



The Corporation of the Town of Espanola

By-law No. ####

Being a Bylaw to Enact Rules and Regulations And to Establish the Tariff of Fees for the Espanola Cemetery

WHEREAS the Funeral, Burial and Cremation Services Act (2002) provides that the owner of a cemetery may make bylaws affecting the operation of the cemetery; and

NOW THEREFORE the Council of the Corporation of the Town of Espanola enacts as follows as owner of the Espanola Cemetery:

1. DEFINITIONS IN THIS BYLAW:

- (a) **"The Act"** means the Funeral, Burial and Cremation Services Act (FBCSA), 2002, O. Reg. 30/11, and regulations thereunder;
- (b) **"Public Works Department"** means the Town of Espanola Public Works Department;
- (c) **"The Corporation"** means the Corporation of the Town of Espanola;
- (d) **"The Manager"** means the Manager of the Public Works Department or his designate;
- (e) **"Cemetery or Cemetery Operator"** means the Corporation of the Town of Espanola, Public Works Department, or Manager;
- (f) **"Full burial"** means the casket burial of human remains;
- (g) **"Interment"** means the burial of human or cremated remains and includes the placing of human or cremated remains in a lot;
- (h) **"Burial"** means the opening and closing of an in-ground lot or plot for the disposition of human or cremated remains;
- (i) **"Care and Maintenance Fund"** is a requirement under the FBCSA that a prescribed amount or a percentage of the purchase price (excluding tax) of all interments sold; and prescribed amounts for monuments and markers is contributed into the care and maintenance fund. Interest earned from this fund is used to provide care and maintenance of lots, plots, markers and monuments at the cemetery;
- (j) **"Grave/Lot"** means any single in-ground burial space intended for the interment of a human or cremated remains;
- (k) **"Interment Right"** means the right to require or direct the interment of human or cremated human remains in a grave, lot, niche or crypt and direct the associated memorialization;
- (l) **"Interment Rights Certificate"** means the document issued by the Cemetery to the purchaser once the interment rights have been paid in full, identifying ownership of the interment rights;
- (m) **"Interment Rights Holder"** means any person designated to hold the right to inter human remains and direct memorialization in a specified lot as registered with the Town of Espanola;
- (n) **"Marker"** means any permanent memorial structure that is set flush and level with the ground, and used to mark the location of a burial lot;
- (o) **"Monument"** means any permanent memorial projecting above the ground installed within the designated space to mark the location of a burial or lot;
- (p) **"Resident"** means any person who:
 - 1. Resides in the municipality
 - 2. Is the owner or tenant of land in the Municipality or the spouse of such a person
 - 3. Is a resident receiving chronic health care in another municipality.

2. HOURS OF OPERATION:

- (a) Cemetery Visitation Hours: Regular daylight hours.

- (b) Cemetery Operator Office Hours: Monday to Friday from 8:00am – 4:00pm. Office is closed between 12:00pm – 1:00pm.
- (c) Burial Hours: 8:00am – 2:30pm for cremation burial and 8:00am-2:00pm for full burials on Monday to Friday. Burials not within these days/hours are subject to additional fees. No burials shall be made on a Sunday with the exception of a written order of the Medical Officer of Health for the Municipality.

3. GENERAL CONDUCT:

- (a) The cemetery operator reserves full control over the cemetery operations and management of land within the cemetery grounds.
- (b) No person may damage, destroy, remove or deface any property within the cemetery.
- (c) All visitors and contractors should conduct themselves in a quiet manner that shall not disturb any service being held.

4. LIABILITY:

- (a) The cemetery operator will not be held liable for any loss or damage, without limitation (including damage by the elements, Acts of God, or vandals) to any lot, grave, columbarium, niche, mausoleum, crypt, monument, marker, lot decoration, or other article that has been placed in relation to an interment right save and except for direct loss or damage caused by gross negligence of the cemetery.

5. PUBLIC REGISTER:

- (a) Provincial legislation – Section 110 of Ontario Regulation 30/11 requires all cemeteries to maintain a public register that is available to the public. Available for viewing at the Cemetery Operator Office at 596 Second Ave. during regular hours of operation.

6. PETS OR OTHER ANIMALS:

- (a) Burial of pets or other animal remains are prohibited in cemetery grounds.
- (b) Domestic animals are prohibited in the cemetery grounds.
- (c) Feeding of wildlife is prohibited in the cemetery grounds

7. RIGHT TO RE-SURVEY:

- (a) 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.

8. SALE & OWNERSHIP OF INTERMENT RIGHTS:

- (a) Interment Rights may only be sold by the cemetery operator.
- (b) All prices for cemetery lots and services shall be as set out in the most recent Fees & Charges By-law. Prices for lots shall include the applicable portion for deposit to the Cemetery's Care and Maintenance Fund.
- (c) Purchasers of lots are interment rights holders and acquire only the right to direct the interment or burial of human remains, and the installation of monuments, markers and inscriptions, subject to the conditions set out in the cemetery by-law.
- (d) No burial, installation of any monument, marker, inscription, or memorialization is permitted until the interment rights have been paid in full.
- (e) An interment rights certificate will be issued to the interment rights holder(s) when payment has been made in full.
- (f) The purchase of a lot - interment rights is not a purchase of real estate or real property. Ownership of all cemetery land remains vested with the Corporation at all times.
- (g) At the time of sale, the Cemetery Operator shall provide each interment rights holder with:
 - 1. Copy of the Cemetery Bylaw
 - 2. Certificate of Interment Rights/Contract
 - 3. Consumer Information Guide
 - 4. Receipt

- (h) A purchaser has the right to cancel an interment rights contract within thirty (30) days of purchasing the interment rights, by providing written notice of the cancellation to the cemetery operator. The cemetery operator will refund all monies paid less an administration fee by the purchaser within thirty (30) days from the date of the request for cancellation. The interment rights certificate that has been issued to the interment rights holder(s) must be returned to the cemetery operator along with the written notice of cancellation.
- (i) If any portion of the interment rights has been exercised, the interment rights holder(s) is not entitled to cancel the interment rights contract.

9. RE-SALE OR TRANSFER OF INTERMENT RIGHTS:

- (a) Third party resale of interment rights is prohibited. Interment Rights may only be sold by the Cemetery Operator.
 - a. If a rights holder(s) wishes to re-sell the interment rights back to the cemetery operator, the interment rights holder(s) must make the request to the cemetery operator in writing. The cemetery operator will repurchase the interment right at the price listed on the cemetery operator's current price list less the Care & Maintenance Fund contribution made at the time of purchase and less an administration fee. The re-purchase and payment to the rights holder requesting the sale must be completed within 30 days of the request.
 - b. The interment rights holder requesting the resale of the rights must return the interment rights certificate to the cemetery operator and the interment rights holder(s) must endorse the interment rights certificate, transferring all rights, title and interest back to the cemetery operator. The appropriate paperwork must be completed before the cemetery operator reimburses the rights holder(s).
 - c. An interment rights holder may transfer interment rights to another person. The original interment rights holder must return the original interment rights certificate to the cemetery operator before a new certificate can be created.
 - d. If any portion of the interment rights has been exercised, the interment rights holder(s) is not entitled to re-sell the interment rights.
- (b) Interment rights are not automatically inherited when the interment rights holder dies.
- (c) If the interment rights holder is deceased, the cemetery may grant a transfer of interment rights to an applicant if the appropriate documentation is provided.
 - a. The interment Rights holder's last will that identifies a beneficiary as successor for the interment rights or the estate's residual assets.
 - b. If there was no will, succession law applies and any new rights holders (minimum 18 years of age) will be established in the following order:
 - i. Children - if no children, then,
 - ii. Grandchildren - if no grandchildren, then,
 - iii. Great-grandchildren - if no great grandchildren, then,
 - iv. Parents - if no parents, then,
 - v. Brothers & Sisters - if no brothers or sisters, then,
 - vi. Grandparents - if no grandparents, then,
 - vii. Uncles and aunts, nieces and nephews.
 - c. If there are multiple successors in the same class, the applicant must obtain letters from other living successors identifying themselves as successors and releasing themselves from any claims on the interment rights.
 - d. If an applicant is considered to be in a lower class than other living successors, the applicant must provide letters from living successors in their class as well as all upper classes identifying themselves as successors and releasing themselves from any claims on the interment rights. These letters must be commissioned by a Commissioner of Oath.
 - e. An affidavit must be signed by the applicant.
 - f. If letters cannot be provided and there is no will, the interment rights may not be transferred.

- (d) When interment rights have been transferred, a new certificate will be issued to the new interment rights holder and the previous interment certificate will become void.

10. BURIAL OF HUMAN OR CREMATED REMAINS

- (a) Interment rights holder(s) shall provide written authorization prior to a burial taking place. Should the interment rights holder be the deceased, no authorization is required.
- (b) A burial permit issued by the Registrar General or equivalent document showing that the death has been registered with the province must be provided to the cemetery office prior to a burial taking place, or a certificate of cremation must be submitted to the cemetery office prior to the burial of cremated remains taking place.
- (c) A "Burial Order" form, providing such information as may be required by the cemetery operator for the completion of the burial and the public register prior to each burial of human or cremated remains.
- (d) Payment must be made to the Town of Espanola prior to a burial taking place.
- (e) The cemetery shall be given 24 business hours of notice for each burial of human or cremated remains. Notices of intent received outside of business hours for interments are subject to additional fees.
- (f) The opening and closing of graves may only be conducted by cemetery staff or those designated to do work on behalf of the cemetery.
- (g) No burials shall be allowed to take place in the cemetery outside of the normal burial hours of the cemetery unless special arrangements are made with the Cemetery Operator and are subject to additional fees.
- (h) No burials shall be made on a Sunday with the exception of a written order of the Medical Officer of Health for the Municipality.
- (i) Cremated remains are not permitted to be scattered on a grave or in the cemetery.
- (j) Human and 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 may take place. A certificate from the local medical officer of health is not required for the removal of cremated remains. In special circumstances, the removal of human remains may also be ordered by certain public officials as per the Act without the consent of the interment rights holder and/or next of kin(s).
- (k) Where the first burial is a casket, no more than six (6) cremation burials shall be placed on top of one casket in a single plot.
- (l) No more than four (4) cremation burials shall be allowed on a cremation-only sized plot.
- (m) The Cemetery Operator requires the following documentation for:
 - a. Interment:
 - i. Burial of human remains:
 - 1. Burial Order
 - 2. Burial Permit – Proof of Registration of Death
 - 3. Written consent if the deceased is not the interment rights holder
 - 4. Payment
 - ii. Burial of cremated remains:
 - 1. Burial order
 - 2. Cremation certificate
 - 3. Cremation layout diagram
 - 4. Written consent if the deceased is not the interment rights holder
 - 5. Payment
 - iii. Written instruction from a social services administrator must be submitted to the cemetery operator before a burial assisted by a social services agency may take place.
 - b. Disinterment of:
 - i. Human remains:
 - 1. Written consent from the Medical Officer of Health
 - 2. Court Order or written consent of the interment rights holder

3. Payment
- ii. Cremated remains:
 1. Court order or written consent of the interment rights holder
 2. Notification to the Medical Officer of Health
 3. Payment
 - c. Monument Installation
 1. Monument application form
 2. Permit
 3. Written consent if the deceased is not the interment rights holder
 4. Payment (if required)

11. MARKERS & MONUMENTS

- (a) No marker, monument or other structure shall be erected or permitted on a lot until a "Monument Application Form" has been completed, all charges have been paid in full, and a monument permit has been issued. A monument 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.
- (b) No monument, footstone, marker or memorial of any description shall be placed, moved, altered, or removed without permission from the cemetery operator.
- (c) Minor scraping of the monument base of an upright monument due to grass/lawn maintenance is considered to be normal wear.
- (d) The cemetery operator will take reasonable precautions to protect but assumes no liability for the loss of, or damage to, any monument, marker, or other structure, or part thereof.
- (e) The cemetery operator reserves the right to determine the maximum size of monuments, their number and their location on each lot or plot. They must not be of a size that would interfere with any future interments.
- (f) 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.
- (g) The cemetery operator retains the right to temporarily relocate a monument or marker so that cemetery operations, involving a burial can take place.
- (h) 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.
- (i) In keeping with the cemetery by-laws, only one monument shall be erected within the designated space on any lot.
- (j) The minimum thickness for flat markers including footstones is 4 inches or 10 cm.
- (k) Only one upright monument and up to six flat markers are permitted on each single lot.
- (l) Only one flat marker is permitted on a cremation lot.
- (m) All flat markers shall be installed flush to the surface of the ground.
- (n) An upright monument, including the base, is restricted to a maximum height of four (4) feet.
- (n) All monuments, markers and cornerstones must be of good quality granite, marble or other natural stone adapted to such purposes, real bronze and stainless steel. Special consideration for monuments not constructed from the above materials must be submitted to the Cemetery Operator.
- (o) Monuments to be erected for or by lot owners shall be set upon an adequate foundation of a good quality concrete, granite, marble or other natural stone of a minimum depth of 15.24cm (6 inches). All foundations must be flushed to the ground and shall not be wider than the lot that it is being set on and not have a length greater than 40.56cm (18 inches) from the head of the lot. The foundation must be a minimum of 7.62cm (3 inches) wider than the monument base in the front, back and sides.
- (p) Temporary markers are only permitted for a period of one year and must be approved by the Cemetery Operator prior to installation.
- (q) Temporary nameplates provided by the Cemetery Operator will only remain on gravesites for a period of one year.

- (r) All maintenance, repairs and vandalism of monuments are the responsibility of the plot owner.
- (s) No work shall be carried out on any lot in the cemetery without permission from the Cemetery Operator.

12. LOT DECORATIONS:

- (a) Flowers placed on a grave for a funeral shall be removed by the cemetery staff after a reasonable time (7 days) to protect the sod and maintain the tidy appearance of the cemetery.
- (b) Only one of the following lot decorations shall be permitted on a single lot:
 - 1. One artificial flower arrangement is permitted and is restricted to the area immediately adjacent to the monument.
 - 2. One-rod iron plant hanger may be erected and is restricted to the area immediately adjacent to the monument. Only one floral arrangement per hanger is permitted.
- (c) Evergreen shrubs, maximum 2 feet in spread (Little Gem Spruce, Alberta Globe Spruce), may be planted and are restricted to the area immediately adjacent to the monument. Shrubs may only be planted on double plots that have one shared monument.
- (d) If any shrubs or other permitted memorial artefacts encroach on adjacent lots, the Cemetery Operator may trim or remove without replacement. It is the owner's responsibility to maintain any shrubs planted.
- (e) The following items are prohibited in or around lots, but not limited to the following, the erection of borders, fences, railings, walls, decorative stones, hedges, solar lights and flowerbeds.
- (f) The Cemetery Operator reserves the right to regulate the articles placed on lots or plots that pose a threat to the safety of all interment rights holders, visitors to the cemetery and cemetery employees, prevents the cemetery from performing general cemetery operations, or are not in keeping with the respect and dignity of the cemetery. Prohibited articles will be removed and disposed of without notification.
- (g) Any items placed on lots are the sole responsibility of the interment rights holder. The Cemetery Operator is not responsible for the loss of or damage to any articles placed within the cemetery.
- (h) No person other than cemetery staff shall remove any sod or in any other way change the surface of the burial lot in the cemetery.
- (i) No person shall plant trees, flower beds or shrubs within the cemetery grounds except with the approval of the cemetery.
- (j) No work shall be carried out on any lot in the cemetery without permission from the Cemetery Operator.
- (k) The Cemetery Operator reserves the right to correct any breach of the rules and to remove any non-compliant, withered or abandoned memorial artefacts.

13. CARE & MAINTENANCE:

A portion of the price of interment is trusted into the Care and Maintenance Fund. The income generated from this fund is used to maintain, secure and preserve the cemetery grounds. Services that can be provided through this fund include:

- (a) Re-levelling and sodding or 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
- (f) Repairs and general upkeep of cemetery maintenance buildings and equipment.

14. CONTRACTORS/MONUMENT DEALERS

- (a) 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 work may begin. Pre-approval includes but is not limited to: 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, the location of the work to be performed. It is the responsibility of all contractors to report to the cemetery operator

and provide the necessary approvals before commencing work at any location on the cemetery property.

- (b) Prior to the start of any work, contractors must provide proof of:
 - 1. WSIB coverage
 - 2. Occupational Health and Safety compliance standards
 - 3. Environmental Protection
 - 4. WHMIS
 - 5. Certificate of liability insurance of not less than \$5 million.
- (c) All cemetery by-laws apply to all contractors and all work carried out by contractors within the cemetery grounds.
- (d) Contractors, monument dealers and suppliers shall not enter the cemetery in the evening, weekends or statutory holidays, unless approval has been granted by the cemetery operator.
- (e) No work will be performed at the cemetery except during the regular business hours of the cemetery.
- (f) Contractors shall temporarily cease all operations if they are working within 100 metres of a funeral until the conclusion of the service. The cemetery reserves the right to temporarily cease contractor operations at their sole discretion 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.
- (g) Contractors, monument dealers and suppliers shall lay wooden planks on the burial lots and paths over which heavy materials are to be moved in order to protect the surface from damage.

15. BYLAW CONTRAVENTIONS:

- (a) Any person who contravenes any of the provisions of this bylaw is guilty of an offence and upon conviction is liable to a fine as provided for in the Provincial Offences Act.

16. EFFECTIVE DATE:

- (a) Upon approval of the Registrar, Funeral, Burial and Cremation Services Act, 2002, Bereavement Authority of Ontario.

17. PREVIOUS BYLAWS:

- (a) Bylaws 1534/01, 1589/02, 1841/05 and 1973/07 are hereby repealed.

Read a first, second and third time and finally passed in open Council on this _____ day of _____, 2020.

Jill Beer
Mayor

Paula Roque
Clerk