

## The Corporation of the Town of Grimsby

### By-law No. 12-62

#### A By-law to enact rules for the maintenance, management and control of Grimsby Mountain Cemetery.

Ministry of Consumer Services  
**RECEIVED**

NOV 01 2012

**CEMETERIES REGULATION**

**Whereas** the Municipal Act, 2001, S.O. 2001, c. 25, Section 9 provides that Sections 8 and 11 shall be interpreted broadly so as to confer broad authority on municipalities to (a) enable municipalities to govern their affairs, as they consider appropriate and (b) enhance their ability to respond to municipal issues;

**And whereas** the Funeral, Burial and Cremation Services Act, 2002 (FBCSA) came into effect on July 1, 2012 and requires that municipalities amend existing cemetery by-laws to comply with new legislation;

**And whereas** the Corporation of the Town of Grimsby (the Corporation) is the owner of the Grimsby Mountain Cemetery comprised of approximately 33 acres described as Part of Lots 7 and 8, Concession 3, Town of Grimsby, Regional Municipality of Niagara, formerly the Township of North Grimsby, County of Lincoln;

**And whereas** Council deems it expedient to enact rules for the maintenance, management and control of Grimsby Mountain Cemetery;

**Now therefore** the Council of the Corporation of the Town of Grimsby enacts as follows:

This By-law comes into force and takes effect on the date of its passing.

#### 1. Definitions

- a. **Burial** means the opening and closing of an in ground lot or plot for the disposition of human remains or cremated human remains.
- b. **By-law** means the rules and regulations under which the Cemetery operates.
- c. **Care and Maintenance Fund** means a requirement under the FBCSA that a percentage of the purchase price of all Interment Rights and set amounts for marker and monument installations is contributed into the Care and Maintenance Fund. Interest earned from this fund is used to provide care and maintenance of plots, lots, markers and monuments at the Cemetery.
- d. **Cemetery** means the Grimsby Mountain Cemetery.
- e. **Certificate of Interment Rights** means assignment of Interment Rights from the Corporation according to the prescribed form.
- f. **Clerk** means the Clerk of the Corporation.
- g. **Contract** means an agreement according to the prescribed form between the Corporation and the purchaser of Interment Rights or cemetery supplies or services.
- h. **Corporation** means the Corporation of the Town of Grimsby.
- i. **Council** means the municipal Council of the Corporation.
- j. **Director** means the Director of Public Works of the Corporation.
- k. **FBCSA** means the Funeral, Burial and Cremation Services Act, 2002.

1. **Grave** (also known as a lot) means any in ground burial space intended for the interment of a child, adult or cremated human remains.
- m. **Holiday** means New Year's Day, Family Day, Good Friday, Victoria Day, Canada Day, Civic Holiday, Labour Day, Thanksgiving Day, Christmas Day and Boxing Day. When any holiday falls on a Saturday or on a Sunday, the Monday following is in lieu of a holiday. Boxing Day shall be the first work day following the day of observance of Christmas.
- n. **Human remains** mean a dead human body and include a cremated human body.
- o. **Inter** means that burial of human remains and includes the placing of human remains in a lot.
- p. **Interment Rights** means the right to require or direct the interment of human remains or cremated remains in a lot.
- q. **Interment Rights Certificate** means the document issued by the Corporation to the purchaser once the Interment Rights have been paid in full, identifying ownership of the Interment Rights.
- r. **Interment Rights Holder** means a person with Interment Rights with respect to a lot and includes a purchaser of Interment Rights under the FBCSA or a predecessor that Act.
- s. **Lot** means an area of land containing or set aside to contain human remains.
- t. **Marker** means any monument, tombstone, plaque, headstone, cornerstone or other structure ornament affixed to or intended to be affixed to a burial lot.
- u. **Medical Officer of Health** means the Region of Niagara Health Services Department Medical Officer of Health or an authorized representative.
- v. **Monument** means any permanent memorial projecting above the ground installed within the designated space to mark the location of a burial or lot.
- w. **Normal hours** means Monday to Friday from 7:00 a.m. to 3:30 p.m. except holidays.
- x. **Official Plan** means the plan of the Cemetery prepared and approved in accordance with the FBCSA.
- y. **Owner** means the Corporation of the Town of Grimsby.
- z. **Ownership** means the person(s) named on the original Certificate of Interment Rights.
- aa. **Plot** means two or more lots in which the rights to inter have been sold as a unit.
- bb. **Registrar** means the registrar appointed under the FBCSA by the Ministry of Consumer Services.
- cc. **Regulations** means regulations contained in this By-law and any regulations made under the authority of this By-law.
- dd. **Resident** means a person residing in the Town of Grimsby or a person who is a taxpayer in the Town of Grimsby and includes a person who has moved from the Town of Grimsby directly into an institution established under the Retirement Homes Act.
- ee. **Tariff** means the schedule of rates and fees for the Cemetery as established by by-law.
- ff. **Transfer** means a gift, a bequest or any other transfer made without consideration.
- gg. **Treasurer** means the Treasurer of the Corporation.

**2. General Administration**

- a. Subject to the jurisdiction of the Council the operational control and maintenance of the Cemetery is vested in the Public Works Committee and the general administration of the Cemetery is vested in the Administration and Finance Committee.
- b. Subject to the jurisdiction of the Council and to the general control and management of the Public Works Committee the care, maintenance and improvement of the Cemetery is vested in the Director and he/she shall have full charge and authority over the same.
- c. The Director may delegate the execution of any work in and about the Cemetery.
- d. The Director for purposes of managing, maintaining and improving the Cemetery, has power to perform such work as may be necessary, desirable or expedient and to enter in and upon every part of the Cemetery and in doing so does not in any way render himself or the Corporation liable for damages or otherwise.
- e. The Treasurer shall keep such books, accounts and records as are necessary for properly recording and exhibiting all financial matters pertaining to the Cemetery.
- f. All revenues and other monies belonging or pertaining to the Cemetery shall be paid to and received by the Treasurer.
- g. All fees and charges shall be in accordance with the most recent Tariff.
- h. All funds apportioned for Care and Maintenance shall be deposited as prescribed by the FBCSA and the regulations. The income from the fund shall be used to maintain, secure and preserve the Cemetery, its grounds and buildings and to maintain, stabilize, secure and preserve markers as described in the FBCSA.
- i. Interment Rights Holders must, at the time an interment takes place in a plot previously purchased on an annual care basis and for which no funds were collected by Care and Maintenance, pay the appropriate current Care and Maintenance charge as per the Tariff of Rates. The Care and Maintenance fee equivalent to the current 1 grave plot rate shall be charged at the time of each interment.
- j. The Council and the Treasurer shall not be bound to spend the whole or any part of the revenues of the Care and Maintenance Fund in any year or years but may accumulate and hold and subsequently spend the funds.
- k. No Interment Rights Holder or other person, whether he has contributed to any of the funds or not, shall have lien, charge or claim to funds or any right to question the management, application or use of the funds or the times, manner or extent of such application or use.

**3. Sale of Interment Rights**

- a. Interment Rights may only be sold by the Corporation. The Clerk shall have charge of the sale of Interment Rights and all such sales shall be for cash at the prices set out in the most recent Tariff. The sale of interment rights on the open market is prohibited.
- b. Purchasers of Interment Rights 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 this By-law. No burial or installation of any monument or marker is permitted until the Interment Rights have been paid in full.
- c. If the Interment Rights Holder wishes to re-sell the interment rights the rights holder(s) must make the request to the Cemetery operator in writing. The Corporation will repurchase the Interment Right at the price listed on the current price list less applicable taxes and the Care and Maintenance Fund contribution made at the time of purchase. The repurchase and payment to the Rights Holder requesting the sale must be completed within 30 days of the request.
- d. The Interment Rights Holder requesting the resale of the rights must return the Interment Certificate to the Corporation and the Rights Holder(s) must endorse the Interment Rights Certificate, transferring all rights, title and interest back to the Corporation. The appropriate documents must be completed before the Cemetery operator reimburses the Rights Holder(s).
- e. Plots are indivisible. Where rights to two or more lots have been purchased as a unit, only the complete unit (plot) may be transferred.
- f. All purchasers of Interment Rights shall be provided with the following:
  - i. A copy of the contract,
  - ii. A copy of the Grimsby Mountain Cemetery By-law,
  - iii. A Certificate of Interment Rights.
- g. The issuance of a Certificate of Interment Rights shall not mean a conveyance in fee simple but shall constitute only the exclusive right to use a plot or single lot for human burial purposes and memorialisation and such rights are subject to the provisions of the FBCSA and of this By-law.
- h. Immediately upon the sale of Interment Rights, the Clerk shall record the particulars of the sale in the register and shall give notice to the Director who shall enter the particulars in the register and indicate the sale upon the Official Plan.
- i. The Corporation shall, within thirty days after receiving written demand, repurchase Interment Rights at any time before they are used, but is not required to repurchase a plot in which any Interment Rights have been exercised.
- j. Where no interment has been made in a purchased plot or single lot for more than fifty (50) years, the Council may apply to the Registrar for a declaration that Interment Rights are abandoned and if approved

following the notice and appeal procedures prescribed in the FBCSA may resell such Interment Rights. Any person whose Interment Rights have been declared abandoned and resold may apply to the Registrar for redress.

#### **4. Ownership of Interment Rights**

- a. The Corporation will require when a request to make use of Interment Rights or to place a monument on a plot, single lot or cremation lot:
  - i. Return of the original Certificate of Interment Rights by the owner.
  - ii. In the case of a testamentary transfer by delivery to the Clerk of a certified or notarial copy of the Probate. If the Will is not probated a certified or notarial copy of the Will must be provided.
  - iii. In the case of intestate, by delivery to the Clerk of a notarized affidavit to establish and prove the legal title of the owner.

#### **5. Transfer of Interment Rights**

- a. The holder of Interment Rights to a plot may transfer same subject to and in accordance with the provisions of this By-law and the regulations, otherwise no transfer shall be binding upon or recognized by the Corporation.
- b. Plots are indivisible. Where Rights to two or more lots have been purchased as a unit, only the complete unit (plot) may be transferred.
- c. A transfer of Interment Rights shall be recorded:
  - i. Upon written notice from the Interment Rights Holder and return of the original Certificate of Interment Rights.
  - ii. In the case of a testamentary transfer by delivery to the Clerk of a certified or notarial copy of the Probate. If the Will is not probated a certified or notarial copy of the Will must be provided.
  - iii. In the case of an intestate transfer by delivery to the Clerk of a notarized affidavit to establish and prove the legal title of the transferee.
- d. Upon receipt of the proper documents of transfer, the prescribed fee and the original Certificate of Interment Rights and upon the Clerk satisfying herself that all other provisions of the By-law and the regulations have been complied with, a new Certificate of Interment Rights shall be issued to the transferee.

#### **6. Interments**

- a. No interment other than that of the body or cremated remains of a human being shall be permitted in any part of the Cemetery.
- b. A maximum of four cremated remains are permitted in a single full size grave whether or not a regular burial has taken place. A companion urn is considered 2 cremated remain burials.
- c. Only one burial per grave is allowed in any cremation section.
- d. No interment will be made until all prescribed fees and charges have been paid and the following documentation provided:

- i. Written permission of the Rights Holder or his/her authorized representative.
- ii. A Burial Permit issued by a Division Registrar or in the case of a cremation interment, a Cremation Certificate issued by the Crematorium.
- e. Request for burial according to the prescribed form must be given to the Clerk before 12 noon on the business day preceding an interment.
- f. No person other than a Corporation employee may open any grave, tomb, vault or crypt, either for an interment or for any other purpose.
- g. Interment arrival times shall be scheduled with the Town by the interment rights holder or their representative in order that the closing of the grave can be initiated by Cemetery staff by no later than 3:30 p.m. during normal hour weekdays and 11:30 a.m. on Saturdays.
- h. No interment is to take place on a Sunday or holidays unless ordered by the Medical Officer of Health.
- i. Overtime charges for interments on Saturdays, ordered Sundays and ordered holidays are as set out in the Tariff and shall be added to the appropriate Regular Work Rate Charge.
- j. Interment at double depth is not permitted.
- k. The Corporation does not assume responsibility for the number of interments that may be made in any plot due to use of oversized outer cases.
- l. The Corporation or its officers will not be responsible for mistakes or misunderstandings arising from telephone orders.

## 7. Disinterments

- a. No disinterment shall be made until all prescribed fees and charges have been paid and the following documentation provided:
  - i. Written permission of the Rights Holder,
  - ii. Written guarantee that the applicant will assume any additional expenses incurred other than the opening/closing.
- b. The Medical Officer of Health shall be notified prior to a disinterment taking place, except in the case of the disinterment of cremated remains.
- c. All disinterment and removals from the Cemetery shall be carried out in accordance with the regulations contained in the FBCSA.
- d. The Corporation will not be held liable or responsible for any damage to a casket, urn or other container resulting from disinterring remains.

## 8. Plantings

- a. No person other than a Corporation employee shall plant, maintain or remove any tree, shrub, bush or plant in any part of the Cemetery unless otherwise permitted in this By-law.

- b. No person shall make or maintain any mounds upon any lot in the Cemetery.
- c. Private plantings or the placement of any other items at the site of any nature are prohibited in any area of the Cemetery set aside for interment of cremated remains.
- d. In all areas of the Cemetery set aside for regular interments, the following plantings are permitted:
  - i. A maximum of 2 ornamental evergreen shrubs on plots containing 2 or more lots and an upright monument. Shrubs must be placed in line with the monument on either side and must be of reasonable size and shape, maintained to a maximum height of 4 feet and are not to interfere with plots on either side. Shrubs are not allowed on single lots.
  - ii. Flower beds not exceeding 12 inches immediately adjacent to the front of a monument, maximum width as follows:

Single lot	Not to extend beyond sides of monument.
Double plot	Maximum 1 foot beyond each side of monument, but not to exceed 5 feet total including monument.
Triple Plot	Maximum 1 foot beyond each side of monument.
- e. Enclosure of flower beds is allowed only with approval of the Corporation; however the Corporation is not responsible for damage to same and may remove any enclosures which interfere with the normal maintenance of the Cemetery.
- f. Shrubs or plantings which are overgrown and unsightly or which encroach onto an adjacent plot or which interfere with the operation and maintenance of the Cemetery shall be removed by Corporation employees at the cost of the Interment Rights Holder.
- g. Glass containers of any kind are prohibited.
- h. Winter wreaths and artificial flowers or plants are permitted from October 15 to April 1. All wreaths and artificial flowers or plants remaining in the Cemetery after April 1 shall be removed by Corporation employees and the Corporation will not be held responsible for any loss or damage.

#### 9. **Markers**

- a. Upright monuments are permitted only on those plots so designed in accordance with the approved plan of the Cemetery.
- b. Only one upright monument is permitted on any plot.
- c. All monuments must be placed within the confines of the space reserved for it unless special permission is obtained from the Director.
- d. No monument may be erected which:

- i. Is composed in whole or in part of wood, steel/iron, marble veneer or other veneer, brick or cement facing or exterior or any other material not of a permanent nature and durable quality.
- ii. Is defective or cracked.
- iii. Will or may cause the removal or destruction of or injury to any lot, tree or other monument.
- iv. Is not upon a foundation and an unpolished base.
- e. All upright monuments shall be placed upon a foundation which shall be constructed or placed by the Corporation and its employees or contractors employed by the Corporation.
- f. The base of a monument must be level on the bottom and it's under surface squared and even so as to permit full bearing upon the foundation.
- g. Application for a foundation order must be made according to the prescribed form.
- h. A Rights Holder intending to erect a monument must allow not less than eight weeks after the issue of a foundation order for the construction of the foundation.
- i. Foundations are not constructed between the 15<sup>th</sup> day of October and the succeeding 15<sup>th</sup> day of April.

j. Maximum size of foundations and monument base is as follows:

Regular burial sections	Single lot	2'2" x 1'2"
	Double plot	3'6" x 1'2"
	Triple plot	4'6" x 1'2"
Infant section	Single lot	2'0" x 1'0"

k. Maximum size of flat markers is as follows:

Regular burial sections	Single, double or triple plots	24" x 18"
Infant section		18" x 12"
Cremation sections	Single lot	12" x 12"
	Double plot	24" x 12"
	Family plot	24" x 18"

- l. One flat marker not exceeding 18" x 12" may be placed at the foot of each regular size grave.
- m. Flat markers must be smooth on top and bottom and 4" minimum and 6" maximum thickness.
- n. Flat markers of marble, granite or bronze are permitted.
- o. All flat markers shall be installed by the Corporation at the expense of the Interment Rights Holder. They shall be placed with the upper surface at ground level.

p. No fence, hedge, railing, coping, corner posts, embankment, depression, tree, shrub, bush, plant or other similar method of denoting boundaries shall be permitted to mark the confines of any plot.

#### 10. Regulations

- a. All visitors shall conduct themselves in a quiet manner that shall not disturb any service being held.
- b. All people entering the Cemetery shall behave with order and decorum and with respect.
- c. Vehicles in the Cemetery shall not exceed 25 km per hour and not run vehicles off the roadways. Vehicles owners and/or drivers shall be held responsible for any damage done by them.
- d. Recreational vehicles are not permitted in the Cemetery.
- e. The Cemetery shall be open sun up to sun down.
- f. During an interment service all work in the immediate vicinity shall cease.
- g. Scattering of cremated remains in the Cemetery is prohibited.
- h. All persons working in any capacity within the Cemetery are subject to the direction and control of the Director.
- i. Any person employed by an Interment Rights Holder who does any damage to any lot or marker or any other damage in the Cemetery shall be personally responsible for such damage apart from any liability on the part of his employer or the Interment Rights Holder.
- j. Heavy loads will not be allowed to enter the Cemetery when the roads are in such condition that they might be damaged.
- k. In storing and handling materials or supplies for undertakers or contractors, the Corporation assumes no liability for damage or loss either by fire, accident or any other cause.
- l. No person shall write upon, deface or injure any lot, marker, fence, shrub, plant or tree or other work for the protection or ornament of the Cemetery.
- m. No person shall bring any animal into the Cemetery.
- n. Pets or other animals, including cremated animal remains are not allowed to be buried on Cemetery grounds.
- o. The discharge of firearms is prohibited except at a military funeral.
- p. No money shall be paid to any Corporation employee in reward for any personal service or attention.

- q. The Corporation reserves full control over the Cemetery operations and management of land within the Cemetery grounds.
- r. No person shall damage, destroy, remove or deface any property within the Cemetery.

11. **Liability**  
The Corporation 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, mausoleum, crypt, monument, marker or other article that has been placed in relation to an interment save or except for direct loss or damage caused by gross negligence of the Cemetery.

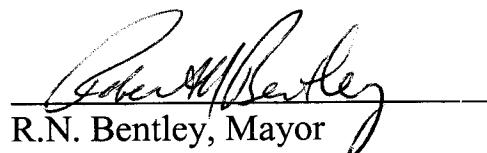
12. By-law Nos. 74-20, 77-79, 85-28, 87-55, 91-41, 95-52 and 08-58 are hereby repealed.

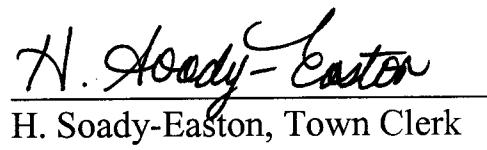
13. This By-law shall become effective upon approval by the Ministry of Consumer Services.

14. Any person contravening any provision of this By-law is guilty of an offence and upon conviction is liable to a fine not exceeding \$5,000.00 recoverable under the Provincial Offences Act.

Read a first time this 17<sup>th</sup> day of September 2012.

Read a second and third time and finally passed this 17<sup>th</sup> day of September 2012.

  
R.N. Bentley, Mayor

  
H. Soady-Easton, Town Clerk

