

## Staff Report

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<b>Report To:</b>	<b>General Government Committee</b>	
<b>Date of Meeting:</b>	November 28, 2022	<b>Report Number:</b> LGS-019-22
<b>Submitted By:</b>	Rob Maciver, Deputy CAO/Solicitor	
<b>Reviewed By:</b>	Mary-Anne Dempster, CAO	<b>Resolution#:</b> GG-265-22
<b>File Number:</b>		<b>By-law Number:</b> 2022-055
<b>Report Subject:</b>	Update to Cemetery By-law to Include Bereavement Authority of Ontario's Changes	

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### Recommendations:

1. That Report LGS-019-22, and any related delegations or communication items, be received;
2. That the By-law attached to Report LGS-019-22, repealing and replacing By-law 2022-035, the Cemetery By-law, as Attachment 1, be approved; and
3. That the new Cemetery By-law be forwarded to the Bereavement Authority of Ontario for approval;
4. That all interested parties listed in Report LGS-019-22 and any delegations be advised of Council's decision.

## Report Overview

This Report suggests changes to the “new” Cemetery By-law, By-law 2022-035, based on a review by the Bereavement Authority of Ontario, prior to obtaining approval of the by-law from same.

## 1. Background

- 1.1 On June 20, 2022, arising out of a full cemetery review in Report LGS-012-22, Council passed [By-law 2022-035](#), the “new” Cemetery By-law.
- 1.2 In accordance with Section 151 of Regulation 30/11 of the [Funeral, Burial and Cremation Services Act, 2002](#), no cemetery by-law or by-law amendment is effective until, the cemetery operator has filed it with the registrar, performed the notice requirements, and the by-law has been approved by the Registrar of the Bereavement Authority of Ontario (BAO).
- 1.3 Notice requirements (to funeral homes and monument companies, as well as signs posted in cemeteries) have been fulfilled in the summer, and the by-law was forwarded to the BAO Registrar for their review and approval.

## 2. BAO’s Review of Cemetery By-law

- 2.1 Staff’s review used the sample by-laws available at the time, which have now been updated. The BAO’s review was received by Staff this fall and the comments were that the by-law “is essentially good”. However, they had some comments and suggested changes (both written and arising out of discussions) which we have added in the attached redlined version of By-law 2022-035.

BAO's Suggestion	Staff's Comments
Add reference to all cemetery sites, including Abandoned Cemeteries. Although the BAO noted that some municipalities choose to leave just the active cemeteries.	Staff agree with this and have placed the full list of cemeteries in Schedule A; with the note that not all sections are applicable. The BAO notes that putting the cemeteries in a Schedule would not require a full BAO notice and approval if other cemeteries are added in the future.
Under Definitions, for "Care and Maintenance Fund, amend to include that it is a requirement under the FBCSA and O. Reg. 30/11 and 184/12.	Agreed
Under Definitions, for "Cemetery", remove the words "set aside for the interment of human remains or ashes", as it is meant to be the entire property.	Agreed – remove wording and replace reference to individual cemeteries with reference to Schedule of Cemeteries.
Under Definitions, for Interment Rights Holder, please consider using the definition from our sample as it encompasses more.  Interment Rights Holder: The person(s) authorized or entitled to inter human remains in a specified lot. They may be the person named in the Interment Rights Certificate or such other person to whom the rights have been assigned.	Agreed
In Section 3.10 – regarding notice for large memorials – suggest that the notice be defined.	Agreed – added "one week's notice".

BAO's Suggestion	Staff's Comments
<p>Under section 5 "Disinterment or Removals" please consider changing 5.1 to the wording provided in our sample by-laws as it provides more clarity.</p> <p>Human remains may be disinterred from a lot provided that the written consent (authorization) of the interment rights holder has been received by the cemetery operator and the prior notification of the medical officer of health. A certificate from the local medical officer of health must be received at the cemetery office before the removal of casketed human remains from the cemetery may take place.</p> <p>In special circumstances the removal of human remains may also be ordered by certain public officials without the consent of the interment rights holder and/or next of kin(s).</p>	<p>Agreed to replace "Unless otherwise directed by the Medical Officer of the Department of Health, no human remains may be disinterred from the Grave without written consent of the Interment Rights Holder."</p> <p>Also added wording to exclude cremated remains.</p> <p>Added a section to state that cremated remains require the authorization of rights holder (i.e., but not Medical Officer).</p>

BAO's Suggestion	Staff's Comments
<p>Under 7.2 consider changing the wording as this a little difficult to read. The main point should be in reference to the fees.</p> <p>Subject to availability of Lots, Interment Rights may be purchased from the Municipality at the rates set out in the Fee By-law.</p> <p>The rates for Interment Rights include the portion specified by the Act for deposit to the Cemetery's Care and Maintenance Fund.</p>	<p>Agreed – to change from the following, creating a new section 7.2 and adding a new section 7.3:</p> <p>Subject to availability of Lots, Interment Rights may be purchased from the Municipality at the rates set out in the Fee By-law. The rates for Interment Rights include the portion specified by the Act for deposit to the Cemetery's Care and Maintenance Fund except for transactions with a grave (i.e., transfer, interment, or installation of a marker/monument) that was purchased previously and included the "care and maintenance" at the time of purchase.</p>
<p>Under 7.5 you've specified markers, but wouldn't monuments also be included? Perhaps use memorial or other structure as referenced in 11.1.</p>	<p>Agreed – change to "monuments, memorials, markers, and inscriptions".</p> <p>NOTE: Staff does not wish to include the words "other structures" because benches, chairs, trellis, archways are not allowed.</p>

BAO's Suggestion	Staff's Comments
Under 7.10 & 7.12 perhaps specify that "if no part of the interment rights have been exercised in a lot". Since purchasers can own a plot and you are not restricting resale if part of a plot has been exercised.	Agreed. Also added the following to clarify reselling after use and vacancy: "Notwithstanding section 7.10, if the interment rights have been exercised but disinterment has taken place and the lot is considered vacant, rights holders are permitted to resell their interment rights provided notice is given to the Cemetery Operator as stated above in 7.10."
Clarification that scattered remains were not allowed.	Agreed - removed the reference to scattered remains in "Care and Maintenance Fund Definition"; Section 7.19 which caused the ambiguity and changed section 10.9 to state that scattering is not allowed anywhere in the cemetery (a change from just prohibiting in graves); and section 12.1(a).
Section 8.3 – regarding the pre-1955 sales, change "shall" to "may" and add "in accordance with the prevailing legislation."	Agreed
Section 10.4, change "24 business hours" (which could mean three days) to "one business day".	Agreed – changed from "The Cemetery Operator shall be given 24 business hours of notice for each Interment."

- 2.2 Staff view the above changes as improvements and have no issues with making the changes.
- 2.3 Staff have forwarded the redlined version to the BAO, provided comments that have been incorporated in this report, and they agree with the changes, in principle.

### **3. Housekeeping Changes**

- 3.1 While making the changes suggested by the BAO, Staff also made the following housekeeping changes:
- a) Changed the definition of Infant Baby Land to Infant Burial Land (IBL).
  - b) Deleted the definition of “vessel” as it is not used in the by-law. Moved definition to “Urn”.
  - c) Deleted Section 11.8, which was a duplicate of section 11.5.
  - d) Section 13.3 = added the words “free standing and”

### **4. Timing**

- 4.1 The BAO acknowledges a delay in their initial review and therefore are not asking for a new submission package as the active cemeteries were covered in the newspaper and the postings.
- 4.2 Additionally, the BAO notes that, since the by-law has not been approved by the BAO yet, changes can still be made to the by-law without further notice protocol. Therefore, the attached draft by-law is being presented, to repeal and replace By-law 2022-035 as outlined in the redlined version. However, if the BAO approves a by-law and we amend it later, the notice and approval process starts again.
- 4.3 The attached by-law will still need to be forwarded to the BAO for their approval. Upon their approval, the approval date will be added to the by-law, and it will be in effect.
- 4.4 Staff are hoping that the BAO will approve the by-law in time to make the updated pricing changes effective January 1, 2023.

### **5. Financial Considerations**

- 5.1 Although there are no direct financial implications related to the attached – there are several financial implications with the initial changes to the Cemetery By-law, including the timing of the Consumer Price Index (CPI) changes (being based on October instead of November CPI).

### **6. Concurrence**

This report has been reviewed by the Director of Public Works who concurs with the recommendations.

## **7. Conclusion**

It is respectfully recommended that Committee recommend the approval of the attached new Cemetery By-law, repealing and replacing By-law 2022-035.

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Staff Contact: June Gallagher, Municipal Clerk, 905-623-3379 ext. 2102 or [jgallagher@clarington.net](mailto:jgallagher@clarington.net).

Attachments:

Attachment 1 – New Cemetery By-law, shown as redlined of By-law 2022-035

Interested Parties:

The following interested parties will be notified of Council's decision:

BAO Registrar, c/o Jaime Traynor, Licensing Officer, Bereavement Authority of Ontario

Funeral Homes dealt with in the past 12 months:

- Ainsworth Funeral Home
- Allison Funeral Home
- Armstrong Funeral Home
- Barnes Memorial Funeral Home
- Brock & Visser Funeral Home
- Chapel Ridge Funeral Home
- Courtice Funeral Home
- Fallis & Shields Funeral Home
- McIntosh-Anderson-Kellam Funeral
- Mackey Funeral Home
- Morris Funeral Home
- Newcastle Funeral Home
- Nisbett Funeral Home
- Northcutt Elliott Funeral Home
- Oshawa Funeral Home

Monument Companies dealt with in the past 12 months

- Campbell Monuments
- Kawartha Monuments
- Oshawa Monument Company
- Peterborough Monument Works
- Sanderson Monuments
- Stafford Monument Company



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## The Corporation of the Municipality of Clarington

### By-law 2022-xxx

Being a by-law to provide for the maintenance, management, regulation, and control of the cemeteries in the Municipality of Clarington, and to repeal the previous Cemetery By-law and amendments.

Whereas The Corporation of the Municipality of Clarington owns, and operates both active and abandoned cemeteries within the Municipality of Clarington;

And whereas the Funeral, Burial and Cremation Services Act, 2002, S.O. 2002 c.33 regulates the operations of cemeteries in Ontario;

And whereas the Council of The Corporation of the Municipality of Clarington deems it desirable to enact a By-law to regulate the operation of municipal cemeteries;

Now therefore the Corporation of the Municipality of Clarington hereby enacts as follows:

#### 1. Approval

These by-laws are the rules and regulations that govern the cemeteries listed in Schedule "A", including the abandoned cemeteries, and have been approved by the Registrar, Funeral, Burial and Cremation Services Act, 2002 (FBCSA), Bereavement Authority of Ontario (BAO).

#### 2. Definitions

**"Act"** means the Funeral, Burial and Cremation Services Act, 2002 (FBCSA), S.O. 2002 c.33.

**"Ashes"** means the cremated or aquamation remains of a deceased human body.

**"Assisted Burial"** means a burial when the deceased's estate is unable to cover the cost of the burial and Social Services pays for the grave and interment, to ensure that individuals who are in receipt of social assistance, indigent persons, and persons in financial need may have their remains interred or cremated in a respectful and dignified manner.

**"Burial"** means the opening and closing of an inground lot or plot for the disposition of human remains or cremated human remains.

## Cemetery By-law 2022-xxx

**“Care and Maintenance Fund”** means the requirement under the FBCSA and O. Reg. 30/11 and 184/12 that a prescribed amount or a percentage of the purchase price (excluding tax) of all interment rights sold, transferred, assigned, or permitted; and prescribed amounts for monuments and markers is contributed into the care and maintenance fund.

**“Casket”** means the container/coffin in which human remains are interred.

**“Cemetery”** means those areas inside the properties noted in Schedule “A”, the list of cemeteries operated by the Municipality of Clarington.

**“Cemetery Operator”** means the Municipality of Clarington.

**“Columbarium”** means a structure (a niche wall) designed for the purpose of interring and preserving of cremated remains in sealed compartments (niches).

**“Contract”** means the signed contract between the purchaser of Interment Rights and the Cemetery Operator detailing the obligations of both parties, and acknowledging receipt and acceptance of the cemetery by-laws, a copy of the Consumer Information Guide and the Price List.

**“Corner Stones”** means any stone or other land markers, usually 6”x 6”, set flush with the surface of the ground and used to indicate the location of a lot or plot.

**“Corporation”** means the Corporation of the Municipality of Clarington.

**“Cremation Monument”** see “Niche Monument”.

**“Director”** means the Director of Public Works of the Municipality of Clarington or their designate.

**“Disinterment”** means the digging/removal and re-interment of a casket, vault or urn from a burial lot or niche.

**“Grave”** (Also known as Lot) means any inground burial space intended for the interment of a child, adult, or cremated human remains.

**“Holiday”** means a Statutory or Declared Holiday as well as any day designated in a collective agreement approved by the Municipality of Clarington.

**“Human remains”** means the remains of a deceased human body.

**“Infant Burial Land”** = IBL = means a part of a cemetery designated for infants with a grave no bigger than 18” x 36”.

**“Interment”** means the opening of a lot and then the placing of dead human remains or cremated human remains in that lot, followed by closing the lot. The lot may be a grave in the ground, a crypt in a mausoleum, or a niche in a columbarium.

## Cemetery By-law 2022-xxx

**“Interment Right”** means the right to require, or direct, the interment of human remains or cremated human remains in a grave, lot, or niche and direct the associated memorialization.

**“Interment Rights Certificate”** means the document issued by the Cemetery Operator to the purchaser once the interment rights have been paid in full, identifying ownership of the interment rights.

**“Interment Rights Holder”** means the person(s) authorized or entitled to inter human remains in a specified lot. They may be the person named in the Interment Rights Certificate or such other person to whom the rights have been assigned.

**“Lot”** (also known as Grave) means a single grave space.

**“Marker”** means any permanent memorial structure that is set flush and level with the ground, where no foundation is required and used to mark the location of a burial.

**“Memorial Bench”** means a bench (typically granite) personalized with lettering/dates/artwork placed on a burial lot.

**“Monument”** means any permanent memorial projecting above the ground installed to mark the location of a burial or lot. This may include an upright or pillow style requiring a foundation and a base.

**“Municipal Clerk”** means the Clerk of the Municipality of Clarington or their designate.

**“Niche”** means an individual compartment in a columbarium for the entombment of cremated human remains.

**“Niche Monument”** means a permanent memorial installed by individuals to mark the location of a particular burial, or a lot, which includes individual compartment(s) intended for the entombment of cremated human remains.

**“Plot”** means a parcel of land, sold as a single unit, containing multiple lots.

**“Register”** means an up-to-date record (within five days of interment) of the name and address of each Interment Rights Holder and the location of the lot. The name and address of the original Interment Rights Holder, any date of transfer, and to whom the rights were transferred. The name of each person interred, the location within the Cemetery, and the date of interment, particulars regarding disinterments including the name of the person disinterred, date of disinterment, who authorized the disinterment, where the remains were re-interred, or the person who took possession of the remains.

**“Registrar”** means the Registrar of the Bereavement Authority of Ontario (BAO).

**“Social Services Burial”** see “Assisted Burial”.

# Cemetery By-law 2022-xxx

**“Third Party Purchaser”** means any person who purchased Interment Rights from a source other than the Cemetery Operator, in accordance with the provisions of this by-law.

**“Urn”** means a container for cremated remains.

**“Vault”** means a manufactured fiberglass or concrete shell that the casket is placed into prior to an Interment.

## 3. General

### 3.1 Hours of Operation

Visitation Hours: 8:00 a.m. to Sundown  
Office Hours: 8:30 a.m. to 4:30 p.m. (September to June)  
8:00 a.m. to 4:00 p.m. (July and August)  
Interment Hours: 8:00 a.m. to 4:00 p.m.

Note, the Office for the Cemeteries is the Municipal Clerk’s Division, 40 Temperance Street, Bowmanville.

3.2 No person shall enter or remain in a Cemetery between sundown and 8:00 a.m. without the permission of the Cemetery Operator.

3.3 The hours of operation shall not apply to a police constable and employees of the Municipality of Clarington in the performance of their duties.

### 3.4 Conduct

The Cemetery Operator reserves full control over the Cemetery operations and management of land within the Cemetery grounds.

No person may damage, destroy, remove, or deface any property within the Cemetery.

All visitors shall conduct themselves in a quiet manner that shall not disturb any service being held.

### 3.5 Liability

The Cemetery Operator shall not be held liable for any loss or damage, without limitation (including damage by the elements, Acts of God, or vandals) to any lot, plot, columbarium niche, monument, marker, or other article that has been placed in relation to an Interment, save and except for direct loss or damage caused by gross negligence of the Cemetery Operator.

## Cemetery By-law 2022-xxx

### 3.6 Public Register

Section 110 of O. Reg. 30/11 requires all cemeteries and crematoriums to maintain a public register that is available to the public during regular office hours. The Public Register shall be available to the public through the Municipal Clerk's Division during regular office hours.

### 3.7 Pets or Other Animals

Pets or other lower animals, including cremated animal remains, are not allowed to be buried on Cemetery grounds.

### 3.8 Right to Re-Survey

The Cemetery Operator has the right at any time to re-survey, enlarge, diminish, re-plot, change or remove plantings, grade, close pathways or roads, alter in shape or size, or otherwise change all or any part of the Cemetery, subject to approval of the appropriate authorities.

### 3.9 Interments on a Statutory Holiday or Sundays

No interment shall be made on a Statutory Holiday, or Sunday, without payment of an extra charge as set forth in the Fee By-law. This extra charge is not applicable when there is a written order, from a Medical Officer of Health, for interment.

### 3.10 Memorial Services

Memorial Services greater than 75 people shall require one week's advanced notice to the Cemetery Operator.

## 4. Cemetery Services

### 4.1 Cemetery services available from the Municipality of Clarington shall not be allowed to be supplied by any person, other than those authorized by the Cemetery Operator.

"Cemetery Services" shall include:

- a) cutting grass and general care of lots;
- b) planting trees, shrubs and grass;
- c) setting grave markers, and memorials;
- d) construction of a foundation for monuments and markers;
- e) opening and closing of graves; and
- f) disinterment or removal of human remains.

## Cemetery By-law 2022-xxx

### 5. Disinterment or Removals

- 5.1 Human remains (excluding cremated remains) may be disinterred from a lot provided that the written consent (authorization) of the interment rights holder has been received by the cemetery operator and the prior notification of the medical officer of health. A certificate from the local medical officer of health must be received at the cemetery office before the removal of casketed human remains from the cemetery may take place.
- 5.2 Cremated remains may be disinterred from a lot or niche provided that the written consent (authorization) of the interment rights holder has been received by the cemetery operation before the removal.
- 5.3 In special circumstances the removal of human remains may also be ordered by certain public officials without the consent of the interment rights holder and/or next of kin(s).
- 5.4 No disinterment or removal of any casketed human remains shall be allowed except as ordered by those defined in the Act and in the presence of the Cemetery Operator, and upon due observance of all other requirements of the Act and regulations.
- 5.5 No opening of a niche is permitted except for the addition or removal of human remains.
- 5.6 Removal of a joint urn to add a second set of human cremated remains (work performed by a funeral home employee) would not be considered a disinterment.
- 5.7 A certificate from the local Medical Officer of Health is not required for the removal of cremated remains.

### 6. Oversized Vaults

- 6.1 Where a Vault has a width of more than 2' 6" (0.762 metres), or a length of more than 7' 6" (2.286 metres), the Cemetery Operator shall not be obliged to permit the interment unless there is sufficient space to accommodate it; and the Cemetery Operator shall not be obliged to permit the erection of any Monument where there is insufficient room left for the foundation.

## Cemetery By-law 2022-xxx

### 7. Sale and Transfer of Interment Rights

- 7.1 Purchasers of interment rights holders acquire only the right to direct the burial of human remains, and the installation of monuments, markers, and inscriptions, subject to the conditions set out in the cemetery by-laws. In accordance with cemetery by-laws, no burial, entombment, or installation of any monument, marker, inscription, or memorialization is permitted until the interment rights have been paid in full. An interment rights certificate will be issued to the Interment Rights Holder(s) when payment has been made in full. The purchase of interment rights is not a purchase of Real Estate or real property.
- 7.2 Subject to availability of Lots, Interment Rights may be purchased from the Municipality at the rates set out in the Fee By-law.
- 7.3 The rates for Interment Rights include the portion specified by the Act for deposit to the Cemetery's Care and Maintenance Fund.
- 7.4 Payments for Interment Rights shall be made payable to the Municipality of Clarington, through the Municipal Clerk's Division.
- 7.5 Upon payment in full, the Municipality shall provide each purchaser of Interment Rights with:
- a) a copy of the Contract;
  - b) a copy of the Cemetery By-law;
  - c) a Certificate of Interment Rights; and
  - d) any other documents as required under the Act
- 7.6 Purchasers of lots acquire only the right and privilege for the interment of human remains and the placing of monuments, memorials, markers, and inscriptions, subject to this By-law.
- 7.7 To ensure accuracy of the Register, no transfer of any Interment Right or any interest therein shall be binding upon the Municipality, unless application for the Transfer has been submitted, including necessary supporting documentation, and the original Certificate of Interment Rights returned, as required under Subsection 4.9 a). Upon receipt of such application and payment of the prescribed fee, the Transfer shall be made and a new Certificate of Interment Rights issued.
- 7.8 The sale of Interment Rights shall be limited to a maximum of six lots/graves/niches to each individual.
- 7.9 For sales after the effective date of this by-law, the sale of six niches shall not be continuous (i.e. not a whole row).

### **Third Party Purchases/Re-Sales**

## Cemetery By-law 2022-xxx

- 7.10 . An interment rights holder may resell their interment rights so long as no portion of their interment rights has been exercised in a lot. Prior to seeking a third party buyer for their interment rights, the interment rights holder must notify the Cemetery Operator of their intentions to resell.
- 7.11 Notwithstanding section 7.10, if the interment rights have been exercised but disinterment has taken place and the lot is considered vacant, rights holders are permitted to resell their interment rights, provided notice is given to the Cemetery Operator as stated above in 7.10.
- 7.12 Subject to the provisions of this By-law and the Act, , an Interment Rights Holder may sell, or transfer, their Interment Rights to a Third Party Purchaser at no more than the current price, so long as the sale or transfer is conducted through the Cemetery Operator and the interment rights holder and purchaser meet the qualifications and requirements.
- 7.13 If an Interment Rights Holder is unable to find a third Party Purchaser at the current purchase price, the Municipality may buy the rights back at a negotiated price.
- 7.14 No person shall purchase Interment Rights for the sole or primary purpose of reselling the Rights with a view to making a financial gain. The Interment Rights may not be sold to Third Party Purchasers for more than the price set out in the current Price List (contained in Clarington's Fee By-law) as the case may be.
- 7.15 An Interment Rights Holder intending to sell their Interment Rights to a Third Party Purchaser shall provide the Municipality with the following documentation so that the Municipality can confirm the ownership of the Rights and provide the Third Party Purchaser with the required documentation:
- a) an Interment Rights certificate endorsed by the current Rights holder;
  - b) if the resale involved Interment Rights, a written statement of the number of Lots that have been used in a Plot and the number of Lots that remain available; and
  - c) any other documents in the Interment Rights Holder's possession relating to the Rights.



## Cemetery By-law 2022-xxx

- 7.16 To complete the sale of the Interment Rights to a Third Party Purchaser the Municipality may also require:
- a) a statement signed by the Interment Rights Holder(s) selling the Interment Rights acknowledging the sale of the Rights to the Third Party Purchaser;
  - b) confirmation that the person selling the Interment Rights is the person registered on the Cemetery records and that they have the right to re-sell the Interment Rights;
  - c) a record, setting out the date of the transfer of the Interment Rights to the Third Party Purchaser; and
  - d) a statement of any money owing to the Municipality in respect of the Interment Rights.
- 7.17 The Third Party Purchaser will be provided with the following documents by the Municipality:
- a) a new Certificate of Interment Rights;
  - b) a copy of this By-law;
  - c) a copy of the current Price List (contained in Clarington's Fee By-law);
  - d) If the resale involves Interment Rights, a written statement of the number of Lots that have been used in a Plot and the number of Lots that remain available; and
  - e) any other documentation in the Interment Rights Holder's possession relating to the Rights.
- 7.18 Upon completion of the procedures detailed in the "Third Party Purchaser" section of this by-law, and at the approval of the Municipal Clerk, the Third Party Purchaser shall be considered the current Interment Rights Holder and the resale or Transfer of the Interment Rights shall be considered completed.

### **Transfer by Will or Bequest**

- 7.19 In cases of Transfer by will or bequest, the Municipal Clerk shall have the right, in their sole discretion, to require the production of a notarized copy of the will or other evidence sufficient to prove ownership.

### **Cancellation of Interment Rights within 30 Day Cooling-Off Period**

- 7.20 In accordance with the Act, any Interment Rights Holder may cancel the Interment Rights within thirty (30) days of signing the Contract by providing written notice of the cancellation to the Cemetery Operator. The Cemetery Operator will refund all monies paid by the purchaser within thirty (30) days from the date of the request for cancellation.

## Cemetery By-law 2022-xxx

- 7.21 Upon receiving written notice from the purchaser, the Cemetery Operator will cancel the contract and issue a refund to the purchaser for the amount paid for the interment rights. This refund will be made within thirty (30) days of receiving said notice. If the interment rights certificate has been issued to the interment rights holder(s), the certificate must be returned to the Cemetery Operator along with the written notice of cancellation.
- 7.22 No refund will be made for any Lot if any portion of the Interment Rights have been exercised.
- 7.23 Notwithstanding subsections 7.1 to 7.17, inclusive, burial rights for graves provided for assisted burials cannot be transferred or sold and shall remain vested with the Municipality in perpetuity.

### 8. Care and Maintenance Fund Contributions

- 8.1 Interest earned from this fund is used to provide care and maintenance of lots, plots, markers, and monuments.
- 8.2 Contributions to the Care and Maintenance Fund are not refundable except when Interment Rights are cancelled within the 30 day cooling off period.
- 8.3 Where interment rights were sold before 1955 and no trust funds were collected for the purpose of care and maintenance (or perpetual care as was often the term used pre-1955), the Municipality may charge the interment rights holder care and maintenance fees, at the time the rights are either transferred or at the time the rights are executed (including erecting a monument). The rate shall be based on the approved rates in accordance with the prevailing legislation.

### 9. Errors

- 9.1 In the event that an error on the part of the Municipality is discovered with an Interment Right prior to the use of the lot/niche for Interment, and that niche is no longer available, the Municipality shall:
  - a) promptly notify the Interment Rights Holder of the error;
  - b) amend the affected Contract and Certificate of Interment Rights of that lot/niche, or other Interment Right made prior to the enactment of this By-law, so as to provide a lot/niche of equal or greater value and similar location acceptable to the Interment Rights Holder; or
  - c) cancel the Interment Rights and refund the full amount paid as evidenced in the Municipality's records.
- 9.2 The Interment Rights Holder shall notify the Municipality of their preference within 30 days of the notification of the error; otherwise, the Municipality shall be entitled to make the decision.

## Cemetery By-law 2022-xxx

### 10. Interments

- 10.1 Interment Rights Holders must provide written authorization prior to an Interment. Should the Interment Rights Holder be deceased, authorization must be provided in writing by the person authorized to act on behalf of the Interment Rights Holder (i.e. Personal Representative, Estate Trustee, Executor, succession Rights holder, or next of kin).
- 10.2 A duly issued burial permit, or equivalent document showing that the death has been registered with the Province, must be provided to the Cemetery Operator prior to an Interment taking place.
- 10.3 A Certificate of Cremation must be submitted to the Cemetery Operator prior to the Interment of cremated remains.
- 10.4 The Cemetery Operator shall be given one business day of notice for each Interment.
- 10.5 Payment for Interment, and the Provincial License Fee for each individual interred, must be made to the Cemetery Operator, payable to the Municipality of Clarington through the Municipal Clerk's Division before an interment can take place.
- 10.6 Notwithstanding subsection 10.5, an interment can take place, without payment for interment for niches purchased in the:
- Hampton Cemetery prior to June 28, 2013; and
  - Orono Cemetery prior to June 1, 2019.
- 10.7 Notwithstanding subsection 10.5, an interment can take place for an assisted burial prior to receipt of payment for the Interment, provided the Municipal Clerk has received written confirmation from Social Services of a commitment to pay for the services.
- 10.8 The opening and closing of Graves or Niches may only be conducted by Municipal staff or those designated to do work on behalf of the Cemetery Operator.

### **Scattering**

- 10.9 Scattering of cremated remains is not permitted within the cemetery.

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## More than Two in One Lot

- 10.10 Due to the instability of the soil, the top of any interment container shall be 36” (91.5 cm) below ground surface for safety reasons. Regardless of the manner in which the Grave is prepared, only one full-body Human Remains is to be interred in any single Lot.
- 10.11 Human cremated remains shall be allowed to be interred with full-body Human Remains. The limit shall be three cremated remains with one full-body Human Remains in any single Lot or, four cremated remains if there is no full human remains.
- 10.12 Notwithstanding Subsection 10.11, if the lot is being used for both full-body burials and cremated remains, full-body burials must be in place prior to placing cremated remains in any single lot.
- 10.13 Notwithstanding Subsection 10.11, for those who purchased Lots or Plots:
- In the Bowmanville Cemetery prior to July 1, 2005, requesting a double interment in one Lot, the limit shall be four cremated remains with two full-body Human Remains in any single Lot;
  - In the Orono Cemetery prior to June 1, 2019, six cremations will be permitted with the approval of the Cemetery Operator;
  - In the Hampton Cemetery, six cremations will be permitted in all graves (as all graves were sold prior to Clarington assuming the cemetery).

## 11. Memorialization

- 11.1 No memorial or other structure shall be erected or permitted on a Lot until all setup and foundation fees have been paid in full including markers requested to be installed for graves provided for assisted burials.
- 11.2 No Monument, footstone, marker, or memorial of any description shall be placed, moved, altered, or removed without permission of the Cemetery Operator.
- 11.3 Minor scraping of the monument base of an upright monument due to grass/lawn maintenance is considered to be normal wear and tear.
- 11.4 The cemetery operator will take reasonable precautions to protect the property of interment rights holders, but it assumes no liability for the loss of, or damage to, any monument, marker, or other structure, or part thereof.

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- 11.5 Memorials – monuments, markers, plaques etc. are owned by the interment rights holder and the cemetery operator is not responsible for their loss or deterioration. These memorials should be protected by the interment rights holder's own insurance coverage.
- 11.6 Monuments, footstones, markers, or memorials may be purchased and placed on an assisted burial grave by a person, or by a relative of a deceased person where the deceased person is the rights holder, provided they sign an indemnity declaration on the Monument Order Form.
- 11.7 The Cemetery Operator is not responsible for the cleaning of any monuments and/or markers.
- 11.8
- 11.9 All foundations for Monuments and Markers shall be built by or contracted to be built for, the Cemetery Operator at the expense of the Interment Rights Holder.
- 11.10 Should any Monument or Marker present a risk to public safety because it has become unstable, the Cemetery Operator shall do whatever it deems necessary by way of repairing, resetting, or laying down the Monument or Marker or any other remedy so as to remove the risk.
- 11.11 The Cemetery Operator reserves the right to remove at its sole discretion any Marker, Monument, or inscription which is not in keeping with the dignity and decorum of the Cemetery as determined by the Cemetery Operator.
- 11.12 No niche/cremation monuments are permitted on a burial lot.
- 11.13 No memorial benches are permitted.
- 11.14 No corner stones are permitted to be installed after the effective date of passing of this by-law.
- 11.15 All Monuments shall be mounted only on a stone or concrete base or footing and the base or footing shall be constructed by the Cemetery Operator and set flush with the level of the adjoining ground.
- 11.16 A Monument or other structure shall be erected only after the specific design plans have been approved by the Cemetery Operator including dimensions, material of structure, construction details, and proposed location.
- 11.17 The minimum thickness for flat markers, including footstones, is 4 inches or 10 cm.
- 11.18 Only one Monument shall be erected within the designated space on any Lot.
- 11.19 Notwithstanding subsection 11.18, additional markers may be permitted, at the discretion of the Cemetery Operator.

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- 11.20 Every Monument shall be made of bronze, natural stone (granite or marble or other durable stone used for that purpose) with no vertical joint and no ornament of stone, metal or other material attached thereto.
- 11.21 No Monument shall be delivered to the Cemetery for installation until the Monument foundation has been completed, and the Interment Rights Holder(s) and/or Monument supplier have been notified by the Cemetery Operator.
- 11.22 Every Marker for a single Grave shall be of a size as nearly as practicable, of 18" X 24" (45.7 cm X 61 cm) width, with a thickness of from 3" to 8" (7.6 cm to 20.3 cm).
- 11.23 No Monument shall exceed 48" (122 cm) in height, including base or footing, above the level of the adjoining ground, and when located on a Lot shall not exceed 10% of the Lot area. When located on a Plot, the base shall not exceed 14" X 38" (35.5cm x 96.5 cm).

### 12. Care and Planting

- 12.1 The interest generated from the Care and Maintenance Fund shall be used to maintain, secure and preserve the Cemetery grounds, including:
  - a) re-leveling and seeding of Lots;
  - b) maintenance of cemetery roads, sewers, and water systems;
  - c) maintenance of perimeter walls and fences;
  - d) maintenance of cemetery landscaping;
  - e) maintenance of mausoleum and columbarium; and
  - f) repairs and general upkeep of cemetery maintenance buildings and equipment.
- 12.2 No person, other than the Cemetery Operator, shall remove any sod or in any other way change the surface of the Cemetery.
- 12.3 No person shall plant flower beds or live plants that exceed 12".
- 12.4 No person shall install plant/garden borders of any kind.

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### 13. Decorations

- 13.1 The Cemetery Operator reserves the right to regulate the articles placed or hung, on Lots, Plots, columbariums, or niches that: pose a threat to the safety of all Interment Rights Holders, visitors to the Cemetery, and Cemetery employees; prevents the Cemetery Operator from performing general cemetery operations; or are not in keeping with the respect and dignity of the Cemetery. Items will be removed and disposed of without notification.
- 13.2 Notwithstanding subsection 13.1, no articles will be allowed in new areas, specifically:
- In sections DD and any new sections in the Bowmanville Cemetery;
  - In Sections A, D, and G in the Orono Cemetery; and
  - Columbariums constructed after the passing of this by-law.
- 13.3 Columbarium decorations should free standing and be no more than 4" in any direction from the opening of the holder.
- 13.4 The Cemetery Operator reserves the right to disallow or remove quantities of memorial wreaths or flowers considered to be excessive and that diminish the otherwise tidy appearance of the Cemetery.
- 13.5 Memorial wreaths may be placed in the Cemetery between the last day of October and the first day of April. In order to prepare the grounds for spring, wreaths must be removed prior to the first day of April. Wreaths not removed by the first day of April will be removed and disposed of by the Cemetery Operator without notification.
- 13.6 The following are permitted at the front of a Grave, not more than 12" (30.5 cm) from the Marker or Monument:
- a) unbreakable flowerpots; and
  - b) planted flowers
- 13.7 Floral stands are to be of a single leg support type and may not exceed 48" (122 cm) with no more than two stands per Monument. The arms of the stand must not project more than 12" (30.5cm) from the Marker or Monument. Stands not in compliance will be removed by the Cemetery Operator.
- 13.8 Pot hangers/holders/stands are prohibited.
- 13.9 Notwithstanding subsection 13.8, pot hangers/holders/stands are allowed in St. Georges Cemetery, Hampton Cemetery, Bond Head Cemetery, Bowmanville Cemetery lots A-CC and the Orono Cemetery lots excluding A, D, and G.

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- 13.10 Flowers placed on a Grave for a funeral shall be removed by the Cemetery Operator after a reasonable time to protect the sod and maintain the tidy appearance of the Cemetery.
- 13.11 Planted items must be in alignment with, and in close proximity to, the Marker. Flowering plants must be grown only in front of the Marker and shall not extend more than 12" (30.5 cm) from the Marker. Maintenance involves pruning to limit height of trees to 48" (122 cm), and laterally to within the boundaries of the Interment Rights Holder's Lot. Flowering plants must be weeded and watered. The plants may be removed and discarded at the discretion of the Cemetery Operator.
- 13.12 Lettered boards, signs, items made of glass, porcelains and clay items, in whole or in part, crockery items or wind chimes are prohibited.

### 14. Contractor/Monument Dealer

- 14.1 Any contract work to be performed within the Cemetery requires the written pre-approval of the Interment Rights Holder and the Cemetery Operator before the commencement of the work. Work requiring pre-approval includes landscaping, delivery of Monuments and Markers, inscriptions, designs, drawings, plans and detailed specifications relating to the work, proof of all applicable government approvals and permits, and the location of the work to be performed.
- 14.2 All contractors shall report to the Cemetery Operator and provide the necessary approvals before commencing work at any location in the Cemetery.
- 14.3 Prior to the start of any said work, contractors must provide proof of:
- a) WSIB coverage;
  - b) Occupational Health and Safety compliance standards;
  - c) Environmental Protection;
  - d) WHMIS; and
  - e) evidence of liability insurance of not less than \$2 million.
- 14.4 All contractors and all work carried out by contractors within the Cemetery shall comply with the requirements of this By-law.
- 14.5 No contractor, monument dealer or supplier shall enter the Cemetery outside of the Interment Hours unless approval has been granted by the Cemetery Operator.
- 14.6 No work shall be performed at the Cemetery except during the regular Interment Hours.



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- 14.7 Contractors shall temporarily cease all operations if they are working within 100 metres of a funeral until the conclusion of the service. The Cemetery Operator, at their sole discretion, reserves the right to temporarily cease contractor operations, if the noise of the work being performed by the contractor is deemed to be a disturbance to any funeral or public gathering within the Cemetery.
- 14.8 Contractors, monument dealers and suppliers shall lay wooden planks on the Lots and paths over which heavy materials are to be moved in order to protect the surface from damage.

### 15. Columbarium

- 15.1 Only the Cemetery Operator may open and seal Niches for Interments. This applies to the inside sealer and the Niche front.
- 15.2 To ensure quality control, desired uniformity, and standard of workmanship, the Cemetery Operator reserves the right to inscribe all Niche fronts or install all lettering, vases, adornments, or any other approved attachment.
- 15.3 No person, other than the Cemetery Operator, shall remove or alter niche fronts.

### 16. By-Law Amendments

- 16.1 The Cemetery shall be governed by this By-law, and all procedures will comply with the Act and Ontario Regulation 30/11, which may be amended periodically.

All By-law amendments must be:

- a) published once in a newspaper with general circulation in the locality in which the Cemetery is located;
  - b) conspicuously posted on a sign at the entrance of the Cemetery;
  - c) delivered to each supplier of markers who has delivered a marker to one of the Clarington cemeteries during the previous year, if the by-law or by-law amendment pertains to Markers or their installation; and
  - d) posted on the municipal website.
- 16.2 All by-laws and by-law amendments are subject to the approval of the Registrar.

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### 17. General

- 17.1 By-laws 2012-061, 2013-006, 2013-065, 2015-037, 2016-002, 2016-072, 2019-045, 2020-044, and 2022-035 are hereby repealed.
- 17.2 In the event that any provisions of this By-law are deemed to be invalid or void, in whole or in part, by any court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.
- 17.3 This By-law shall be effective the date that it is approved by the Registrar.

Passed in Open Council this \_\_\_\_\_ day of \_\_\_\_\_, 2022

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Adrian Foster, Mayor

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June Gallagher, Municipal Clerk

# Cemetery By-law 2022-xxx

## Schedule A

### List of Cemeteries Operated by the Municipality of Clarington

#### Active Cemeteries:

- Bowmanville Cemetery, located at 1330 Haines Street, Bowmanville;
- Bond Head Cemetery, located at 44 Queen Victoria Street, Newcastle;
- St. George's Cemetery, located at 2 Browview Road, Bowmanville;
- Hampton Union Cemetery, located at 5810 Old Scugog Road, Hampton;
- Orono Cemetery, located at Lot 28, Mill Lane, Orono.;

#### Inactive Cemeteries:

#### Abandoned Cemeteries in the Former Township of Clarke

<b>Cemetery Name</b>	<b>Location</b>
Billings Cemetery	Lot 25, Concession 9
Brown Family	Lot 21, Concession 2
Christian Church	Lot 28, Concession 5
Coulter Farm (Banstra)	Lot 25, Concession 2
Gifford Family	Lot 15, Concession 2
Gilmer Family Plot	Lot 2, Concession 4
Graham Property	Lot 32, Concession 2
Lawrence's Back Church	Lot 34, Concession 7
Lawrence's	Lot 21, Concession 5
McLean or Elliott	Lot 9, Concession 8
McNeil Property	Lot 15, Concession 3
McNeile & Neely	Lot 32, Concession 7
Nay & Staples	Lot 31, Concession 8
Newtonville Presbyterian	Lot 8, Concession 2
Smith Family	Lot 3, Concession 4
Stutt Farm	Lot 19, Concession 4
White Church Cemetery	Lot 13, Concession 4

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### Abandoned Cemeteries in the Former Township of Darlington

<b>Cemetery Name</b>	<b>Location</b>
Abandoned Cemetery	Lots 28 & 29, Concession BF
Advent	Lot 26, Concession 5
Bible Christian Cemetery	Lot 19, Concession 6
Burk	Lot 24, Concession BF
Enniskillen Presbyterian	NW Corner, Lot 18, Concession 7
Hampton South	Lot 18, Concession 5
Long Sault	SE Corner, Lot 5, Concession 9
Mount Vernon Episcopal	Lot 28, Concession 6
Old Methodist	Lot 27, Concession 9
Providence	Lot 3, Concession 3
Rehobeth	Lot 5, Concession 2
Salem	North End, Bowmanville Golf & Country Club
Trinity Anglican	Lot 17, Concession 8
Trulls	Lot 32, Concession 1
Tyrone	Lot 9, Concession 7