

THE CORPORATION OF THE TOWNSHIP OF MALAHIDE

BY-LAW NO. 15-90

(as approved by Bereavement Authority of Ontario
on January 17, 2017)

Being a By-law to govern the operations of municipally-owned
cemeteries in the Township of Malahide.

WHEREAS The Corporation of the Township of Malahide owns, operates
and maintains cemeteries in the Township of Malahide;

AND WHEREAS the *Funeral, Burial, Cremation Services Act, 2002*, S.O.
2002, c. 33 regulates the operations of cemeteries in Ontario;

AND WHEREAS the *Funeral, Burial and Cremation Services Act*, S.O.
2004, c.33 and Ontario Regulation 30/11 provides that an owner of a cemetery may
make By-laws governing rights, entitlements and restrictions with respect to interment
and scattering rights in the said cemetery;

AND WHEREAS Section 11(2) of the *Municipal Act, 2001*, S.O. 2001,
c.25, authorizes a lower-tier municipality to pass by-laws respecting, *inter alia*, public
assets of the municipality acquired for the purpose of exercising its authority under the
Municipal Act, 2001 or any other Act;

AND WHEREAS pursuant to subsection 8(3) of the *Municipal Act, 2001*, a
by-law enacted under Section 11 of the *Municipal Act, 2001* respecting a matter may
regulate and prohibit respecting the matter, require persons to do things respecting the
matter;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides a
municipality with the capacity, rights, powers and privileges of a natural person for the
purpose of exercising its authority under the *Municipal Act, 2001* or any other Act;

AND WHEREAS sections 23.1, 23.2, 23.3 and 23.5 of the *Municipal Act*,
2001, authorize a municipality to delegate certain powers and duties, and impose certain
restrictions upon such delegation;

AND WHEREAS section 442 of the *Municipal Act, 2001* provides that
where a duty or liability is imposed by statute or agreement upon any person in favour of
a municipality, or in favour of some or all of the residents of a municipality, the
municipality may enforce it and obtain such relief and remedy as could be obtained in a
proceeding by the Attorney General, in a relator proceeding by any person in the name
of the Attorney General, or in a proceeding by the residents on their own behalf or on
behalf of themselves and other residents;

AND WHEREAS section 445 of the *Municipal Act, 2001* provides that,
where a municipality is satisfied that a contravention of a by-law has occurred, the
municipality may make an order requiring the contravening person to do work to correct
the contravention of the by-law;

AND WHEREAS section 446 of the *Municipal Act, 2001* provides that where a municipality has the authority to direct or require a person to do a matter or thing, the municipality may also provide that, in default of it being done by the person directed or required to do it, such matter or thing may be done at the person's expense and that the municipality may recover the cost of doing such thing or matter by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes;

AND WHEREAS the Council of The Corporation of the Township of Malahide deems it desirable to enact a By-law to regulate the operation of the municipally owned cemeteries in the Township of Malahide;

NOW THEREFORE the Council of The Corporation of the Township of Malahide **HEREBY ENACTS AS FOLLOWS:**

1. DEFINITIONS

- 1.1 ACT and FBCSA means the *Funeral, Burial and Cremation Services Act, 2002, S.O. 2002, c.33* and all amendments thereto together with all Regulations prescribed thereunder.
- 1.2 BODY means the body of a deceased person.
- 1.3 BURDICK CEMETERY means the Cemetery located at municipal address 50971 Talbot Line, in the Township of Malahide, in the Province of Ontario.
- 1.4 BURIAL means the opening and closing of an in-ground lot or plot for the disposition of human remains or cremated human remains.
- 1.4 BURIAL PERMIT means a permit for the burial of human remains issued by the Division Registrar.
- 1.5 BY-LAWS mean the rules and regulations which govern the operation of the Cemetery.
- 1.6 CARE AND MAINTENANCE FUND means a trust fund established pursuant to the provisions of the Act, into which monies received from the Interment Rights Holder for perpetual care and maintenance of the Cemetery, including lots, plots, markers, monuments, memorials and structures are paid.
- 1.7 CEMETERY(IES) means each and every municipal cemetery located with the Township of Malahide, including the Trinity Cemetery and the Burdick Cemetery, and any other municipal cemetery, and also including those inactive or abandoned cemeteries of which the Township is the registered owner.
- 1.8 CEMETERY MANAGER means the Director of Community & Corporate Services or his/her designate appointed to oversee the Operations of the Cemeteries.

- 1.9 CEMETERY CARETAKER means the person who maintains the cemetery grounds; opens and closes the graves; and represents the Township for all interments.
- 1.10 CEMETERY OPERATOR means The Corporation of the Township of Malahide who is the owner of the Cemeteries. The Township offices are located at 87 John Street South, Aylmer, Ontario.
- 1.11 CEMETERY PRICE LIST means a list of the rates for the supplies and services of the Cemeteries as described in the Township's most current User Fee and Rates By-law.
- 1.12 CEMETERY SERVICES means services provided for the interment or disinterment of human remains at a Cemetery and any other services arising therefrom or incidental thereto, as well as the preparation of Flower Beds and planting on a Lot.
- 1.13 CERTIFICATE OF INTERMENT RIGHTS means the document certifying the holder's Interment(s) Rights within a given Lot or Plot.
- 1.14 CONTRACT means the agreement that is required to be signed by a representative of the Cemetery Operator and all purchasers of Interments Rights and which details the obligations of both parties and acceptance of the cemetery by-laws.
- 1.15 CREMATED REMAINS means the residue after cremation of the body and of the casket or container in which it was received.
- 1.16 DISINTERMENT means the removal of a casket or cremated remains from a closed grave.
- 1.17 FLOWER BED means that portion of a Lot upon which natural or artificial floral tributes, trees, shrubs, vegetation or arrangements, are placed with the intention of improving the appearance of same.
- 1.18 FOUNDATION means the below-ground concrete structure upon which rests the base stone of a monument.
- 1.19 GRAVE (also known as lot) means an in-ground burial space intended for the interment of a child, adult, or cremated human remains.
- 1.20 HUMAN REMAINS means a dead human body or the remains of a cremated human body.
- 1.21 INTERMENT RIGHTS means the right to require or direct the interment or inurnment of human remains in a grave or lot, and direct the associated memorialization.
- 1.22 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.

- 1.23 INTERMENT RIGHTS HOLDER means the person who holds the interment rights to inter human remains with respect to a Lot whether the person is the purchaser of the rights, the person named in the Interment Rights Certificate, or such other person to whom the Interment Rights have been assigned.
- 1.24 LOT means an area of land in a Cemetery containing, or set aside to contain, human remains.
- 1.25 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.
- 1.26 BAO means the Bereavement Authority of Ontario.
- 1.27 MONUMENT means any permanent memorial projecting above the ground installed within the designated space to mark the location of a burial Lot.
- 1.28 PLOT means a parcel of land, sold as a single unit, containing multiple lots.
- 1.29 PUBLIC REGISTER means the register that is required to be made available to the public and contains the information as prescribed under the FBCSA, Ontario Regulation 30/11.
- 1.30 REGISTRAR means the Registrar appointed under the FBCSA.
- 1.31 REGULAR INTERMENT means the interment of human remains which have not been cremated.
- 1.32 REGULATIONS means the regulations made pursuant to the *Funeral, Burial and Cremation Services Act, 2002*.
- 1.33 TRANSFEREE means a person wherein the interment rights with respect to a lot(s) have been either transferred or resold to such person.
- 1.34 TRINITY CEMETERY means the Cemetery located at municipal address 51996 Glencolin Line, in the Township of Malahide, in the Province of Ontario.
- 1.34 TOWNSHIP means the Corporation of the Township of Malahide.
- 1.35 URN means any container used to hold cremated human remains.
- 1.36 VAULT means a burial chamber (underground).

2. GENERAL INFORMATION

2.1 **Hours of Operation:**

- (a) Normal hours of operation, including burial hours, are Monday to Friday between 9:00 a.m. and 4:00 p.m.
- (b) Township Office hours are Monday to Friday between 8:30 a.m. and 4:30 p.m.
- (c) Visiting hours are Monday to Sunday between 7:00 a.m. and 9:00 p.m.

- 2.2 **General Conduct:** The Cemetery Operator reserves the full control over the cemetery operations and management of land within the Cemeteries grounds.
- See Section 14 for Rules for Visitors.
- 2.3 **Protection of Privacy:** The Cemetery Operator is committed to protecting the privacy of its Interment Rights Holders. The Township collects, uses, and discloses personal information as required by governing federal and provincial legislation. The Township does not rent, sell, or trade personal information lists. Individuals may request their personal information, in writing, at any time, to ensure that it is correct and current or to edit it.
- 2.4 **Correction of Errors:** The Cemetery Operator reserves the right, at its cost, to correct any error that may be made by it in making interments, in the description of the Lot, or the transfer or conveyance of any Interment Rights. The Cemetery Operator may, at its sole discretion, cancel such grant and substitute other Interment Rights, or lot of equal value and similar location, as far as is reasonably possible; or refund all money paid on account for such purchase. In the event that any such error may involve the disinterment of remains, the Cemetery Operator shall first obtain the approval of any regulatory authority and the Interment Rights Holder.
- 2.5 **By-law:** The Cemetery Operator shall be governed by this by-law and all procedures will comply with the *Funeral, Burial and Cremation Services Act, 2002*, which may be amended periodically. To the extent that any particular provision of this by-law is in conflict with the provisions of the *Funeral, Burial and Cremation Services Act, 2002*, the provisions of the *Funeral, Burial and Cremation Services Act, 2002* shall govern and this by-law shall be deemed to have been amended to conform thereto in all respects.
- 2.6 **By-law Amendments:** All By-law amendments must be:
- (a) Published once in a newspaper with general circulation in the locality in which the Cemeteries are located;
 - (b) Conspicuously posted on a sign at the entrance of the Cemeteries; and
 - (c) Delivered to each supplier of markers who has delivered a marker to the Cemeteries during the previous year, if the by-law or by-law amendment pertains to markers or their installations.
- All by-laws and by-law amendments are subject to the approval of the Registrar, Bereavement Authority of Ontario.
- 2.7 **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, Monument, Marker, 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 Operator.

The Cemetery Operator shall not be responsible for replanting or replacing Flower Beds in the event of their destruction or damage to any Flower Beds from causes other than negligence on the part of the Cemetery Operator. Its liability, if any, shall be fully satisfied by a reasonable effort to correct the same.

- 2.8 **Notice:** All notices required to be given to Interment Rights Holders may be given personally to the Interment Rights Holder or, if necessary, it may be mailed to the Interment Rights Holder or their legal representative, at their last appearing address in the record books of the Cemetery.
- 2.9 **Public Register:** A public register will be maintained and made available to the public during regular office hours.
- 2.10 **Pets and Other Animals:** Only human remains shall be interred in the Cemeteries and in no case shall the bodies of any other type of animal be placed in any grave in the cemetery.
- 2.11 **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. FINANCIAL

- 3.1 All fees and charges shall be payable in accordance with the Cemetery Price List which shall be set by Council upon recommendation of the Cemetery Manager, who will forward same to the Cemetery Operator.
- 3.2 Payments for all fees and charges shall be made to the Cemetery Manager, who will forward same to the Cemetery Operator.
- 3.3 All revenue and other monies belonging or pertaining to the Cemeteries shall be received by the Treasurer of the Township of Malahide.
- 3.4 As required by sections 166 and 168 of Regulation 30/11, a prescribed amount or a percentage of the purchase price of all Interment Rights, and a prescribed amount for Monuments and Markers is contributed into the Care and Maintenance Fund. Income from this fund is used to provide only general care and maintenance of the Cemeteries. Contributions to the Care and Maintenance Fund are not refundable except when Interment Rights are cancelled within the thirty (30) day cooling off period.
- 3.5 The Treasurer of the Township of Malahide shall keep such books, accounts and records as are necessary for properly recording and exhibiting all financial matters pertaining to the Cemeteries as may be prescribed.
- 3.6 The Treasurer of the Township of Malahide shall maintain, invest, and administer the Care and Maintenance Fund in accordance with the provisions of the Act and the regulations made thereunder.
- 3.7 The Cemetery Manager shall submit a yearly annual budget to Council setting out operating and capital expenses for approval of Council. In determining the budget, the Cemetery Manager shall not be bound to expend the whole of operating or capital revenues in any year or years but may accumulate and hold or subsequently expend the same or any part thereof, or invest the same or any part thereof.

4. SALE OF INTERMENT RIGHTS

- 4.1 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 the Cemeteries By-law. In accordance with the Cemeteries By-law, no burial, 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. An Interment Rights Holder wishing to resell their Interment Rights may advise the Cemetery Operator of their intention prior to seeking a third party buyer for their Interment Rights.
- 4.2 The Cemetery Operator has for sale the following Interment Rights:
- Regular Lots
- 4.3 All prices for Cemetery Lots and Services shall be set out in the Cemetery Price List. Prices for Lot(s) shall include the applicable portion for deposit to the Cemetery's Care and Maintenance Fund.
- 4.4 All Interment Rights and Cemetery Services shall be paid in full at the time of purchase or service; and may be purchased by cash, cheque, or debit.
- 4.5 The monies received for Interment Rights shall be held by the Treasurer of the Township of Malahide for a period of thirty (30) days as prescribed by the Act.
- 4.6 The Cemetery Operator shall after the thirtieth (30th) day but before sixty (60) days, transfer the monies received for Interment Rights into the Cemetery Care and Maintenance Fund and Operating Fund.
- 4.7 The Cemetery Operator shall provide each Interment Rights Holder at the time of sale with:
- (a) a copy of the Certificate of Interment Rights;
 - (b) a copy of the Contract for Purchase of Interment Rights;
 - (c) a copy of the Cemeteries By-law;
 - (d) a copy of the current Cemetery Price List; and
 - (e) a Consumer Information Guide.
- 4.8 In order for the Contract for Purchase of Interment Rights to be valid, it must be signed and dated by both the Purchaser and the duly authorized representative of the Cemetery Operator.
- 4.9 The Certificate of Interment Rights shall specify:
- (a) the name of the Interment Rights Holder,
 - (b) the size of the Lot
 - (c) the location of the Lot;
 - (d) the date of purchase;
 - (e) the amount paid for the Lot
 - (f) the amount to be deposited in the Care and Maintenance Fund
 - (g) the amount of tax;

- (h) the amount refundable;
- (i) a statement regarding transfer/resale restrictions of said Interment Rights;

and shall be subject to the provisions of the *Funeral, Burial and Cremation Services Act, 2002*, and the Ontario Regulations in effect thereunder and to the approved by-laws of the Cemetery Operator which may be in effect from time to time.

- 4.10. The purchaser of Interment Rights shall be provided with a Contract, at the time the Contract is made, which shall indicate:
- (a) the name, address and telephone number of the Cemetery Operator;
 - (b) the Cemetery Operator's licence number as provided by the Registrar;
 - (c) the Contract reference number;
 - (d) the date Interment Rights were purchased;
 - (e) the name, address and telephone number of the purchaser;
 - (f) the name, address and telephone number of the Interment Rights Holder;
 - (g) the location and dimensions of the Lot(s) being purchased;
 - (h) the number and type of interments permitted in each Lot;
 - (i) the purchase price including an itemized breakdown of Cemetery Supplies and Services charges and all applicable taxes;
 - (j) the amount being set aside for the Care and Maintenance Fund;
 - (k) the existence of a By-law that governs the operation of the Cemetery and includes restrictions on Interment Rights in the Cemetery;
 - (l) any limitations or restrictions on exercising the Interment Rights; and
 - (m) any limitations with respect to Markers, lot decorations and private structures.
- 4.11 A Contract for the provision of licensed supplies or Services is not enforceable by the Cemetery Operator unless,
- (a) the Contract is written, signed by both parties and complies with the Act, By-law and regulations;
 - (b) the Contract sets out the purchaser's cancellation rights under the Act;
 - (c) the Contract sets out all the supplies and services to be provided and the price charged for each of them;
 - (d) the Cemetery Operator delivers a signed copy of the Contract to the purchaser in the prescribed manner; and
 - (e) in the case of a Contract for the purchase of Interment Rights, the Operator delivers to the purchaser,
 - (i) a copy of the By-laws of the Cemeteries and written notice as to whether the By-laws of the Cemeteries permit the purchaser to resell the Interment Rights to a third party, and
 - (ii) a description of the location of the lot that is purchased.
- 4.12 The Cemetery Operator shall not reserve Lots for future purchase.
- 4.13 The Interment Rights Holder shall notify the Cemetery Operator of any changes in their mailing address.

5. CANCELLATION OR RESALE OF INTERMENT RIGHTS

5.1 **Cancellation of Interment Rights within 30 Day Cooling-Off Period:** The purchaser of Interment Rights has the right to cancel an Interment Rights Contract within thirty (30) days of signing the Interment Rights Contract ("30-day cooling-off period") 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 less sums chargeable under the contract or pursuant to the FBCSA in respect of interment services provided within the 30 day period at the request and with the consent of the Interment Rights Holder or his or her assign or representative.

5.2 **Notice of Resale and Transfer of Interment Rights:** The Cemetery Operator permits an 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 and the purchaser meets the qualifications and requirements as outlined in this by-law.

5.3 **Resale of Interment Rights after 30 Day Cooling-Off Period:** Unless the Interment Rights have been exercised, the purchaser retains the right to re-sell the Interment Rights. Once payment for the Interment Rights has been made in full, and an Interment Rights Certificate has been issued, the Interment Rights Holder(s), as recorded on the Cemetery records, has right to re-sell the Interment Rights. Any resale of the Interment Rights shall be in accordance with the requirements of the Cemetery By-laws and in keeping with the FBCSA.

If any portion of the Interment Rights in relation to a specific Lot have been exercised, the purchaser, or the Interment Rights Holder(s) is not entitled to re-sell the Interment Rights in relation to that specific Lot.

5.4 **Requirements for Resale of Interment Rights:**

(a) The Interment Rights Holder(s) intending to sell their rights shall provide the following documents to the Cemetery Operator so that the Cemetery Operator can confirm the ownership of the rights and provide the third party purchaser with a the required certificate and other required information:

- (1) an Interment Rights Certificate endorsed by the current Interment Rights Holder;
- (2) a written statement of the number of Lots that have been used in the Plot and the number of Lots that remain available;
- (3) any other documentation in the possession of the Interment Rights Holder(s) relating to the rights.

(b) The third party purchaser will be provided with the following documents by the Cemetery Operator:

- (1) an Interment Rights Certificate endorsed by the current Interment Rights Holder;
- (2) a copy of the current Cemeteries By-laws;
- (3) a copy of the current Cemetery Price List;

- (4) a written statement of the number of Lots that have been used in a Plot and the number of Lots that remain available; and
 - (5) any other documentation in the possession of the Interment Rights Holder(s) relating to the rights.
- (c) The Cemetery Operator will require:
- (1) the following Resale Endorsements completed and signed:
 - Rights Holder(s) Endorsement of Resale;
 - Acknowledgement of Transferee(s); and
 - Cemetery Operator Acknowledgement and Acceptance of the Resale.
 - (2) 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;
 - (3) a statement of any money owing to the Cemetery Operator in respect to the Interment Rights.
- 5.5 Once the endorsed Interment Rights Certificate and all required information has been received by the Cemetery Operator from the Interment Rights Holder(s), the Cemetery Operator will issue a new Interment Rights Certificate to the third party purchaser.
- 5.6 Upon completion of the requirement in Sections 5.4 and 5.5 of this By-law, the third party purchaser or Transferee(s) shall be considered the current Interment Rights Holder(s) of the interment, and the resale or transfer of the Interment Rights shall be considered final in accordance with the Cemeteries By-laws and the FBCSA.
- 5.7 The Cemetery Operator shall charge an administration fee for the resale or transfer of Interments Rights in accordance with the current Cemetery Price List.
- 5.8 **Repurchase of Interment Rights:** The Cemetery Operator does not prohibit the resale of an Interment Rights and may repurchase the Interment Rights from the Interment Rights Holder(s) if the Cemetery Operator so desires and may negotiate a purchase price so long as the seller acknowledges being aware of the Cemetery Operator's current Cemetery Price List amount for Interment Rights.
- The Cemetery Operator shall not repurchase the Interment Rights of any Lot or Plot wherein the rights have been exercised. Also, the Cemetery Operator shall not repurchase the Interment Rights of any Lot or Plot wherein a Monument/Marker is installed on said Lot or Plot, unless the Interment Rights Holder removes such Monument/ Marker at their own expense prior to the repurchase.
- 5.9 All arrears due for care and maintenance must be paid on Lots sold prior to January 1, 1955 before the Cemetery Operator will endorse the resale to a third party. The fee for care and maintenance of these Lots is determined by the Cemetery Price List.

Further, where there is no record of date of purchase or record that care and maintenance has been paid, a fee, as determined by the Cemetery Price List, will be charged on Lots sold prior to January 1, 2015. All arrears due for care and

maintenance must be paid before the Cemetery Operator will endorse the resale to a third party.

6. TRANSFER OF LOTS

- 6.1 For the purposes of Section 6, 'Transfer' means a gift, a bequest, or devolution under a will but not a resale of Interment Rights. The Cemetery Operator reserves the right to require the production of a notarial copy of the Will or Certificate of Appointment of Estate of Trustee or other evidence sufficient to prove ownership or authority to deal with the Interment Rights.
- 6.2 To ensure the correctness of records of ownership and interments, no transfer of any Lot or interest therein shall be binding upon the Cemetery Operator until a Transfer Form and such other particulars as may be necessary for proper identification is completed and given to the Cemetery Manager. Upon receipt of the Transfer Form and other documentation if required, and payment of a fee, the transfer shall be made and a new Certificate of Interment Rights issued to the Transferee along with a copy of the Cemeteries By-law and Cemetery Price List.
- 6.3 No transfer shall be made until all arrears due for care and maintenance have been paid on Lots sold prior to January 1, 1955.

Further, where there is no record of date of purchase or record that care and maintenance has been paid, a fee, as determined by the Cemetery Price List, will be charged on Lots sold prior to January 1, 2015. All arrears due for care and maintenance must be paid before the Cemetery Operator will complete any transfer.

- 6.4 In the case of a transfer, the Cemetery Caretaker must confirm that all Lots transferred are usable prior to an interment taking place.

7. INTERMENTS

- 7.1 The Interment Rights Holder(s) must complete an Order for Interment Form prior to a burial taking place. Should the Interment Rights Holder be deceased, the Order for Interment Form shall be completed by the person authorized to act on behalf of the Interment Rights Holder, including the Personal Representative, Estate Trustee, Executor or Next of Kin.
- 7.2 When Interment Rights are held jointly by two or more persons, an Order for Interment Form will be accepted from either or any of them or the person authorized to act on behalf of the Interment Rights Holder.
- 7.3 Verbal or telephone orders for interments shall be accompanied by a completed Order for Interment Form prior to an interment or inurnment taking place.
- 7.4 The Cemetery Operator shall not be responsible for any errors on the Order for Interment Form and shall not be responsible for any errors or misunderstandings that may arise on verbal or telephone orders.
- 7.5 An Authorization Form shall be completed for a request for an interment in the event that the Interment Rights for a grave are not recorded under the deceased's name.

- 7.6 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 Manager or Cemetery Caretaker prior to a burial taking place. A Certificate of Cremation must be submitted to the Cemetery Manager or Cemetery Caretaker prior to the burial or inurnment of cremated remains taking place.
- 7.7 In accordance with the FBCSA the purchaser 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 prior to each burial of human remains.
- 7.8 Persons requesting interments shall be held responsible for charges incurred. Payment for interments or inurnments must be made to the Cemetery Operator before a burial can take place. The interment fee includes the opening and closing of the Lot. Rates may be adjusted from time to time without prior notice by the Cemetery Operator.
- 7.9 Where Interment Rights sold or transferred did not include a payment for the purpose of maintaining the Cemetery, the Cemetery Operator may charge the Interment Rights Holder a sum for care and maintenance in accordance with the Act and regulations, and no interment shall be permitted pursuant to those rights until and unless such sum has been paid in full.
- 7.10 Where Lots were purchased prior to 1955 or where there is no record of date of purchase or record that care and maintenance has been paid, a fee, as determined by the Cemetery Price List, will be charged as the case may be either at the time of first interment or at the time of transfer/resale of said Lot. This fee shall be deposited to the Care and Maintenance Fund.
- 7.11 The Cemetery Operator shall be given notice of each interment at least sixteen (16) working hours (2 business days) in advance for summer interments (Apr 1 - Nov 30), except under special circumstances. The Cemetery Operator shall be given notice of each interment at least twenty-four (24) working hours (3 business days) in advance for winter interments (Dec 1 - Mar 31), except under special circumstances. The Cemetery Operator cannot be responsible for having Lots prepared for funerals unless such notice is given.
- 7.12 Every effort will be made to complete a burial on the assigned day and time. If due to inclement weather conditions, health and safety concerns, or conditions beyond the Cemetery Operator's control, a burial cannot be made at the scheduled time, the burial shall be completed as soon as possible at a later time.
- 7.13 No interment shall be made after 4:00 p.m. from Monday to Friday and after 3:00 p.m. on Saturdays.
- 7.14 No interment shall be made on a Sunday or Statutory Holiday, except upon receipt of a Doctor's Certificate stating that a burial must be made within twenty-four (24) hours of the death in accordance with the regulation of the Ontario Ministry of Health for control of communicable diseases.
- 7.15 The opening and closing of graves may only be conducted by Cemetery Caretaker or those designated to do work on behalf of the Cemetery Operator.

- 7.16 The casket or container must be closed before it is lowered into the grave. A body delivered to a Cemetery for interment must be delivered in a closed casket or container and will be buried in such casket or container. All such caskets and containers must be of sufficient strength to allow safe interment (as determined by the Cemetery Caretaker, or his/her assistant or those designated to do work on behalf of the Cemetery Operator in their sole discretion).
- 7.17 Cremated remains are not permitted to be scattered on a grave.
- 7.18 Not more than one (1) regular interment shall be permitted in a regular Lot. One regular interment and one cremation interment are permitted in any regular Lot; or up to three cremation interments may be permitted in any regular Lot.
- 7.19 Urn vaults with exterior dimensions larger than 15" x 15" x 18" shall not be permitted in the Cemeteries.
- 7.20 An urn may be placed inside a casket to be interred; however the fee for one (1) regular interment and one (1) cremation at the same time as determined by the Cemetery Price List will be required.
- 7.21 When regular interments are required, the funeral home which is conducting the burial shall be responsible for the supply and operation of lowering devices and artificial grass, whether owned by the funeral home or leased from a supplier by the funeral home.
- 7.22 The Cemetery Caretaker or his/her assistant shall be in attendance at each interment.
- 7.23 The Cemetery Operator will exercise all due care in making interments and disinterments, but it is not responsible for damage to any casket, urn or other container sustained during interment or disinterment.
- 7.24 Vaults are highly recommended for all regular interments in the Cemeteries. If vaults are to be used, the Funeral Directors are asked to keep vault sizes to standard or oversize if possible. The placement of jumbo vaults or anything over the size of oversize may jeopardize a future burial in an adjacent Lot.
- 7.25 The Cemetery Operator, Cemetery Manager or Cemetery Caretaker may temporarily relocate a Monument, Marker or any decoration so that cemetery operations involving the opening and closing of an in-ground Lot may be performed.
- 7.26 The opening of an in-ground Lot for interment may necessitate the temporary mounding of earth on adjacent Lots. The Cemetery Operator may, in its sole discretion, determine the location of the temporary mound and will make reasonable efforts to restore adjacent Lots to their original condition as soon as possible following the closing of the Lot.
- 7.27 Where no interment has been made in a Lot for more than twenty (20) years, the Township may apply to the register for a declaration that the rights are abandoned.

8. DISINTERMENTS

- 8.1 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 may take place. A certificate from the local medical officer of health is not required for the removal of cremated remains.
- 8.2 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).
- 8.3 Before a disinterment is to take place the Cemetery Operator requires three (3) days' notice so that arrangements can be confirmed with the Elgin-St. Thomas Public Health.
- 8.4 The human remains of persons who have died from contagious diseases may be removed only with the consent of the local medical officer of health or other public official having authority.
- 8.5 When a disinterment is to take place, the Cemetery Caretaker is responsible to open the grave and the Funeral Director retained for the purpose of the disinterment is responsible to disinter the body.
- 8.6 The Cemetery Operator will not be responsible for damage to any casket or container which occurs during the course of disinterment. A new casket or container may be required to facilitate the removal of human remains at the expense of the party authorizing the disinterment.
- 8.7 The Cemetery Operator will not be responsible for damage to any urn or other cremation container which occurs during the course of disinterment. Due to the length of time that an urn has been buried and/or the condition to which it has been exposed, the Cemetery Operator cannot guarantee that it can be retrieve an urn or other cremation container buried in a Lot. The condition of any urn or other cremation container disinterred may be unstable, in which case, a replacement urn may be required at the expense of the party authorizing the disinterment.
- 8.8 The transporting of the disinterred human remains out of the Cemetery is the responsibility of the party authorizing the disinterment, including all costs associated therein.

9. MONUMENTS AND MARKERS

- 9.1 For the installation of any Monument or flat Marker, a Marker Order Form must be completed, including the proposed location, Monument/Marker dimensions, material of structure, and inscription information.
- 9.2 No foundation shall be constructed and no memorial or other structure shall be erected or permitted on a Lot until all charges have been paid in full, including the care and maintenance fee for Monuments/Markers.

- 9.3 The Cemetery Operator reserves the right to determine the maximum size of Monuments/Markers, their composition, their number and their location on each lot with the following conditions:
- (a) must not be of a size that would interfere with any future interments;
 - (b) not more than one (1) upright Monument and one (1) Marker is permitted on a Lot;
 - (c) Monuments shall be placed at the head of the Lot;
 - (d) a flat Marker may be placed at the foot of the Lot that contains an existing upright Monument as long as it does not exceed two-thirds (2/3) the width of the Lot on which the Marker is to be installed;
 - (e) a flat Marker may be placed at the head of a Lot provided there is no upright Monument erected on said Lot;
 - (f) all Monuments/Markers shall face east;
 - (g) all Markers are to be flat on top and set level with the ground so that a lawn mower can pass safely over them and shall be set in the ground by the Cemetery Caretaker or his/her assistant, or the monument dealer/supplier in accordance with Cemetery specifications;
 - (h) the base of a Monument on a single Lot shall not exceed two-thirds (2/3) the width of the Lot on which the Monument is erected. On a double grave, the base of a Monument shall not exceed four feet (4') or forty-eight inches (48") in width. On multiple graves (ie. three, four, etc.), the base of a monument shall not exceed five feet (5') or sixty inches (60") in width;
 - (i) no Monument, including the base, shall exceed four feet (4') in height;
 - (j) at a single or double lot, a flat Marker shall not exceed two-thirds (2/3) the width of the Lot, including the casing or cement border, on which the Marker is installed;
 - (k) the minimum thickness for flat Markers including footstones is four inches (4") or ten (10) cm;
 - (l) all Monuments and Markers shall be constructed of bronze or natural stone (ie. granite);
 - (m) only the surname may be permitted to be inscribed on the back of a Monument. Except, in the instance wherein an Interment Rights Holder owns Lots that are back to back, then lettering may be allowed on the back of the Monument with the approval of the Cemetery Manager.
- 9.4 Monuments to be erected shall be set upon a concrete foundation which shall be no less than five feet (5') in depth and must exceed the Marker by a minimum of three inches (3") on all sides. All foundations shall be set one inch (1") above the surface of the ground. Foundations must be approved by the Cemetery Operator before the monument is erected thereon. Foundations must be cured for a minimum of forty-eight (48) hours before placing the monument.
- 9.5 All foundations for Monuments/Markers shall be contracted to be built at the expense of the Interment Rights Holder.
- 9.6 No Monument shall be delivered to the Cemetery for installation until the monument foundation has been completed and inspection by the Cemetery Operator and the marker retailer has been notified by the Cemetery Operator.
- 9.7 In the event that a Monument located on a Lot prevents a regular interment from taking place, only cremated remains will be permitted to be interred on such lot unless the Interment Rights Holder is prepared to have such Monument/

foundation removed, at their own expense, to permit a regular interment to take place.

- 9.8 No Monument, footstone, Marker, or memorial of any description shall be placed, moved, altered, or removed without permission from the Cemetery Operator.
- 9.9 No free standing wooden memorial crosses (†) shall be permitted to be installed on any grave.
- 9.10 When any Monument, gravestone, or memorial, of any kind, is to be removed, or any inscription made or cleaning done, permission shall be obtained from the Cemetery Manager.
- 9.11 Minor scraping of the monument base of an upright Monument due to grass/lawn maintenance is considered to be normal wear.
- 9.12 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.
- 9.13 The Cemetery Operator does not accept any responsibility or liability for a picture, photograph, or Monument should a picture or photograph become lost, faded, cracked, damaged, or need to be removed.
- 9.14 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.
- 9.15 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 Manager.
- 9.16 Any contractor performing work at the Cemetery at the request of any person who damages any Lot, upright Monument, Marker, or other structure, or otherwise does any injury in the Cemetery, shall be personally responsible for such damage or injury and in addition thereto, his/her employers shall be liable.
- 9.17 All work done by monument/marker dealers should be done during regular office hours of the Cemeteries, unless special permission is obtained from the Cemetery Manager.

10. CARE OF LOTS

- 10.1 Income from the Care and Maintenance Fund shall be expended to maintain, secure, and preserve the Cemeteries grounds. Such expenses may include, but are not limited to expenses arising from:
 - Re-levelling and sodding or seeding of Lots
 - Maintenance of perimeter walls and fences
 - Maintenance of Cemetery landscaping
 - Repairs and general upkeep of Cemeteries maintenance equipment

- 10.2 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 Cemeteries, Cemetery Caretaker or his/her assistant or those designated to do work on behalf of the Cemetery Operator; prevents the Cemetery Operator 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.
- 10.3 No person shall plant Flower Beds, including trees and shrubs, in the Cemeteries except with the prior approval of the Cemetery Operator.
- 10.4 All Lots and Plots shall be maintained and kept properly graded, sodded, and mown by the Cemetery Caretaker or his/her assistant.
- 10.5 Trees or shrubs (dwarf or ornamental type) are allowed on Lots and Plots when planted on the monument line under the direction of the Cemetery Manager provided that the shrubs/trees, or other plantings are maintained. The height of such shrubs/trees shall at no time exceed 0.91 metres (3 feet) above adjacent ground level. If, the planted shrubs/trees are not well maintained (ie. not trimmed, watered, etc.) the Cemetery Caretaker or his/her assistant has the authority to remove any such neglected shrubs and trees.
- 10.6 The diameter of such shrubs and/or ornamental trees at their widest point, including foliage shall at no time obstruct adjacent Lots.
- 10.7 If any trees or shrubs situated in the boundaries of any Lot shall have, become by means of their roots, limbs or branches or in any way, detrimental to the adjacent Lots, drains, roads or walks, or prejudicial to the appearance of the ground or inconvenient to the public, the Cemetery Caretaker or his/her assistant may remove such trees or shrubs or parts thereof.
- 10.8 No unauthorized person shall cut any sod or move corner post or grave markers in the Cemeteries.
- 10.9 No Person other than the Cemetery Caretaker or his/her assistant shall remove any sod or in any other way change the surface of the burial Lot in the Cemeteries. In the event of any such change, the Cemetery Operator may restore the Lot to its original grade at the expense of the Holder.
- 10.10 Borders, fences, railing, cut-stone coping, and hedges in or around Lots are not permitted, except that borders to protect flowers can only be installed by permission of the Cemetery Manager. The Cemetery Operator shall not be responsible for such borders installed or for damage to such borders by lawn mowing or trimming equipment.
- 10.11 Nails, wires, wooded crosses, glass, or pottery containers/articles, or any other material that creates a hazard to workers and to visitors when neglected or broken are not permitted in the Cemeteries.
- 10.12 Candles, incense, and other flammable articles are not permitted in the Cemeteries.

- 10.13 The Cemetery Operator shall not be responsible for loss or damage to any articles left upon any Lot or Plot.
- 10.14 Rubbish shall not be thrown on roads, walks, or any part of the grounds or buildings. Receptacles are provided at convenient locations within the premises for the deposit of weed, decayed flowers, plants, or other yard waste.

11. CARE OF LOTS - FLOWERS

- 11.1 The Cemetery Operator reserves the right to remove all Flower Beds or part of Flower Beds, including flowers, potted plants, wreaths and baskets of flowers when they become withered or unsightly, or for any other reasons such removals are in the best interest of the Cemetery.
- 11.2 Flowers placed on a grave for a funeral shall be removed by the Cemetery Caretaker or his/her assistant after a reasonable time to protect the sod and maintain the tidy appearance of the Cemetery.
- 11.3 Flower Beds are permitted in front of upright Monuments and Markers located at the head of Lots, but must not exceed 50.8 cm (20 inches) distance from the Monument/Marker base. Flower Beds are not to exceed the Monument/Marker width and where there is no Monument, Flower Beds can only be planted by permission of, and under the direction of the Cemetery Manager. Planting of borders around Lots is prohibited.
- 11.4 Flower Beds or shrubs are prohibited on Lots designated for flat Markers (memorial lots/urn garden).
- 11.5 In the event that a Flower Bed located on a Lot impedes a regular interment, the Cemetery Caretaker or his/her assistant may need to remove such Flower Bed. It is the responsibility of the Lot owner to replace such Flower Bed if desired.
- 11.6 Any shrubs or flowers not attended to by June 1st of each year may be cleaned up/removed by the Cemetery Caretaker or his/her assistant. All annual flowers must be removed or cleaned up and flower vases must be removed or turned down by October 15th of each year.
- 11.7 No glass containers shall be used for flowers.
- 11.8 Artificial flowers, artificial wreaths without glass covers, and potted plants, are permitted to be placed on a Lot after November 15th of each year. Artificial wreaths must be securely fastened to the Monument, or where there is no Monument, mounted on a stand of at least 76.20 cm (30 inches) high, securely anchored to the ground.
- 11.9 To preserve the proper appearance of the grounds, artificial wreaths, flower arrangements and potted plants placed on a Lot must be removed before April 1st of each year otherwise the Cemetery Caretaker or his/her assistant will remove and dispose of them.

12. CONTRACTOR PROVISIONS

- 12.1 All cemetery by-laws apply to all contractors and all work carried out by contractors within the cemetery grounds.
- 12.2 Any contractor who damages any Lot, upright Monument, Marker or other structure, or otherwise does any injury in the Cemetery, shall be personally responsible for such damage or injury and in addition thereto, his/her employers shall be liable.
- 12.3 Contractors, monument dealers and suppliers shall not enter the Cemeteries in the evening, weekends or statutory holidays, unless approval has been granted by the Cemetery Operator.
- 12.4 No work will be performed at the Cemeteries except during the regular business hours of the Cemetery.
- 12.5 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 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.
- 12.6 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.
- 12.7 Any contractor who has been requested by an Interment Rights Holder to perform any type of work is required to contact the Cemetery Manager for permission to perform such work.
- 12.8 Contractors performing work at the Cemetery for or at the request of any person must provide to the Cemetery Manager proof of liability insurance and W.S.I.B. coverage and must comply with all applicable workplace safety and environmental legislation.
- 12.9 Where the Cemetery Manager has received a request by an Interment Rights Holder to perform miscellaneous/custom work, this work shall be recorded by the Cemetery Manager or his/her designate and the Interment Rights Holder will be invoiced for the work completed as set out in the Cemetery Price List (i.e. materials supplied and the amount of time spent by the Cemetery Caretaker to conduct the work).

13. RULES FOR VISITORS

- 13.1 All visitors should conduct themselves in a quiet manner that shall not disturb any burial service or other Cemetery Service.
- 13.2 Any person disturbing the quiet and good order of the Cemetery by noise or other improper conduct or who violates these rules, shall be expelled from the grounds.
- 13.3 The Cemetery Caretaker and his/her assistant are empowered to preserve order and decorum in the Cemeteries.

- 13.4 No person may damage, destroy, remove or deface any property within the Cemeteries.
- 13.5 Any person who, in the Cemetery, damages or moves any tree, plant, Monument, Marker, fence, structure or other thing usually erected, planted or placed in a cemetery is liable to the Township and any Interment Rights Holder who, as a result, incurs damage. The amount of damages shall be the amount required to restore the Cemetery to the state that it was in before anything was damaged or moved by the person liable.
- 13.6 No parades other than funeral processions shall be admitted to or be organized within the Cemeteries.
- 13.7 Children under the age of twelve (12) are welcome on the cemeteries grounds when accompanied by an adult, who shall be responsible for their good conduct and shall see that they do not run over the Lots or climb upon the Monuments.
- 13.9 No all-terrain vehicles or snowmobiles are allowed in the Cemeteries.
- 13.10 Discharging of firearms, other than in regular volleys at burial services, is prohibited in and around the Cemeteries.
- 13.11 Dogs and other pets must be restrained by a proper leash and accompanied by their owner. Every owner of a dog shall remove forthwith, and sanitarily dispose of excrement left by the dog or other pet on the Cemetery property.
- 13.12 Any complaints by Interment Rights Holders or visitors should be made to the Cemetery Manager and not the workers on the grounds and controversies with workers or other on the grounds are to be avoided.
- 13.13 No tips or gratuities are to be given to the Cemetery Caretaker or his/her assistant by visitors or Interment Rights Holders, nor shall any be accepted by Cemetery Caretaker or his/her assistant.
- 13.14 No signs, notices, or advertising of any kind shall be allowed within the Cemeteries except those placed by the Cemetery Operator.
- 13.15 No picnic party shall be permitted in the Cemeteries.

14. ABANDONED CEMETERIES

No burials shall be permitted in the abandoned cemeteries located within the Township of Malahide.

15. GENERAL PROHIBITIONS

- 15.1 No Person shall engage in, perform, or direct, or cause the performance or direction of, any Cemetery Service in a Cemetery unless the person has entered into a Contract or otherwise obtained approval of the Cemetery Operator.
- 15.2 No person shall engage in, perform, direct, or cause the performance or direction of any Cemetery Services contrary to the provisions of this By-law or the Contract.

- 15.3 Without limiting the other prohibitions described in this By-law, no person shall:
- (a) enter or remain in a Cemetery between dusk and dawn, unless otherwise authorized;
 - (b) engage in any activity that creates a nuisance or that interferes with the quietness and use of the Cemetery by other persons;
 - (c) consume or possess any alcoholic beverage within a Cemetery;
 - (d) operate a vehicle on a designated roadway in a Cemetery in excess of 10 kilometres per hour;
 - (e) unless otherwise permitted, no person shall drive, operate or park any vehicle in a Cemetery except upon a designated roadway or parking area; or,
 - (f) disturb in any manner grounds prepared for burial, the erection of Monuments/Markers, or any other Cemetery Service.

16. **ENFORCEMENT**

- 16.1 The Cemetery Caretaker, Cemetery Manager, an enforcement officer or Township employee, may order any person believed to be contravening, or to have contravened, any provision of this By-law to:
- (a) immediately desist from any activity that constitutes or contributes to such contravention; or
 - (b) to leave the Cemetery immediately.
- 16.2 The Cemetery Caretaker, Cemetery Manager, an enforcement officer or Township employee may order any person engaging in an activity that requires a Contract to produce the original copy of the Contract for inspection.
- 16.3 No person shall fail to comply with an order given by an enforcement officer or Township employee under Subsections 16.1 or 16.2.
- 16.4 Every person who contravenes any of the provisions of this By-law is guilty of an offence and upon conviction is liable to a fine and any other penalties prescribed by the provisions of the *Provincial Offenses Act*, R.S.O. 1990, c. P.33, as amended.
- 16.5 Where a duty or liability is imposed by this By-law or by a Contract upon any person in favour of the Township or in favour of some or all of the residents of the Township, the Township may enforce it and obtain such relief and remedy as could be obtained under the provisions of the *Municipal Act, 2001*.

17. **SHORT TITLE**

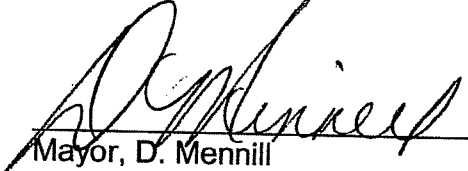
- 17.1 The short title of this By-law is the Cemeteries By-law.

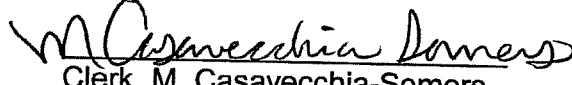
18. EFFECTIVE DATE

- 16.1 The provisions of this By-law shall come into force and take effect the later of December 17, 2015 and the date of approval of this by-law by the Registrar in accordance with the FBCSA.
- 16.2 THAT any other by-laws or provisions in other by-laws found to be inconsistent with this new By-law are hereby deemed to be repealed.

READ a FIRST and SECOND time this 17th day of December, 2015.

READ a THIRD time and **FINALLY PASSED** this 17th day of December, 2015.


Mayor, D. Mennill


Clerk, M. Casavecchia-Somers

BAO BEREAVEMENT AUTHORITY OF ONTARIO	
L'AUTORITÉ DES SERVICES FUNÉRAIRES ET CIMETIÈRES DE L'ONTARIO	
APPROVED	APPROUVÉ
In accordance with the <i>Funeral, Burial and Cremation Services Act,</i> 2002	Conformément à la Loi de 2002 sur les services funéraires et les services d'enterrement et de crémation
Date of Approval/ Date de l'approbation	<u>JANUARY 17, 2017</u>
File/Licence No. Numéro de Fiche/Permis	<u>3268137-1</u>
By/ Par	<u>Casavecchia</u>