White Church Cemetery	White Church Road, Glanford

Part 2 - List of Cemeteries Owned and Operated by Hamilton Municipal Cemeteries

	Name	Location
Hamilton:		
	Bartonstone Cemetery	Stone Church Rd & Upper James Streets
	Bartonville Cemetery	1955 King St., East at Bell Avenue
	Binkley Cemetery	End of Lakelet Dr, off Binkley Crescent
	Burkholder United Church	441 Mohawk Road East
	Eastlawn Cemetery	Corner of Barton & Nash
	Hamilton Cemetery	777 York Boulevard
	Mt. Hamilton Cemetery	Highway 53 at Upper Wellington
	Ryckman Family Cemetery	E/S of Upper James at rear of #1517
	Smith Cemetery	Kennedy Road off Upper James
	St. George's Cemetery	Rymal Road East bet. Nebo & Dartnall
	St. Peter's Cemetery	534 Mohawk Road West
	Stoney Creek Cemetery	King Street at Highway 20
	Trinity Church Cemetery	Highway 53 at Trinity Church Road
	Woodland Cemetery	700 Spring Garden Road, Burlington
	Young Family Cemetery	Upper Wellington at Stone Church
Stoney Creek:		
	Cline Cemetery	73 Highway #20 – Stoney Creek
	Felker Cemetery	120 Mud Street East at First Road West
	Fruitland Cemetery	631 Highway #8 at Fruitland
	Hannon Free Methodist Cem.	1957 Highway 53 at Fletcher, Hannon
	Mountview Gardens	735 Highway #8, west of Jones Road, St. Creek
	Mt. Albion Cemetery	225 Upper Mt. Albion Road, Stoney Creek
	Smith's Knoll (Battlefield)	
	St. George's Anglican	651 Mud St., East at 6 th Road East
	Tapleystown Cemetery	385 Mud St., East – West of Tapleystown Road
	Tweedside Cemetery	1145 Mud Street – West of Eleventh Road
	Van Dusen Cemetery	216 Upper Mt. Albion Road
	Winona (Fifty)	1465 Highway #8 – East of Fifty Road

And any other cemetery which may become the responsibility of the City of Hamilton.

Part 3 - Definitions

3.1 In this By-law:

“**Business Day**” means 8:30 a.m. to 4:30 p.m. on any day on which the Administrative Office of Hamilton Municipal Cemeteries is open for business;

"Care and Maintenance Trust Fund" means the trust fund in which all monies received by the City of Hamilton for the care and maintenance of lots, monuments, markers and mausolea have been invested;

"Funeral, Burial and Cremation Services Act, 2002" means the *Funeral, Burial and Cremation Services Act, 2002* and its regulations and, if applicable, any predecessor or successor Act and its regulations, all as amended;

"cemetery" means land set aside to be used either for the interment of human remains or for the scattering of cremated human remains (in designated sections, only) and includes a mausoleum, columbarium or any other structure or building intended for the interment of human remains that is situated on the land;

"Certificate of Interment Rights" means the certificate issued by the City of Hamilton to the purchaser of interment rights to a lot, once payment has been made in full;

"columbarium" means a structure designed for the purpose of interring cremated human remains in niches or compartments;

"Council" means the Council of the City of Hamilton;

"Director" means the Senior Director of Operations and Waste Management of the Public Works Department of the City of Hamilton or his or her designate or successor;

"Filming Event" means filming, videotaping, photography or any other form of visual recording for a feature film, television film, television program, documentary, commercial, music video, educational film or other purpose outside a studio or film laboratory, but does not include street interviews, newscasts, press conferences or visual recordings for personal purposes only;

"Grave" means a lot in the ground which has a minimum size of:

"Adult Grave" (more than 15 years of age):	91cm x 274cm (36 inches x 96 inches)
"Child Grave)" (from 1 to 15 years of age):	30cm x 121cm (12 inches x 48 inches)
"Infant Grave" (less than 1 year of age):	30cm x 91cm (12 inches x 36 inches)
"Cremation Grave:	36cm x 71cm (14 inches x 28 inches);

"Hamilton Municipal Cemeteries" means the Hamilton Municipal Cemeteries Section of the Operations and Waste Management Division of the Public Works Department of the City of Hamilton that has responsibility for the administration, operation and maintenance of cemeteries;

"human remains" means a dead human body or the remains of a cremated human body;

"inter" means the burial of human remains and includes the placing of human remains in a grave, lot, columbarium niche or mausoleum crypt;

"Interment Rights" means the right to require or direct the interment of human remains or cremated human remains in a grave, lot, niche or crypt and to direct the associated memorialization subject to the conditions set out in the cemetery by-law;

"Interment Rights/Scattering Rights Contract" means the contract entered into by a purchaser of Interment Rights, Scattering Rights, cemetery products or other cemetery services, as required under the Funeral, Burial and Cremation Services Act, 2002.

"Interment Rights Holder" means the person who holds the interment rights with respect to a lot, whether the person be the purchaser of the rights, the person named in the Certificate of Interment Rights or such other person to whom the Interment Rights have been assigned;

"lot" means an area of land in a cemetery containing, or set aside to contain, human remains and includes a tomb, crypt or compartment in a mausoleum and a niche or compartment in a columbarium or any other similar facility or receptacle;

"marker" means any permanent tombstone, plaque, headstone, cornerstone or ornament that is set flush with the surface of the ground and is used to mark the location of a grave;

"mausoleum" means a structure or building, other than a columbarium, used as place for the interment of human remains in sealed crypts or compartments;

"monument" means any permanent tombstone, plaque, headstone, cornerstone or ornament that projects from the surface of the ground and is used to mark the location of a lot or plot;

"Officer" means a Municipal Law Enforcement Officer appointed under any City by-law or any other person assigned or appointed by the Director to administer or enforce this By-law and includes a person employed by the City whose duties are to enforce this By-law and a Police Officer;

"plot" means 2 or more lots in which the rights to inter have been sold as a unit;

"Pre-Need Purchase" means the purchase of services for a person who is alive;

"Registrar" means the Registrar appointed under the Funeral, Burial and Cremation Services Act, 2002;

"scattering ground" means land within a cemetery set aside for the scattering of cremated human remains;

"Scattering Rights" means the right to require or direct the scattering of cremated human remains;

"Scattering Rights Holder" means the person who holds the scattering rights with respect to a scattering ground, whether the person be the purchaser of the Rights, the person named in the Certificate of Scattering Rights or such other person to whom the Interment Rights have been assigned; and

“**Tariff of Charges**” means the price list for interment rights, cemetery supplies and services set in accordance with the Funeral, Burial and Cremation Services Act, 2002 and passed by Council.

Part 4 - INTERPRETATION AND ADMINISTRATION

4.1 Plural

In this By-law a word defined in the singular number has a corresponding meaning when used in the plural and *vice versa*.

4.2 Table of Contents, etc.

The Table of Contents, headings and subheadings used in this By-law shall not form a part of it, but shall be deemed to be inserted for convenience of reference only.

4.3 Schedules

The Schedules attached to this By-law form a part of it.

4.4 Application

The provisions of this By-law apply to cemeteries owned by the City of Hamilton.

4.5 Director Responsibility

The Director is responsible for the management, operation and maintenance of cemeteries owned by the City of Hamilton and is authorized to administer and enforce this By-law with delegated authority granted by Council to execute the provisions of the By-law, including the imposition of conditions as necessary to ensure compliance with this By-law.

4.6 Director Delegation

The Director may assign duties or delegate tasks under this By-law whether in his or her absence or otherwise.

4.7 Director Discretion

The Director may enlarge, reduce, replot, change the boundaries of, or grade a cemetery upon approval of the Registrar as required under the Funeral, Burial and Cremation Services Act, 2002.

4.8 Notices

All notices required by this By-law, or by the Funeral, Burial and Cremation Services Act, 2002 to be given to:

- (a) an Interment Rights Holder or Scattering Rights Holder may be given personally, or by regular mail to the last known address of the Interment Rights Holder, Scattering Rights Holder or their heir or representative;
- (b) the Director or Hamilton Municipal Cemeteries may be given by registered mail, by fax or in person during a business day at the Administrative Office of Hamilton Municipal Cemeteries.

4.9 Director Permission

Where approval of any type from the Director is required under this By-law, such permission may be refused or withdrawn by the Director at any time in his or her sole discretion.

Part 5 - INTERMENT RIGHTS and SCATTERING RIGHTS

Sale and Purchase

5.1 Sale

No person shall sell Interment Rights or Scattering Rights except a person authorized by the Director.

5.2 Single-in-a-Row Grave

The purchaser of a single-in-a-row grave, as set out in the Tariff of Charges, may not:

- (a) choose the location of the grave; or
- (b) be a Pre-Need purchaser.

5.3 Preferred Single Grave

The purchaser of a preferred single grave, as set out in the Tariff of Charges, may:

- (a) choose the location of the grave;
- (b) be a Pre-Need purchaser; and
- (c) pay in installments, as determined by the Director in accordance with the Funeral, Burial and Cremation Services Act, 2002 and the Tariff of Charges.

5.4 Interment Rights/Scattering Rights Contract

At the time Interment Rights or Scattering Rights are purchased and paid in full, the Director or his or her designate shall provide the Interment Rights Holder with a copy of the Interment Rights/Scattering Rights Contract signed by the Director and the Interment Rights or Scattering Rights Holder and a copy of the Hamilton Municipal Cemeteries By-law.

5.5 Interment Rights Certificate and Scattering Rights Certificate

At the time Interment Rights or Scattering Rights are paid for in full, the Director shall provide the Interment Rights Holder with a Certificate of Interment Rights or Certificate of Scattering Rights or a Prepayment Certificate.

5.6 Change of Address

An Interment Rights Holder or Scattering Rights Holder shall inform Hamilton Municipal Cemeteries forthwith of any changes to the information contained in their Interment Rights/Scattering Rights Contract, including changes to their address or telephone number.

Transfer

5.7 Transfer to Others

An Interment Rights Holder or Scattering Rights Holder may transfer their Interment Rights or Scattering Rights by:

- (a) giving written notice to Hamilton Municipal Cemeteries of the name and address of the transferee and the date of the transfer; and
- (b) paying the transfer fee as set out in the Tariff of Charges.

5.8 Transfer by Heirs

An heir or representative of a deceased Interment Rights Holder may transfer the deceased Interment Rights Holder's Interment Rights or deceased Scattering Right Holder's Scattering Rights by:

- (a) giving proof in writing satisfactory to the Director that they have the right to transfer the Interment Rights or Scattering Rights.
- (b) giving notice to Hamilton Municipal Cemeteries of the name and address of the transferee and the date of the transfer; and
- (c) paying the transfer fee as set out in the Tariff of Charges.

Third-Party Resale

5.9 Re-Sale of Rights – Third Party:

An Interment Rights Holder or a Scattering Rights Holder may re-sell their Interment Rights or Scattering Rights to a third party before the Interment Rights or Scattering Rights are exercised for no more than the current price listed on the Tariff of Charges.

5.10 Re-sale of Rights Requirements:

Interment Rights or Scattering Rights are transferred to a third party only when:

- (a) all of the following, if applicable, have been provided to the satisfaction of the Director:
 - (i) written confirmation from the Interment Rights Holder or the Scattering Rights Holder of their intent to sell the Interment Rights or the Scattering Rights to a named purchaser.
 - (ii) written proof that the person intending to sell Interment Rights or Scattering Rights is the Interment Rights Holder or the Scattering Rights Holder;
 - (iii) the original Interment Rights Certificate or Scattering Rights Certificate endorsed by the current Interment Rights Holder or Scattering Rights Holder
 - (iv) payment of the administration fee as set out in the Tariff of Charges;
 - (v) any other documentation in the Interment Rights Holder's or the Scattering Rights Holder's possession relating to the Interment Rights or Scattering Rights.
- (b) a new Interment Rights Certificate or Scattering Rights Certificate has been issued to the named purchaser.

Cancellation of Interment Rights or Scattering Rights:

5.11 Cancellation of Interment Rights within 30-Days:

An Interment Rights/Scattering Rights Contract may be cancelled within 30 days of signing if the purchaser provides written notice of the cancellation to the Director. A refund of all monies paid by the purchaser will be made in accordance with the Funeral, Burial and Cremation Services Act, 2002. If any portion of the Interment Rights or Scattering Rights have been exercised, the purchaser or the Interment Rights Holder or Scattering Rights Holder is not entitled to cancel the Interment Rights/Scattering Rights Contract or re-sell the Interment Rights or Scattering Rights.

5.12 Cancellation of Interment Rights After 30-Days:

An Interment Rights or Scattering Rights contract may be cancelled after 30 days of signing if the purchaser provides written notice of the cancellation to the Director. A refund will be issued to the purchaser for the amount paid for the Interment Rights or Scattering Rights less the appropriate amount required to be deposited into the Care and Maintenance Trust Fund. If an Interment Rights Certificate or Scattering Rights Certificate has been issued to the Interment Rights Holder or Scattering Rights Holder, the certificate must be returned to the Director together with the written notice of cancellation. If any portion of the Interment Rights or Scattering Rights have been exercised, the purchaser or the Interment Rights Holder or the Scattering Rights Holder is not entitled to cancel the Interment Rights/Scattering Rights Contract or re-sell the Interment Rights or Scattering Rights.

5.13 Rights Abandoned:

The City of Hamilton may apply for a declaration that Interment Rights are abandoned and then resell the Interment Rights in accordance with the Funeral, Burial and Cremation Services Act, 2002.

Corrections

5.14 Corrections:

The Director may correct any error made in the sale, purchase, transfer, repurchase or resale of Interment Rights or Scattering Rights and in correcting such error he or she may substitute a lot of equal value and similar location or cancel the transaction and refund all payments. The Director shall give notice to the Interment Rights Holder or Scattering Rights Holder of both the error and the correction to the error, provided that no notice shall be required to be given in regard to a typographical error, error of calculation or similar error.

Part 6- INTERMENTS AND DISINTERMENTS

General

6.1 Director Approval

The Director:

- (a) may decide that an interment or disinterment:
 - (i) may take place despite any other provision of this By-law provided that any other applicable statute, regulation or by-law is complied with;
 - (ii) shall not take place due to weather or ground conditions; and
- (b) shall be in attendance at each interment or disinterment.

6.2 Opening a Lot

No person shall prepare a lot for interment or disinterment except a person authorized by the Director.

6.3 Damage to Containers

Containers holding human remains may be damaged during interment or disinterment and the City of Hamilton shall not be responsible for repairing or replacing such containers or paying any compensation.

Interments

6.4 Notice in Advance

An Interment Rights Holder or Scattering Rights Holder, their heir or representative, or a Funeral Director shall, at least 1 business day in advance of an interment, give notice to Hamilton Municipal Cemeteries:

- (a) authorizing any interment in the Interment Rights Holder's lot or, for a Scattering Rights Holder, in a scattering ground; and,
- (b) requesting that the lot be prepared for the interment; and
- (c) giving the particulars as to the location, depth, width and length of the container holding the human remains to be interred.

6.5 Notice not Provided in Advance

Where an Interment Rights Holder or Scattering Rights Holder, their heir or representative, or a Funeral Director gives notice under section 6.4 less than 1 business day in advance, a lot may be prepared for the interment at the discretion of the Director.

6.6 Notice of Arrangements by Telephone:

An Interment Rights Holder or Scattering Rights Holder, their heir or representative, or a Funeral Director may make required interment arrangements with the Hamilton Municipal Cemetery Administrative Office via telephone (but not Voice Mail); or fax during regular business hours provided that adequate notice is given under section 6.4.

6.7 Authorization

Notice under section 6.4 or section 6.5 shall be given by all of the Interment Rights Holders for a lot or Scattering Rights Holder for a scattering ground and, if one or more of the Interment Rights Holder or Scattering Rights Holder are dead, notice shall instead be given by their heir or representative. In the alternative, notice under section 6.4 or section 6.5 may be given by a Funeral Director.

6.8 Human Remains

Only human remains shall be interred in a lot.

6.9 No Interment

No interment shall take place except where:

- (a) a burial permit or Certificate of Cremation under the *Vital Statistics Act* has been issued;
- (b) all applicable fees under the Tariff of Charges have been paid; and
- (c) an Interment Rights/Scattering Rights Contract has been signed.

6.10 Limits – Cremation Grave

No more than 2 interments of cremated human remains shall take place in any 1 cremation grave purchased on or after the date this By-law is in force.

6.11 Limits – Preferred Single Grave

No more than 2 interments of human remains that are not cremated and 2 interments of cremated human remains (for a maximum of 4 persons) shall take place in any 1 preferred single grave purchased on or after the date this By-law is in force.

6.12 Limits – Single-in-a-Row Grave

No more than 2 interments of human remains that are not cremated and 2 interments of cremated human remains (for a maximum of 4 persons) shall take place in any 1 preferred single grave purchased on or after the date this By-law is in force.

6.13 Limits – Columbarium Niche or Compartment

No more than 2 interments of cremated human remains shall take place in any 1 niche or compartment in a columbarium purchased on or after the date this By-law is in force.

6.14 Limits – Mausoleum Crypt

No more than 1 interment of human remains that are not cremated shall take place in any 1 crypt in a mausoleum purchased on or after the date this By-law is in force.

6.15 By-law Repeal

Notwithstanding the repeal of a by-law under Section 12.1, the by-law shall continue to apply in respect of the number of interments in any lot purchased before the date this By-law is in force.

6.16 Container Requirement

Human remains to be interred in a lot shall be in a container:

- (a) that is securely sealed;
- (b) of sufficient strength to remain intact during interment; and
- (c) of a size to permit interment within the lot.

6.17 Hours for Interments

Interments may take place between the hours of 9:00 a.m. and 3:30 p.m. from Monday to Friday and between the hours of 8:30 a.m. and 11:30 a.m. on Saturdays of three-day weekends provided that an interment may take place on any day and at any time:

- (a) with the advance permission of the Director and for the applicable fee;
- (b) set out in a certificate issued by the Ministry of Health or an order issued by the Coroner's Office.

6.18 Scattering

No person shall scatter cremated human remains in a cemetery, provided that if scattering grounds have been set aside, cremated human remains may be scattered in such scattering grounds with the advance notice; and,

- (a) a Certificate of Cremation under the *Vital Statistics Act* has been issued;
- (b) all applicable fees under the Tariff of Charges have been paid; and,
- (c) a Scattering Rights Contract has been signed.

Disinterments

6.19 Disinterment

No disinterment shall take place except where:

- (a) a certificate issued by the Medical Officer of Health and the Director, confirming the Funeral, Burial and Cremation Services Act, 2002 has been complied with, is affixed to the container holding the disinterred human remains;
- (b) all applicable fees under the Tariff of Charges have been paid; and

- (c) the disinterred human remains are placed in a concrete crypt or vault after disinterment and before reinterment.

6.20 Corrections

The Director may correct any error made in an interment. The Director shall give notice to the Interment Rights Holder or Scattering Rights Holder of both the error and the correction to the error once the error has been corrected, provided that no notice shall be required to be given in regard to a typographical error, error of calculation or similar error. In the event an error may involve the disinterment of human remains, the Direction shall first obtain the approval of any regulatory authority and the Interment Rights Holder or Scattering Rights Holder.

Part 7 - MONUMENTS, MARKERS AND MAUSOLEA

7.1 Schedule A

All monuments, markers and mausolea, where installed, altered, repaired or removed by a person other than an employee or contractor of Hamilton Municipal Cemeteries, shall be installed, altered, repaired or removed in accordance with Schedule A.

7.2 Prohibition

No person shall install or continue to install, alter, repair or remove a monument, marker or mausoleum while an interment or disinterment is taking place in the vicinity until the conclusion of the interment or disinterment.

Part 8 - CARE OF LOTS

8.1 Schedule B

All lots, where cared for by a person other than an employee or contractor of Hamilton Municipal Cemeteries, shall be cared for in accordance with Schedule B.

Part 9 - RULES

Entry

9.1 Cemetery Hours

No person:

- (a) shall enter or exit a cemetery except through established gates and roadways;
- (b) shall enter or remain in a cemetery before sunrise or after sundown except:
 - (i) for employees or contractors of Hamilton Municipal Cemeteries and emergency personnel including, but not limited to, police and firefighters;
or
 - (ii) with the advance permission of the Director;
- (c) responsible for the care of a child under the age of 12 years, shall permit such child to enter or remain in a cemetery unless they are accompanied and supervised by an adult; or
- (d) shall permit an animal to enter or remain in a cemetery except an animal that is leashed and under the control of a person in accordance with any applicable animal control by-law or legislation.

General Conduct

9.2 Rules for Visitors

While in a cemetery, no person shall:

Injury or Damage

- (a) engage in activity that may cause injury to any person or damage to any property including any vegetation, monument, marker, mausoleum, columbarium or other structure or building;

Climbing

- (b) climb any vegetation, monument, marker, mausoleum, columbarium or other structure;

Sports

- (c) play any game or sport including, but not limited to, skateboarding, roller-blading or tobogganing;

Firearms

- (d) discharge any firearm, except with the advance, written permission of the Director for a funeral or to control wildlife;

Disturbance

- (e) disturb any person attending an interment;

Nuisance

- (f) commit a nuisance or create a disturbance;

Rubbish

- (g) throw or deposit or cause to be deposited any rubbish, refuse, waste or litter, except in receptacles provided for the purpose;

Food and Drink

- (h) consume any food or drink, except food or drink consumed as part of a religious or cultural interment rite; or

Alcohol

- (i) have or consume an alcoholic beverage.

Commercial Activity

9.3 Rules for Commercial Activities

While in a cemetery, no person shall

Filming

- (a) undertake or permit the undertaking of a filming event without a valid film permit issued for the filming event under the Hamilton Film Permit By-law;

Solicitation

- (b) solicit work of any kind; or

Gratuities

- (c) give a gratuity to any employee or contractor of Hamilton Municipal Cemeteries.

Vehicles

9.4 Vehicular Activity

While in a cemetery, no person shall:

Recreational Vehicles

- (a) drive, stop or park a motorized snow vehicle or off-road vehicle;

Speed Limit

- (b) drive a vehicle at a speed of more than 10 kilometres per hour or a speed as otherwise posted;

Grass or Flower Beds

- (c) drive, stop or park a vehicle on the grass or a flower bed except with the advance, written permission of the Director; or

Heavy Loads

- (d) drive, stop or park a heavy load in a cemetery except with the advance, written permission of the Director.

Part 10 - ENFORCEMENT

10.1 Enforcement

The By-law may be enforced by an Officer.

10.2 Authority

Cemetery staff authorized by the Director and Officers have authority to direct any person who does not comply with this By-law to leave a cemetery.

10.3 Offence

Every person who contravenes any provision of this By-law is, upon conviction, guilty of an offence and is liable to a fine of not more than:

- (a) \$5,000 for a first offence;
(b) \$25,000 for a second offence; or
(c) \$100,000 for a third or subsequent offence.

10.4 Penalty

Where a person has been convicted of an offence, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may, in addition to any other remedy or penalty provided for by law, make an order prohibiting the continuation or repetition of the offence by the person convicted.

PART 11 - GENERAL PROVISIONS

11.1 By-law Name

This By-law may be referred to as the Hamilton Municipal Cemeteries By-law.

A BY-LAW RESPECTING THE CITY OF HAMILTON'S CEMETERIES
and REPEALING By-law 81-91 Town of Ancaster; By-law 4459-98 Town of Dundas; By-law 91-16-C
Town of Flamborough; By-law 500-94 Township of Glanbrook; By-law 95-125 City of Hamilton; By-law
4402-96 City of Stoney Creek

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11.2 Validity of By-law

If a court of competent jurisdiction declares any subsection, section or part of this By-law
invalid, it is the intention of Council that the remainder of the By-law shall continue to be
in force.

PART 12 - REPEALS & ENACTMENTS

12.1 By-laws Repealed

The following by-laws, all as amended, are repealed.

- (i) By-law 81-91 – Town of Ancaster
- (ii) By-law 4459-98 – Town of Dundas
- (iii) By-law 91-16-C – Town of Flamborough
- (iv) By-law 500-94 – Township of Glanbrook
- (v) By-law 95-125 – City of Hamilton
- (vi) By-law 4402-96 – City of Stoney Creek


12.2 By-law in Force

This By-law shall come into force on the day the Registrar approves it.

PASSED this 27th day of June, 2012.



R. Bratina
Mayor



R. Caterini
City Clerk

SCHEDULE A

MONUMENTS, MARKERS AND MAUSOLEA
DELIVERY, INSTALLATION, ALTERATION, REPAIR AND REMOVAL

General

1.1 Authorization

The installation of a monument, marker or mausoleum shall be arranged by the Interment Rights Holder or Scattering Rights Holder or their heir or representative with Hamilton Municipal Cemeteries.

1.2 Contracts and Fees

Before a monument, marker or mausoleum is installed, all contracts shall be signed and all fees, including fees for the installation of a foundation, paid as required under this By-law and the Tariff of Charges.

1.3 Foundation/Marker Permit

A monument, marker or mausoleum shall be delivered to the cemetery with a Foundation/Marker Permit that includes:

- (a) the name and address of the Interment Rights Holder or Scattering Rights Holder or their heir or representative;
- (b) instructions for the placement of the monument, marker or mausoleum;
- (c) for a monument:
 - (i) the height, width and length of the die;
 - (ii) the height, width and length of the base;
 - (iii) the overall size; and
 - (iv) the design and inscription;
- (d) for a marker, the width and length;
- (e) for a mausoleum, a work plan including the building specifications approved in advance by the Director; and
- (f) the fee as required under the Tariff of Charges.

1.4 Composition

A monument, marker or mausoleum:

- (a) shall be constructed of granite or other industry standard material that is free from defects affecting durability, provided that where bronze is used:
 - (i) it shall be used only for the fixtures such as doors, window grilles or statuary of mausoleums or for tablets attached to markers;
 - (ii) it shall meet industry standards for bronze; and
 - (iii) its casting shall be true and without any sand-like roughness; and
- (b) shall not be constructed of veneered marble, wood, iron or artificial stone.

1.5 Inscriptions

Any inscription on a monument, marker or mausoleum:

- (a) shall be in keeping with the dignity and decorum of the cemetery. If, in the opinion of the Director, an inscription is not in keeping with the dignity and decorum of the cemetery, he or she may have such inscription removed at the cost of the Interment Rights Holder or Scattering Rights Holder or their heir or representative;

- (b) where monuments are located back-to-back, shall not be on the back of a monument; and
- (c) where monuments are not located back-to-back, may be on the back of a monument with the advance, written permission of the Director. In giving or refusing his or her permission, the Director may consider, amongst other things, the number, size, location and character of existing monuments, markers or mausoleums on the lot and adjoining lots.

1.6 Time of Installation

All foundations for monuments and mausoleums shall be installed by the employees or contractors of Hamilton Municipal Cemeteries from April 1 to November 15 of each year and shall not be installed by any other person

1.7 Alteration

A monument, marker or mausoleum shall not be altered or removed without the advance, written permission of the Director.

1.8 Surface Protection

A monument, marker or mausoleum shall not be installed, altered or removed unless plywood is laid over the ground to protect the surface from damage.

1.9 Safety

If, in the opinion of the Director, any monument, marker or mausoleum is or could become hazardous to any person in a cemetery, such monument, marker or mausoleum may be repaired, reset or laid down by the employees or contractors of Hamilton Municipal Cemeteries.

1.10 Risk

Any person other than an employee or contractor of Hamilton Municipal Cemeteries installing, altering or removing a monument, marker or mausoleum does so entirely at their own risk, including assuming the risk for any loss of or damage to a monument, marker or mausoleum or any injury to themselves occurring during or after installation or repair.

Monuments

1.11 Monument Delivery

A monument shall not be delivered to a cemetery for installation unless the foundation has been completed.

1.12 Monument Installation

In addition to meeting the applicable requirements of Part 1 of this Schedule:

Monument Placement

- (a) for a single-grave lot in locations designated by the Director or for a two-grave plot, no more than 1 monument shall be placed at the head of a lot or plot;

Thickness

- (b) for a monument of a height of 123 centimetres (48 inches) or less, the die shall be no less than 20.50 centimetres (8 inches) thick;

- (c) for a monument of a height more than 123 centimetres (48 inches), the die shall be no less than 25.40 centimetres (10 inches) thick;

Dowels

- (d) a monument shall have dowels made of a non-corrosive material (preferably 300 series stainless steel or bronze) of no less than 1.27 centimetres (1/2 inch) in diameter, 7.63 centimetres (3 inches) in length inserted in a hole no more than .32 centimetres (1/8 inch) larger than the dowel;

Bases

- (e) a monument shall have a base of at least 20.32 centimetres (8 inches) in height, that is wider and longer than the die providing a border of at least 7.6 centimetres (3 inches) on all sides, shall be smooth sawn on the bottom, and shall be no more than 7.6 centimetres (3 inches) from the side lot lines of the grave;

Height

- (f) for a two-grave plot, a monument shall have a height of no more than 122.98 centimetres (48 inches) including the base; a base of no more than 96.52 by 35.56 centimetres (38 by 14 inches);

Horizontal Force

- (g) a monument shall be able to withstand a minimum of 45.36 kilograms (100 pounds) of horizontal force without toppling before caulking;

Vertical Joints

- (h) a monument shall have no exposed vertical joints; and

Overall Restriction

- (i) notwithstanding any other provision of this By-law, a monument shall cover no more than 10 percent of a lot.

Markers

1.13 Time of Installation

Markers shall be delivered to cemeteries for installation between April 1 and November 1 of each year.

1.14 Marker Installation

In addition to meeting the applicable requirements of Part I of this Schedule:

Marker Sizes

- (a) for a lot with no monument, no more than 1 marker shall be placed at the head of a lot and:

Adult Grave

- (i) for an adult grave, a marker shall have a surface area of no more than 60.96 by 45.72 centimetres (24 by 18 inches) or 10 percent of the lot, whichever is less;

Cremation Grave

- (ii) for a cremation grave, a marker shall have a surface area no more than 30.48 by 24.40 centimetres (12 by 10 inches); and

Child or Infant Grave

- (iii) for a child or infant grave, a marker shall have a surface area of no more than 30.48 by 24.40 centimetres (12 by 10 inches) to 45.72 by 35.56 centimetres (18 by 14 inches) depending on the size of the grave;

Marker Sizes for Plots

- (b) for 2, 3 or 4 grave plots, no more than 1 marker shall be placed at the foot of each grave and the marker shall have a surface area of no more than 60.96 by 45.72 centimetres (24 by 18 inches);

Cornerstones for Plots

- (c) for 2, 3 or 4 grave plots, no more than 4 cornerstones shall be placed on a plot and each cornerstone shall have a surface area of no more than 15.24 by 15.24 centimetres (6 by 6 inches);

Set Level

- (d) a marker shall be flat on top and flush with the ground so that a lawn mower can pass safely over it; and

Use of Bronze

- (e) where a marker is bronze:
- (i) the marker shall be cast with integral bosses on the back as specified by Hamilton Municipal Cemeteries such bosses being capable of receiving anchor lugs, supplied by the dealer, of brass or bronze of .95 centimetres (3/8 inch) in diameter and maximum size of 7.6 centimetres (3 inches) in length; and,
 - (ii) the marker shall be bolted through granite having a surface area of 45.72 by 60.96 centimetres (18 by 24) inches and a thickness of 10.16 centimetres (4 inches).

Mausolea

1.15 Delivery

In addition to meeting the applicable requirements of Part 1 of this Schedule, a mausoleum shall not be delivered to a cemetery unless:

- (a) a work plan including the building specifications has first been submitted to and approved by the Director;
- (b) the foundation has been completed; and
- (c) the mausoleum has no exposed vertical joints.

SCHEDULE B

CARE OF LOTS

General

Risk

Any person other than an employee or contractor of Hamilton Municipal Cemeteries, including an Interment Rights Holder or Scattering Rights Holder or their heir or representative, caring for a lot does so entirely at their own risk, including assuming the risk for any loss of or damage to an item placed, planted or installed on a lot or attached to a monument or any injury to themselves.

Restrictions

Nothing, including but not limited to nails, wire, glass, pottery or a container that retains water, that is or could become hazardous to any person in a cemetery, shall be placed, planted or installed on a lot or attached to a monument, marker or mausolea.