

THE CORPORATION OF THE MUNICIPALITY OF TEMAGAMI

BY-LAW NO. 19-1465

Being a by-law rescind By-Law 09-891, 11-1021, 11-1029, and to establish a Cemetery By-Law.

WHEREAS Section 150 (1) of Ontario Regulation (O.Reg) 30/11, under the Funeral, Burial and Cremation Services Act, 2002, provides that a cemetery operator may make by-laws governing the operation of the cemetery and, in particular, governing rights, entitlements and restrictions with respect to interment rights;

AND WHEREAS the Temagami Cemetery Board recommended the following rules and regulations to govern the operation of the Whispering Pines Cemetery, which the Council of the Corporation of the Municipality of Temagami received on the ____ day of ____ 2019;

AND WHEREAS these rules and regulations have been approved by the Registrar, Funeral, Burial and Cremation Services Act, 2002 (FBCSA), Bereavement Authority of Ontario (BAO);

AND WHEREAS notice of filing the bylaw with the BAO was given as required by Section 151 of O.Reg 30/11 on the ____ day of _____, 2019;

NOW THEREFORE, the Council of the Corporation of the Municipality of Temagami enacts as follows:

I. GENERAL ADMINISTRATION

Definitions:

Burial: means the opening and closing of an in-ground lot or plot for the disposition of human remains or cremated human remains.

By-laws: means the rules and regulations under which the Cemetery operates.

Care and Maintenance Fund: It is a requirement under the FBCSA that a prescribed amount or a percentage of the purchase price (excluding tax) of all interment and scattering rights 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.

Cemetery: means Whispering Pines Cemetery.

Cemetery Operator: means the Corporation of the Municipality of Temagami

Columbarium: means a structure with niches for funeral urns to be stored

Contract: For purposes of these by-laws, all purchasers of interment or scattering rights, or other cemetery supplies and services must receive a copy of the contract they and the cemetery operator have signed 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 Posts: means any stone or other land markers set flush with the surface of the ground and used to indicate the location of a lot or plot.

Grave: (Also known as Lot) means any in-ground burial space intended for the interment of a child, adult or cremated human remains.

Interment: means the burial of human remains or cremated human remains in a lot or niche.

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 to the purchaser once the interment rights have been paid in full, identifying ownership of the interment rights.

Interment Rights Holder: means any person designated to hold the right to inter human remains in a specified lot.

Lot: means a single grave space of six (6) feet wide by ten (10) feet long

Marker: Shall mean any permanent memorial structure that is set flush and level with the ground, and used to mark the location of a burial lot.

Monument: means any permanent memorial projecting above the ground installed within the designated space to mark the location of a burial or lot.

Niche: means an individual compartment in a columbarium (measuring 12 inches wide x 12 inches high x 18 inches deep) for the entombment of cremated human remains.

Non-resident: means an individual who is neither an owner or tenant of land within the boundaries of the Municipality of Temagami, nor the spouse of such owner or tenant.

Plot: For the purposes of these by-laws, a plot means a parcel of land, sold as a single unit, containing multiple lots.

Resident: means an individual who is an owner or tenants if land within the boundaries

of the Municipality of Temagami, or who is the spouse of such owner or tenant.

Urn: means a closed container made of ceramic, glass, metal, wood, granite or marble used for the disposition of cremated human remains.

II. GENERAL INFORMATION

Hours of Operation:

Visitation Hours: The Whispering Pines Cemetery is open 24 hours a day, 7 days a week.

Office Hours: (7 Lakeshore Drive, Temagami) are Monday to Friday 8:30 am to 4:30 pm.

Burial Hours: Burials may be arranged for any day Monday through Saturday between the hours of 8:00 am and 4:00 pm. during the months of May through October, with the required notice to the operator.

General Conduct:

The cemetery 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 should conduct themselves in a quiet manner that shall not disturb any service being held.

By Law Amendments:

The cemetery shall be governed by these by-laws, and all procedures will comply with the *Funeral Burial & Cremation Services Act, 2002* (FBCSA) 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; and
- C) Delivered to each supplier of markers who has delivered a marker to the cemetery during the previous year, if the by-law or by-law amendment pertains to markers or their installation.

All by-laws and by-law amendments are subject to the approval of the Registrar, Bereavement Authority of Ontario.

Liability:

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, plot, columbarium niche, mausoleum crypt, monument, marker, or other article that has been placed in relation to an interment or scattering right save and except for direct loss or damage caused by gross negligence of the cemetery.

Public Register:

Provincial legislation – Section 110 of Ontario Regulation 30/11 requires all cemeteries and crematoriums to maintain a public register that is available to the public during regular office hours.

Pets or Other Animals:

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

Right to Re-Survey:

The Cemetery 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.

III. SALE OF INTERMENT RIGHTS

Purchasers of interment or scattering rights holders acquire only the right to direct the burial of human remains and the scattering of cremated 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, scattering, 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.

Price of Lots and Niches:

Interment rights to lots and niches shall be sold at prices set by the Cemetery Operator as specified in the current Cemetery Price List at the time of sale.

Payment Plans:

The Cemetery Operator may offer payment plans for the purchase of lots and niches, as set out in the current Cemetery Price List, but no Interment Rights shall be transferred to the purchaser until payment has been made in full.

Contract:

In accordance with the FBCSA, all purchasers of interment rights must enter into a cemetery contract, providing such information as may be required by the cemetery operator for the completion of the contract and the public register prior to each burial or entombment of human remains with the Whispering Pines Cemetery.

Attached hereto and forming part of this by-law are the following schedules:

Schedule 'A' being the contract for the purchase of interment rights;
Schedule 'B' being the contract for the purchase of cemetery supplies and services; and
Schedule 'C' being the Certificate of Interment Rights.

IV. CANCELLATION OR RESALE OF INTERMENT RIGHTS

Cancellation of Interment Rights within 30 Day Cooling-Off Period:

A purchaser has the right to cancel an interment or scattering rights contract within thirty (30) days of signing the interment rights 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.

Cancellation of Interment Rights after the 30 Day Cooling-Off Period:

If a rights holder(s) wishes to re-sell the interment rights, the rights holder(s) must make the request to the cemetery operator in writing. 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. The certificate must be endorsed by the rights holder(s), 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). 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. The cemetery operator will cancel the contract and issue a refund to the purchaser for the amount paid for the interment rights less the appropriate amount that is required to be deposited into the Care and Maintenance Fund. This refund will be made within thirty (30) days of receiving the appropriate paperwork.

If any portion of the interment rights has been exercised, the purchaser, or the interment rights holder(s) are not entitled to cancel the contract or re-sell the interment rights.

The cemetery operator permits the interment rights holder to sell or transfer their interment rights to a third party, at no more than the current price listed on the cemetery price list, as long as the sale or transfer is conducted through the cemetery operator as per the qualifications and requirements below.

- The interment rights holder(s) intending to sell their rights shall provide the following documents to the cemetery operator so that the operator can confirm the ownership of the rights and provide the third party purchaser with a the required certificate etc.:
 1. an interment rights certificate endorsed by the current rights holder;
 2. any other documentation in the interment rights holder(s) possession relating to the rights.
- The third party purchaser will be provided with the following documents by the cemetery operator:
 1. An interment rights certificate endorsed by the current rights holder;
 2. A copy of the cemetery's current by-laws;
 3. A copy of the cemetery's current price list;

4. Any other documentation in the interment rights holder(s) possession relating to the rights.
- The cemetery operator shall:
 1. Require a statement signed by the rights Holder(s) selling the interment rights acknowledging the sale of the interment rights to the third party purchaser;
 2. Require confirmation that the person selling the interment or scattering rights is the person registered on the cemetery records and that they have the right to re-sell the Interment or scattering rights;
 3. Record the date of transfer of the interment or scattering rights to the third party;
 4. Require the name and address of the third party purchaser(s);
 5. Require a statement of any money owing to the Cemetery Operator in respect to the Interment Rights.
 - Once the endorsed certificate and all required information has been received by the cemetery operator from the rights holder(s), the cemetery operator will issue a new interment rights certificate to the third party purchaser.
 - Upon completion of the above listed procedures, and upon the issuance of the new interment rights certificate, the third party purchaser or transferee(s) shall be considered the current interment rights holder(s) of the interment rights, and the resale or transfer of the interment rights shall be considered final in accordance with the cemetery by-laws and the FBCSA.
 - The cemetery operator may charge an administration fee for the issuance of a duplicate certificate in accordance with the price listed on the cemetery operator's current price list.

V. INTERMENTS

Permits:

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 an interment taking place. A Certificate of Cremation must be submitted to the cemetery office prior to the interment of cremated remains taking place.

The opening and closing of graves and niches may only be conducted by cemetery staff or those designated to do work on behalf of the cemetery.

Written Permission:

Written permission must be submitted to the Cemetery Operator for any interment, other than the Interment Rights Holder for each lot.

Charges Incurred:

Payment of the Interment Fee must be made to the cemetery operator before a burial can take place.

Notice Required:

The cemetery shall be given three (3) business days of notice for each burial of human remains.

Disinterment:

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 prior notification has been given to 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 without the consent of the interment rights holder and/or next of kin(s).

Number of Interments per Grave or Niche:

Per Lot: A maximum of one (1) Casket and one (1) Cremation or two (2) cremations are allowed.

Per Niche: A maximum of two (2) Cremations are allowed.

VI. MONUMENTS AND MARKERS**General:**

All monuments, markers, footstones, corner posts, etc. shall comply with this section and shall be at the expense of the interment rights holder.

No monument, footstone, marker or memorial of any description shall be placed, moved, altered, or removed without permission from the cemetery operator.

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.

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 Board.

All monuments and markers shall be constructed of bronze or natural stone (i.e. granite).

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. Minor scraping of the monument base of an upright monument due to grass/lawn maintenance is considered to be normal wear.

Foundations:

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.

All monuments taller than one foot shall have a four inch thick floating slab with reinforcing

steel, surrounded by a four inch apron outside the foundation.

Delivery and Installation:

No memorial or other structure shall be erected or permitted on a lot until all charges have been paid in full. This includes, but is not limited to, the amount that is to be deposited in the Care and Maintenance Fund as regulated in the FBCSA.

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 marker retailer have been notified by the cemetery operator.

All markers are to be installed with the Municipality's Public Works Superintendent or his designate present.

Size and Placement:

The cemetery operator reserves the right to determine the maximum size of monuments, their number and their location on each lot or plot. Their size or placement shall not be such that would interfere with future interments.

Number:

Only one monument shall be erected within the designated space on any lot.

Height, Width and Thickness of Flat Markers:

Flat markers must be not more than 4 inches thick and not more than 32 inches in length and 18 inches in width, and have a concrete apron around the marker to a depth of 4 inches and be flush mounted at ground level.

Height, Width and Thickness of Monuments:

Monuments must conform to the following restrictions:

Adult & Child: Maximum size four (4) feet in height, Thirty-two (32) inches in width and 8 inches in thickness - monuments 2 feet or less in height must be 6 inches thick for a single plot.

Corner Posts:

Width - Six (6) inches; Length – Six (6) inches; Height - Four (4) inches; flush mounted at ground level.

Footstones:

Width – Twelve (12) inches; Length – Six (6) inches; Thickness - Four (4) inches; flush mounted at ground level.

VII. CEMETERY SUPPLIES AND SERVICES

Purchase Price:

The purchase of Cemetery Supplies and Services shall be as per the current Cemetery Price List and also listed in the applicable schedule to the current Municipal User Fee by-law.

VIII. CARE, PLANTING AND FLOWERS

A portion of the price of interment or scattering rights 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:

- Re-levelling and sodding or seeding of Lots or scattering grounds
- Maintenance of cemetery roads, sewers and water systems
- Maintenance of perimeter walls and fences
- Maintenance of cemetery landscaping
- Maintenance of mausoleum and columbarium
- Repairs and general upkeep of cemetery maintenance buildings and equipment

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.

Flowers placed on a grave for a funeral shall be removed by the cemetery staff after a reasonable time to protect the sod and maintain the tidy appearance of the cemetery.

No person shall plant trees, flower beds or shrubs in the cemetery except with the approval of the cemetery, with the exception of the following:

Fresh Flowers and Smaller Pots

Fresh flowers and smaller pots may be placed on a grave to commemorate special occasions, however, the Cemetery assumes no responsibility and will remove these and the containers when they become unsightly.

Flower Beds

No flowers or flower beds may be planted on the ground except in an area 12 inches in front of the monument, and no longer than the foundation. Flowers in vases are permitted in front of the monument only. No glass vases are permitted. Borders, fences, gravel and mulch or any other types of structure are not permitted.

Trees and Shrubs

Only pyramid or globe cedars are permitted on either side of the monument or marker. The Cemetery Operator reserves the right to remove any that do not conform, due to type or shape, and prune any that grow too large.

Items That Are Prohibited And Permitted:

The cemetery 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.

Animals Prohibited

No animals shall be permitted in the Cemetery except in the confines of a vehicle or as a service animal.

Chairs, Trellis, Prohibited

No bench, wooden or wire trellis, arch or iron rods or similar articles shall be brought to or left upon the lots. Chairs may be brought by visitors for their use while visiting, but must not be left at the Cemetery.

Other Items Prohibited

No articles made of hazardous materials such as non-heat resistant glass (excludes glass attached to monuments), ceramics, or corrosive metals; loose stones or sharp objects shall be placed or left on cemetery lots.

Portable Articles

The Cemetery Operator will not be responsible for loss or damage to any portable articles left in the Cemetery.

IX. NICHES AND URNS

Payment must be made to the cemetery operator before an interment may take place.

Only the cemetery operator may open and seal niches for interments. This applies to the inside sealer and the niche front.

To ensure quality control, desired uniformity and standard of workmanship, the cemetery reserves the right to inscribe all niche fronts or install all lettering, vases, adornments, or any other approved attachment.

No person other than cemetery staff shall remove or alter niche fronts.

Niche Price:

The total niche price includes: interment rights, care and maintenance fees, interment of one (1) urn, opening of the niche front for urn placement and closing of the niche front. A second fee will be charged for a second interment in the same niche, which is for the opening of the niche front for urn placement and closing of the niche front.

Cremated Remains:

All remains placed in a niche must be in an urn.

Dimension of Urn:

The dimension of the urn must be so as to fit in the purchased niche of Twelve (12) inches wide by Twelve (12) inches high by Eighteen (18) inches deep. If the niche is intended for the interment of more than one urn, the dimensions of the urns must be adequate to accommodate those urns in the same niche. The Cemetery Operator reserves the right to refuse interment of any urn or urns which is oversized or in any way inappropriate for use in the specified niche.

Niche Doors:

In order to preserve the appearance and uniformity of the Columbarium(s) all niches must be marked with memorialization approved by the Cemetery Operator. All niches will have the name, birth date and death date of each person who is to be inurned in any niche. A sample of the style and type of the niche memorialization used for the Columbarium(s) will be available at the Municipal Office of Temagami. Only etched markings will be permitted. Small etched graphics on the niche door are allowed on the approval of the Cemetery Operator.

X. ACCESS TO CEMETERY GROUNDS

Children under the age of 12 years shall not be permitted on the grounds except in the charge of an adult who shall be responsible for their good conduct.

XI. CONTRACTOR/MONUMENT DEALERS

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

Prior to the start of any said work, contractors must provide proof of:

- WSIB coverage
- Evidence of liability insurance of not less than \$2 million.

All cemetery by-laws apply to all contractors and all work carried out by contractors within the cemetery grounds.

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.

No work will be performed at the cemetery except during the regular business hours of the cemetery.

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.

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.

XII. CORRECTIONS

The Clerk of the Municipality of Temagami is hereby authorized to make minor modifications or corrections of a grammatical or typographical nature to the by-law and schedule, after the passage of this by-law, where such modifications or corrections do not alter the intent of the by-law.

XIII. FORCE AND EFFECT

That any By-law not consistent with this By-Law, namely 09-891, 11-1021, 11-1029 is hereby repealed.

This By-law shall come into force and take effect upon final passing thereof.

TAKEN AS READ A FIRST time on this _____ day of _____ 2019.

READ A SECOND AND THIRD time and finally passed this ____ day of ____ 2019.

Mayor

Clerk