

THE CORPORATION OF THE CITY OF WELLAND

BY-LAW NUMBER 2012 - 137

A BY-LAW GOVERNING THE CITY OF WELLAND'S
CEMETERIES (WOODLAWN AND DOAN'S RIDGE) "THE
CEMETERY BY-LAW"; AND TO REPEAL BY-LAW 10072

WHEREAS the Corporation is the owner and operator of the Woodlawn Cemetery and Doan's Ridge Cemetery;

AND WHEREAS the Corporation pursuant to Section 10 of the Municipal Act, 2011, has the power to pass by-laws providing for any service or thing that the Corporation considers necessary or desirable for the public;

AND WHEREAS the Corporation hereby wishes to establish rules and regulations governing the Woodlawn Cemetery and Doan's Ridge Cemetery, in the City of Welland, using the standard provisions as approved by the Registrar and the Ministry of Consumer Services, pursuant to the Funeral, Burial and Cremation Services Act, 2002, as amended

NOW THEREFORE THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE CITY OF WELLAND ENACTS AS FOLLOWS:

PART 1 - DEFINITIONS

1.1 In this by-law, the following words have the following meanings:

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

"By-law" means: The rules and regulations hereunder which the Cemetery (and/or Crematorium) operates.

"Care and Maintenance Fund" means: A trust fund, as required under the FBCSA and its regulations, as amended, wherein a portion of the purchase price of all Interment Rights and set amounts for Marker and Monument installations and other required items is contributed into this account; Care and Maintenance Fund Interest earned from this fund is to be used to provide care and maintenance of Plot, Lots, Markers and Monuments at the Cemetery.

"Cemetery" means: a Cemetery as defined in the FBCSA and either or both of the Woodlawn Cemetery in the City of Welland, legally described as Part Lot 239, former Township of Thorold, now in the City of Welland; and Doan's Ridge Cemetery, legally described as Part Lot 12, Concession 7, former Township of Crowland, now in the City of Welland; as the text may permit, and cemeteries as a corresponding

"Cemetery Office" means: The Office for the administration of the Cemeteries located offsite at 60 East Main Street, Welland, Ontario.

"Contract" means: For purposes of this By-law, Purchaser of Interment Rights a Contract Cemetery detailing obligations of both parties and acceptance by the Cemetery in regard to the purchase of Interment Rights and any other licenced services or licensed supplies as defined in the FBCSA.

"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.

"Corporation" means: The Corporation of the City of Welland.

“Cremation Lot” means: Any Burial space intended to receive not more than one (1) cremated remains and having a minimum size of 60.96 cm (2 feet) by 60.96 cm (2 feet).

“Crematorium” shall have the same meaning as set out in the FBCSA;

“FBCSA” means: the Funeral, Burial and Cremations Services Act, 2002 and all regulations thereto, as amended.

“Grave” means: Any Burial space intended for the interment of a child, adult or cremated human remains.

“Infant Grave” means: Any Burial space intended for an Infant, and having a minimum size of 1.22 meters (4 feet) by 69.96 cm (2 feet).

“Interment Rights” means: The rights to require or direct the interment of human remains or cremated human remains in a Grave, Lot, 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, representing title/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: For the purposes of this By-Law a Lot is a single Grave space.

“Manager” means: the Manager, Parks, Planning and Maintenance or such other person as designated from time to time.

“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.

“Ministry” means: the Ministry as defined in the FBCSA, as amended from time to time, which as of the date of this By-law is the Ministry of Consumer and Business Services. Burial

“Monument” means: Any permanent memorial projecting above the ground installed within the designated space to mark the location of a Burial or Lot.

“Plot” means: For the purposes of these by-laws, a Plot is a parcel of land, sold as a single unit, containing multiple Lots.

“Purchaser” means: A purchase of Interment Rights pursuant to a Contract.

“Treasurer” means: General Manager, Corporate Services/Treasurer of the Corporation.

PART 2 - GENERAL INFORMATION

2.1 The following are the permitted hours of operation for the Cemeteries:

Visitation Hours:	8:00 a.m. until dusk
Office Hours:	8:30 a.m. to 4:30 p.m.
Burial Hours:	8:00 a.m. to 3:00 p.m.

2.2 **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 must conduct themselves in a quiet manner that shall not disturb any service being held.

2.3 **Governance**

The Cemetery shall be governed by this By-law, and all subsequent amendments, and all procedures pursuant to this By-law must comply with the FBCSA, its regulations. For the purpose of this By-law, all reference to the rights, obligations or otherwise of the Cemetery or Cemetery Operator shall include and refer to the Corporation in regard to the cemeteries owned by the Corporation.

2.4 All by-law amendments shall 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.

2.5 All by-laws and by-law amendments related hereto shall be submitted to the Registrar.

2.6 **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, columbarium niche, mausoleum crypt, Monument, Marker, or other article that has been placed in relation to an interment save and except for direct loss or damage caused by gross negligence of the Corporation.

2.7 **Public Register**

In accordance with FBCSA, the Manager shall maintain a public register of Crematoriums, and such record shall be made available to the public during regular Office hours.

2.8 **Pets or Other Animals**

Pets or any animals, including cremated animal remains, are prohibited from being buried on Cemetery grounds.

2.9 **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.

2.10 **Notice of Resale and Transfer of Interment or**

The Cemetery operator hereby 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, provided the sale or transfer is conducted through the Cemetery operator, and the Purchaser meets the qualifications and requirements as outlined in the Cemetery operator's by-laws.

PART 3 – PURCHASE, CANCELLATION OR RESALE OF INTERMENT RIGHTS

3.1 Purchasers of Interment Rights shall only acquire the right to direct the Burial of human remains, and the installation of Monuments, Markers and inscriptions, subject to the conditions set out this by-law. No Burial, entombment, or installation of any Monument, Marker, inscription, or

memorialization is permitted until the Interment Rights have been paid in full. An Interment Rights Certificate will be issued to the Interment Rights Holder(s) when payment has been made in full. The purchase of Interment Rights does not give the Interment Rights Holder any interest in the land or the Cemetery. 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, and shall comply with the Cemetery by-law.

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

A Purchaser shall be entitled to cancel a Contract in accordance with the FBCS, as amended and 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 receipt of the notice of cancellation.

A purchaser shall be entitled to amend the Contract in accordance with FBCSA after the 30 day cooling period referred to in Section 3.2 of this by-law, and before the Contract is fully performed by the Cemetery Operator if the Purchaser gives written notice to the Cemetery Operator.

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

Upon receiving written notice from the Purchaser of the Interment Rights, the Cemetery operator will cancel the Contract and issue a refund to the Purchaser for the amount paid for the Interment Rights, less the mandatory amount required to be deposited into the Care and Maintenance Fund and all other amounts that can be deducted pursuant to the FBCSA. The refund will be made within thirty (30) days of receiving said notice. If the Interment Rights Certificate has been issued to the Interment Rights Holder(s), the Certificate must be returned to the Cemetery operator along with the written notice of cancellation. If any portion of the Interment Rights has been exercised, the purchaser, or the Interment Rights Holder is not entitled to cancel the Contract or re-sell the Interment Rights.

3.4 Care and Maintenance Fund Contributions

In accordance with sections 166 and 168 of Regulation 30/11, a percentage of the purchase price of all Interment Rights and a prescribed amount of \$25.00 and a prescribed amount for Monuments and Markers shall be contributed into the Care and Maintenance Fund. Contributions to the Care and Maintenance Fund are not refundable except when interment are cancelled within the 30 day cooling off period, in accordance with paragraph 3.3 herein.

3.5 Resale of Interment or after 30 Day Cooling-Off Period

Unless the Interment Rights have been exercised the Purchaser retains the right to 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 right shall be in accordance with the requirements of these by-laws and the FBCSA as amended. However, if it is determined by the Manager that any portion of the Interment Rights have been exercised, the Purchaser, or the Interment Rights Holder(s) shall not be entitled to re-sell the Interment Rights.

3.5.1 Requirements if resale of Interment Rights is permitted by the Cemetery operator

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 the required Certificate etc.:

- a) an interment Certificate endorsed by the current rights Holder ;
- b) if the resale involves Interment Rights, a written statement of the number of Lots that have been used in the Plot and the number of Lots that remain available;
- c) any other documentation in the interment Holder(s) possession relating to the rights.

3.5.2 The third party Purchaser will be provided with the following documents by the Cemetery operator :

- a) an interment Certificate endorsed by the current rights Holder;
- b) a copy of the Cemetery's current by-laws;
- c) a copy of the Cemetery's current price list;
- d) if the resale involves Interment Rights, a written statement of the number of Lots that have been used in the Plot and the number of Lots that remain available; and
- e) any other documentation in the Interment Rights Holder(s) possession relating to the rights.

3.5.3 The Cemetery operator shall require:

- a) a statement signed by the rights Holder(s) selling the Interment Rights acknowledging the sale of the Interment Rights to the third party Purchaser;
- b) confirmation that the person selling the Interment Rights is the person registered on the Cemetery records and that they have the right to re-sell the Interment Rights;
- c) record the date of transfer of the Interment Rights to the third party;
- d) the name and address of the third party Purchaser(s); and
- e) a statement of any money owing to the Cemetery Operator in respect to the Interment Rights.

3.5.4 Once the endorsed Certificate and all required information have 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.

3.5.5 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 these by-laws and the FBCSA.

3.5.6 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.

3.5.7 The Cemetery operator does not prohibit the resale of an Interment Rights or and may repurchase the Interment Rights from the 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 operators current price list amounts for Interment rights.

PART 4 - BURIAL OF CREMATED REMAINS

4.1 Interment Rights Holder must provide written authorization prior to a Burial taking place. Should the Interment Rights Holder be deceased, authorization must be provided in writing by the person authorized to act on behalf of the Interment Rights Holder. The Cemetery operator shall require proof, satisfactory to it, of such person's authority.

4.2 A Burial permit issued by the Registrar General or equivalent document showing that the death has been registered with the Province, must be provided to the Cemetery Office prior to a Burial taking place. A certificate of cremation must be submitted to the Cemetery Office prior to the Burial of cremated remains takes place.

4.3 In accordance with the FBCSA the Purchaser of Interment Rights must enter into a 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 human remains.

4.4 Payment must be made to the Cemetery before a Burial can take place.

- 4.5 The Cemetery shall be given at least twenty-four (24) hours written notice, in advance, (eight (8) hours of which must be business hours), for each Burial of human remains.
- 4.6 The opening and closing of Graves, may only be conducted by Cemetery staff or those designated to do work on behalf of the Cemetery.
- 4.7 Cremated remains shall not be permitted to be scattered on a Grave.
- 4.8 Human remains may be disinterred from a Lot provided that the written consent of the Interment Rights Holder and the prior notification of the medical Officer of health has been received by the Cemetery operator. 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.
- 4.9 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.
- 4.10 There shall not be more than one Burial made in any single Grave except:
- a) that of the cremated remains of four persons; or
 - b) a 60.96 x 30.48 cm (24 x 12) Infant container may be buried at the head end of a single Grave in which a casket containing human remains has been buried, provided space is available.
- 4.11 There shall not be more than one (1) cremated remains in a Cremation Lot, having a minimum size of 60.96 cm (2 feet) by 60.96 cm (2 feet).

PART 5 – MEMORIALIZATION

- 5.1 No memorial or other structure shall be erected or permitted on a Lot until all charges have been paid in full.
- 5.2 No Monument, footstone, Marker or memorial of any description shall be placed, moved, altered, or removed without permission from the Cemetery operator.
- 5.3 Minor scraping of the Monument base of an upright Monument due to grass/lawn maintenance is considered to be normal wear and tear and the Cemetery operator is not liable for same.
- 5.4 The Cemetery operator shall take reasonable precautions to protect the property of Interment Rights Holders, but shall assume no liability for the loss of, or damage to, any Monument, Marker, or other structure, or part thereof.
- 5.5 The Cemetery operator reserves the right to determine the maximum size of Monuments, their number and their location on each Lot or Plot. They must not be of a size that would interfere with any future interments.
- 5.6 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.
- 5.7 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.

5.8 The Cemetery operator reserves the right to remove at its sole discretion any Marker, Monument, or inscription which is not in keeping with the dignity and decorum of the Cemetery as determined by the Cemetery operator

5.9 A Monument, private mausoleum, or other structure shall be erected only after the specific design plans have been approved in writing by the Cemetery operator including: dimensions, material of structure, construction details, and proposed location.

5.10 In keeping with this by-law only one Monument shall be erected within the designated space on any Lot.

5.11 The minimum thickness for flat Markers including footstones is 4 inches or 10 cm.

5.12 All Monuments and Markers shall be constructed of bronze or natural stone (example such as granite).

5.13 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.

5.14 Foundation requirements are as follows:

Single Lot maximum: Height 1.22 meters (4 feet)
Width 76.20 cm (30 inches)
Base (minimum) 35.56 cm (14 inches)
Die (minimum) 15.24 (6 inches)

Double Lot maximum: Height 1.22 meters (4 feet)
Width 106.68 cm (42 inches)
Base (minimum) 35.56 cm (14 inches)
Die (minimum) 15.24 (6 inches)

5.15 Markers and footstones of bronze or granite are permitted with size and quantity restrictions as set out below, according to this by-law and provided that the placement of such memorials shall not interfere with future interments, as follows:

Single Lot maximum: (76.20 cm x 45.72 cm 30" x 18")
Double Lot maximum: (91.44 cm x 40.64 cm 42" x 16")
Cremation Lot maximum: (55.88 cm x 40.64 cm 22" x 16")
Double Cremation Lot maximum: (91.44 cm x 40.64 cm 36" x 16")

PART 6 - CARE AND PLANTING

6.1 As indicated in this by-law, a portion of the price of Interment 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. Further services that are permitted through this fund include:

- a) Re-levelling and sodding or seeding of Lots;
- b) Maintenance of Cemetery roads, sewers and water systems;
- c) Maintenance of perimeter walls and fences;
- d) Maintenance of Cemetery landscaping; and
- e) Repairs and general upkeep of Cemetery maintenance buildings and equipment.

6.2 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.

6.3 No person shall plant trees, flower beds or shrubs in the Cemetery except with the approval of the Cemetery.

6.4 Flower beds exceeding 30.48 cm (12 inches) in width are not permitted around the base of Monuments.

6.5 Cemetery staff are permitted to remove flowers placed on a Grave for a funeral after a reasonable time to protect the sod and maintain the tidy appearance of the Cemetery.

PART 7 - ITEMS THAT ARE PROHIBITED AND PERMITTED

7.1 The Cemetery reserves the right, in its sole unfettered discretion, to regulate articles placed on Lots or Plot as follows:

- a) Articles that pose a threat to the safety of all Interment Rights Holders, visitors to the Cemetery and Cemetery employees shall be removed by Cemetery staff;
- b) Articles that prevent the Cemetery from performing general Cemetery operations, or are not in keeping with the respect and dignity of the Cemetery shall be removed by Cemetery staff; and
- c) Prohibited articles shall be removed and disposed of without notification.

The following are examples of articles that are prohibited from being placed on Lots within the Cemetery: articles made of hazardous materials such as non-heat resistant glass (excludes glass attached to Monuments), ceramics, corrosive metals, loose stones, sharp objects, trellises or arches, chairs or benches.

7.2 The Cemetery reserves the right to disallow or remove quantities of memorial wreaths or flowers considered to be excessive and that diminishes the otherwise tidy appearance of the Cemetery.

7.3 Memorial wreaths may be placed in the Cemetery after October 1st in each year.

7.4 All wreaths must be removed prior to May 1st in each year. Wreaths not removed by May 1st in each year shall be removed and disposed of by the Cemetery without notification.

PART 8 - CONTRACTOR/MONUMENT DEALER

8.1 Any Contract work to be performed within the Cemetery requires the written pre-approval of the Interment Rights Holder and the Cemetery operator before the work may begin. Pre-approval shall include, 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, and 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.

8.2 Prior to the start of any said work, Contractors must provide proof of (any or all may apply depending on your specific operation):

- a) WSIB coverage;
- b) Occupational Health and Safety compliance standards;
- c) Environmental Liability Insurance;
- d) WHMIS;
- e) evidence of liability insurance of not less than \$2,000,000 per occurrence, naming the Corporation as an additional insured ; and
- f) the policy shall contain provisions for cross liability, severability of interest and contractual liability. The policy shall contain a clause providing the City with thirty (30) days notice of cancellation or non-renewal of such policy.

8.3 This By-law shall also apply to all Contractors and all work carried out by Contractors within the Cemetery grounds.

8.4 All Contractors, Monument dealers and suppliers shall not enter the Cemetery in the evening, weekends or statutory holidays, unless written approval has been granted by the Cemetery operator.

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

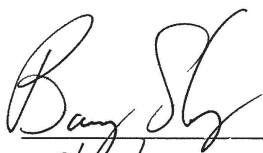
8.6 Contractors, if they are working within 100 metres of a funeral, shall temporarily cease all operations until the conclusion of the service. The Cemetery reserves the right to temporarily cease Contractor operations at their sole discretion if the noise of the work being performed by the Contractor is deemed to be a disturbance to any funeral or public gathering within the Cemetery.

8.7 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.


PART 9 – EFFECTIVE DATE

9.1 This by-law shall come into full force and take effect upon approval of same by the Registrar of the Funeral, Burial and Cremation Services Act, 2002.

READ A FIRST, SECOND AND THIRD TIME AND PASSED BY COUNCIL THIS 27th
DAY OF **November, 2012.**



MAYOR



CLERK