

THE CORPORATION OF THE TOWN OF KINGSVILLE

BY-LAW 120 - 2018

Being a By-law to establish rules and regulations to be used in connection with all cemeteries owned and operated by The Corporation of the Town of Kingsville

WHEREAS section 10 of the *Municipal Act, 2001* S.O. 2001 c. 25 provides that a municipality may provide any service or thing that the municipality considers necessary or desirable for the public and may pass by-laws respecting such service.

AND WHEREAS The Corporation of the Town of Kingsville (the "Town") is the owner and operator of certain cemeteries within the boundaries of the Town, which cemeteries are listed in Schedule "A" attached hereto and forming part of this By-law, the locations of which cemeteries are more specifically indicated on a map attached hereto as Schedule "B" and forming part of this By-law.

AND WHEREAS section 150 of Regulation 30/11 (the "*Regulations*") made under the *Funeral, Burial and Cremation Services Act, 2002* S.O. 2002, c. 33 (the "*Act*") provides that a cemetery operator may make by-laws governing the operation of the cemetery and, in particular, governing rights, entitlements and restrictions with respect to interment and scattering rights.

AND WHEREAS section 151(1) of the Regulations provides that no cemetery by-law is effective until the cemetery operator has filed it with the registrar appointed under section 3 of the Act (the "Registrar") in an approved form and manner; provided notice of the filing in accordance with subsection 151(3) of the Regulations; and the Registrar has approved it.

AND WHEREAS it is expedient to repeal By-law 90-2012, being a by-law to establish rules and regulations to be used in connection with all cemeteries owned by the Town.

THEREFORE, THE COUNCIL OF THE CORPORATION OF THE TOWN OF KINGSVILLE ENACTS AS FOLLOWS:

Definitions

1. For the purpose of this By-law, the following further definitions are applicable:
 - a) "Care and Maintenance Fund" It is a requirement under the FBCSA and O. Reg.30/11 and 184/12 that a prescribed amount or a percentage of the purchase price (excluding tax) of all interment and scattering rights sold, transferred, assigned or permitted; and prescribed amounts for monuments and markers, is contributed into the care and maintenance fund. If no scattering rights are sold but scattering is permitted a prescribed amount must be contributed to the fund when the scattering is conducted. Interest earned from this fund is used to provide care and maintenance of lots, plots, markers and monuments at the cemetery
 - b) "Cemetery" means any one of the cemeteries owned and operated by the Town and listed in Schedule "A" herein and "Cemeteries" shall have a corresponding meaning;
 - c) "Contract" means a contract complying with the provisions of section 40 of the *Act*;

d) "Fee" means the corresponding fee charged for a service pursuant to the Town's Fees and Charges By-law, as amended from time to time, and as set out in a price list as required by section 33 of the Act;

e) "Holiday" means:

New Year's Day	Labour Day
Family Day	Thanksgiving Day
Good Friday	Remembrance Day
Easter Monday	December 24
Victoria Day	Christmas Day
Canada Day	Boxing Day
Civic Holiday	

and the day designated by the Town to observe the above listed holidays

f) "Inter" means the burial of human remains and includes the placing of human remains in a Lot and "Interred" and "Interment" shall have corresponding meanings;

g) "Interment Rights" includes the right to require or direct the Interment of human remains in a Lot;

h) "Lot" means an area of land in a Cemetery being approximately 3'4" x 8' containing, or set aside to contain, Interred human remains;

i) "Manager" means the person assigned by the Town from time to time to manage the Cemeteries or his or her designate;

j) "Marker" means any permanent memorial set flush with the surface of the ground and used to mark the location of a Lot;

k) "Monument" means any permanent memorial projecting above the ground level and used to mark the location of a Lot;

l) "Open Hours" means between 8:00 a.m. and 8:00 p.m.;

m) "Plot" means two (2) or more Lots in respect of which the Interment Rights have been sold as a unit;

n) "Rights Holder" means the person who holds the Interment Rights with respect to a Lot; and

o) "Town" means The Corporation of the Town of Kingsville

Regulations for Interments and Disinterments

Generally

2. A Rights Holder, or his or her authorized representative, shall provide at least forty-eight (48) hours notice (excluding Sundays and holidays) of a proposed date and time of Interment in writing to the Manager.
3. No Interment or Disinterment will be performed on any Sunday or Statutory Holiday unless authorized by the Manager of Public Works or if the Town is ordered to do so by a representative of the Ministry of Health.
4. No Lot shall be opened for Interment or Disinterment by a person not in the employ of; acting as agent of; or under the express direction of the Town.
5. The Town assumes no responsibility or liability for loss or damage to any person or property during Interment or Disinterment.

Requirements Prior to Interment

6. In addition to any other requirement under the *Act* and the Regulations and any other legislation that may be in force from time to time, the following shall be received by the Town prior to an Interment in a Cemetery:
- a. a Contract for the Interment;
 - b. if the remains to be Interred are not those of a Rights Holder, the written consent of all Rights Holders, or their authorized representatives, to such Interment; and
 - c. payment in full of the Fee for the Interment
 - d. burial permit
 - e. certificate of cremation

Requirements Prior to Disinterment

7. In addition to any other requirement under the *Act* and the Regulations and any other legislation that may be in force from time to time, the following shall be received by the Town prior to a Disinterment in a Cemetery:
- a. a Contract for the Disinterment; and
 - b. payment in full of the Fee for the Disinterment

Interments

8. The following may be Interred in one (1) Lot:
- a. not more than four (4) cremated remains; or
 - b. one (1) non-cremated remains; and
 - i. one (1) 12"x24" container containing infant remains to be Interred at the head of the Lot, provided space is available; or
 - ii. not more than two (2) cremated remains
9. Remains to be Interred in a Lot shall be enclosed in a container which container shall be:
- a. sealed securely;
 - b. of sufficient strength to permit Interment with the container remaining intact; and
 - c. of a size to permit Interment within the Lot

Notice of Resale and Transfer of Interment Rights

10. The Town prohibits the resale of Interment Rights to a third party and will repurchase these rights at the price set out in the Town's Fees and Charges By-law, ~~as may be amended from time to time~~, at the rate on the current price list, less any care and maintenance contribution amount previously paid. The Town is not required to repurchase unused Interment Rights in a plot if one of the Interment Rights in the plot has been exercised.
11. The Town permits the Interment Rights holder to transfer their Interment Rights to a third party, at the current price set out in the Cemetery Service Price List, so long as the transfer is conducted through the Town.

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

12. A purchaser has the right to cancel an interment contract within thirty (30) days of signing the interment contract, by providing written notice of the cancellation to the cemetery operator. The cemetery operator will refund all monies paid by the purchaser within thirty (30) days from the date of the request for cancellation.

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

13. 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 appropriate amount that is required to be deposited into the Care and Maintenance Fund. This refund will be made within thirty (30) days of receiving 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.
14. If any portion of the interment rights has been exercised, the purchaser, or the Interment Rights Holder(s), are not entitled to cancel the contract or re-sell the interment rights.

Regulations for Markers and Monuments

Generally

15. Subject to sections 22 and 23, one (1) Marker or one (1) Monument that otherwise complies with the regulations contained in this By-law may be installed on a Lot or Plot.
16. No person shall erect, install, move, alter or remove or cause to be erected, installed, moved, altered or removed, a Marker or Monument in a Cemetery without written authorization from the Manager.
17. No person shall deliver to a Cemetery or cause to be delivered to a Cemetery a Marker or Monument without written authorization from the Manager and unless the foundation is prepared and the marker and Monument is to be immediately installed.
18. Every person who wishes to deliver to a Cemetery or, erect, install, place, move, alter or remove a Marker or Monument in a Cemetery shall provide such information in connection with the Marker or Monument and the erection, installation, placement, movement, alteration or removal of the Marker or Monument as the Manager may require.
19. Vases permanently attached to a Marker or Monument shall be:
 - a. constructed of bronze;
 - b. of sufficient strength to protect the vase in an inverted position; and
 - c. attached to the Marker or Monument with a chain long enough to invert, and the Town shall assume no responsibility nor liability for the loss or damage to vases attached to any Marker or Monument.
20. Despite anything else in this By-law, no Marker, Monument or Foundation shall extend over the side of any Lot or Plot.

Requirements Prior to Installation

21. In addition to any other provisions of this By-law, the following shall be received by the Town prior to the installation of a Marker or Monument:
 - a. Written authorization for the installation of the Monument or Marker from all Rights Holders or the authorized representatives of the Rights Holders; and
 - b. Payment in full of the Fee for the Marker or Monument Care and Maintenance

Markers

22. When measuring a Marker, depth shall refer to the distance from front to back and width shall refer to the distance from left to right.

23. A Marker shall:

- a. be flat;
- b. be constructed of marble, granite or bronze;
- c. be set level with the ground so that a lawnmower may pass safely over the Marker;
- d. not have any inscription which is not in keeping with the dignity and decorum of the Cemeteries;
- e. be a minimum thickness of 4"
- f. be a minimum size of 10" in depth x 20" in width
- g. be a maximum size of:
 - i. 16" in depth x 30" in width if placed on a Lot; or
 - ii. 18" in depth x 42" in width if placed on a Plot
- h. be placed such that the Marker does not interfere with future Interments

24. If the Marker has a skirt, such skirt shall be no more than 2" greater than the size of the Marker

Monuments

25. Notwithstanding any other provision of this By-law, Monuments are prohibited in the following Cemeteries:

- a. Sections A, B, C, D and E of the Greenhill Cemetery; and
- b. Graceland Expanded Cemetery

26. When measuring a Monument or its base, height shall refer to the distance from top to bottom; width shall refer to the distance from left to right; and depth shall refer to the distance from front to back.

27. A Monument shall:

- a. not have any inscription which is not in keeping with the dignity and decorum of the Cemeteries;
- b. be a maximum size of:
 - i. 24" in height x 24" in width if placed on a Lot; or
 - ii. 30" in height x 48" in width if placed on a Plot;
- c. if it includes a base, have a base a maximum size of:
 - i. 8" in height x 32" in width if placed on a Lot; or
 - ii. 8" in height x 60" in width if placed on a Plot;
- d. have only a family name on its back;
- e. not be placed "back-to-back" against another Monument; and
- f. be placed at the centre of the head of the Lot or Plot, unless otherwise authorized or directed by the Manager.

Supplementary Markers

28. Supplementary Markers may be installed on a Lot or Plot in accordance with section 18.

29. Supplementary Markers shall be a maximum size of 16" in depth and 24" in width and the maximum number to be installed shall be one (1) if on a Lot and two (2) if on a Plot and such Supplementary Marker shall be installed as follows:

- a. flush to and centered under a Marker; or
- b. at the opposite end of and centered under a Monument, and if two (2) Supplementary Markers are installed in accordance with this By-law, such shall be installed one beside the other

Legion Stones and Supplementary Vase Stone

30. War Memorial markers placed on veteran graves by the Royal Canadian Legion will be permitted to remain as a permanent marker, in addition to other markers and monuments allowed. Only markers consistent with those approved by Veterans Affairs Canada are permitted.

Foundations

31. Every Monument shall have a foundation.

32. A Foundation shall:

- a. be constructed between March 31 and November 14;
- b. have a surface area that is flush with the surrounding ground level;
- c. provide a level surface free of defects;
- d. be cured for a minimum of forty-eight (48) hours before the installation of the Monument; and
- e. have a skirt no more than two (2) inches greater than the size of the Monument base

Removal by Manager

33. The Manager, in his or her sole discretion, may remove from a Cemetery, Lot or Plot any Marker or Monument that does not comply with the regulations in this By-law.

Maintenance

34. The Town shall be responsible for the general care and maintenance of the Markers and Monuments once installed on a Lot or Plot in accordance with the regulations in this By-law.

35. Notwithstanding any other provisions of this By-law, if any Marker or Monument is found to pose a hazard or risk to public safety, the Town may remove such risk or hazard. **should 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 to remove the risk.**

36. Any person who finds a Marker or Monument in need of care or maintenance shall notify the Town.

37. The Town assumes no responsibility nor liability for the proper installation of any Marker or Monument, nor for any loss or damage to any Marker or Monument resulting from normal wear and tear, including, but not limited to, minor scraping of the base of Monuments due to turf mowing operations.

Regulations for Cemeteries, Lots and Plots

General Care and Maintenance

38. The Town shall be responsible for the general care and maintenance of the Cemeteries, Lots and Plots.

Lots and Plots

39. No person may alter any Lot or Plot in any manner whatsoever, including, but not limited to the changing of the grade, the addition of sod, grass seed, or loose stone, the addition of flower beds, trees, shrubbery or plants, the construction of curbing, coping, fencing or walkways of any kind.

40. No person shall place, leave, install or erect any article, item, memorial, structure, object or thing of any kind whatsoever in a Cemetery or upon any Lot or Plot unless otherwise permitted by this By-law.

41. Subject to section 41, the following articles are permitted to be left upon a Lot or Plot by any person:
- a. fresh and artificial flowers;
 - b. between November 1 and March 31 each year, Christmas wreaths and blankets or artificial wreaths without glass or plastic covers, provided the same are securely fastened to a Monument, or where there is no Monument, mounted on a stand of a least thirty (30) inches high and securely anchored to the ground; and
 - c. between April 1 and October 31 each year, plastic vases, plastic flower pots, potted plants and shepherd's hooks on top of the ground, but not buried, and placed as close to a Monument or Marker base as practical

Maintenance

42. Any person who leaves any article permitted by this By-law on a Lot or Plot shall care for and maintain the article while it is left on the Lot or Plot and shall remove the article when the article is no longer permitted under this By-law.
43. Except as otherwise indicated in the Act, the Regulations and this By-law, the Town is not responsible to maintain, nor is the Town liable for loss or damage to any articles left in the Cemeteries or upon any Lot or Plot.

Removal by Manager

44. The Manager, in his or her sole discretion, may remove from the Cemetery, Lot or Plot:
- a. anything that is not authorized under this By-law;
 - b. any article if that article may not be left on a Lot or Plot after a certain date if that date has passed;
 - c. any article that is not cared for or maintained, including, but not limited to dead plants or flowers and pots or urns not filled with plants or flowers;
 - d. any trees or shrubs situated in any Lot or Plot that have become, by means of their roots or branches or in any other way detrimental to the adjacent Lot, drains, roads or walks, or prejudicial to the general appearance of the grounds or inconvenient to the public; and
 - e. any article, such as nails, wires, glass, or pottery, which is detrimental to efficient maintenance or constitutes a hazard to machinery, employees or visitors, or does not conform with the natural beauty or design of the Cemetery.

Rules for Contractors

45. In section 43, "Contractor" shall mean any person undertaking work in the Cemeteries who is not an employee of the Town, whether party to a contract with the Town or not.
46. Contractors shall:
- a. Respect the integrity and decorum of the Cemeteries;
 - b. Cease work, if in the immediate vicinity of a funeral, until the conclusion of the funeral service;
 - c. Indemnify and hold harmless the Town, its directors, officers, employees, agents and elected officials, from and against all claims, losses, suits, judgements, legal expenses and for any and all liability for damages to property and injury to persons, including death, which the Town may incur or suffer directly or indirectly as a result of or arising out of or in relation to the Contractor's work within the Cemeteries;

- d. at his own expense, take out and maintain, general liability insurance of not less than two million dollars (\$2,000,000.00) and such policy shall be written on a comprehensive basis with coverage for any one occurrence or claim of not less than two million dollars (\$2,000,000.00) and shall contain a provision for cross liability or severability of interest and non-owned automobile coverage with blanket contractual and physical damage coverage for hired automobiles and provide proof of such insurance as required by the Town;
- e. comply with all applicable laws, regulations, orders, by-laws, and requirements of governmental or other public authorities having jurisdiction at any time, including, but not limited to, the following:
 - i. *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, including the Town's Violence and Harassment in the Workplace Policy and Program, which shall be in place from time to time;
 - ii. *Workplace Safety and Insurance Act*, 1997, S.O. 1997, c.16, Schedule A; and
 - iii. *Accessibility for Ontarians with Disabilities Act*, 2005, S.O. 2005, c.11, including the Town's Accessible Customer Service Standards Policy, which shall be in place from time to time

and, upon request, provide proof of such compliance in the prescribed form or in any other form as required by the Town;

- f. undertake all work during Open Hours, unless under special written permission of the Manager;
- g. undertake no work on a Saturday that cannot be finished on that day;
- h. undertake no work on a Sunday absent written permission or direction from the Manager of Public works;
- i. not remove any marker or monument without written permission of the Manager
- j. not transport heavy loads in the Cemeteries when, in the opinion of the Manager, driveways or any other areas are in an unfit condition;
- k. lay planks on Lots and areas over which materials are to be moved;
- l. restore or replace any surface damaged by any work undertaken;
- m. not park on the grassy areas of the Cemeteries unless directed to do so by the Manager;
- n. place all implements and materials used in the performance of any work in accordance with the direction of the Manager; and
- o. remove all rubbish and surplus earth, refuse, litter and debris in such manner as the Manager directs

Rules for Visitors

47. Funeral corteges within Cemeteries shall follow the route as may be directed by the Manager, when required.

48. All persons visiting the Cemeteries shall:

- a. attend during Open Hours;
- b. respect the integrity and decorum of the Cemeteries and not engage in any noisemaking, picnicking nor improper conduct;
- c. not walk on any Marker nor sit, lean nor climb on any Monument;
- d. not drive vehicles within the Cemeteries at a speed of more than ten (10) kilometres per hour, or elsewhere than upon the roadways provided for vehicles
- e. not park on the grassy areas unless directed to do so by the Manager;
- f. not drive any all-terrain vehicle or snowmobiles in the Cemeteries;
- g. not discharge any firearm unless in accordance with the provisions of any by-law of the Town that may be in effect from time to time regulating the discharge of firearms

SCHEDULE “A”

Cemetery Name	Location	Description	Status	Roll No.
Augustine	Farm Lot, Road 2 East	Lot: 1 Conc. 1 Pt. 3 12R15587	Inactive	None
Greenhill	Mill Street West	Lot: 4 Conc. 1	Active	020-00300
Pearl Street	Pearl Street West	Lot: 2 Conc. 1 WD	Inactive	090-08300
Cottam Cemetery	s/s County Road 34	Lot: 271 Conc. STR Part 1 Plan 12R12365	Active-Anglic. Active-Other	570-05400 570-05500
Northridge	South Talbot Road	Lots: 277, 278 Conc. STR Part 1 12R15809	Active	580-04100
Baptist	e/s Thompson Crescent	Lot: 21 Conc. 5 E.D.	Active	400-02500
Chippawa Indian	Farm Lot, Road 4 East	s/e corner Lot: 20 Conc. 4 E.D.	Inactive	390-03500
Fairview	n/s Road 3 East	Lot: 11 Conc. 3 E.D.	Active	340-00500
Graceland Universalist (or Fox) + Expansion	Road 5 East at Olinda Sideroad	Lot: 21 Conc. 4 E.D Part of Part 1 12R6602.	Active	390-02100
Kenyon (Malott)	Farm Lot 12, w/s Kenyon Point Rd.	Lot: Farm Lt. 12 Kenyon Point Road	Inactive	Road Allowance
Negro	Division Road	s/w corner Lot: M Conc 3 W.D.	Inactive	370-08600
Malott	Heritage Road	Lot: 4 Conc. 1 W.D. Parts 1 to 3 12R5593	Inactive	270-31502
Olinda United Church	w/s Olinda Sideroad	Lot: 20 Conc. 5 E.D. Part 1 12R11510	Active	400-05200
Ruthven United Church (north) (south)	n/s Hwy. 3 at Albuna Townline s/s Hwy. 3 at Albuna Townline	Lot: 13 Conc. 2 E.D. Lot: 13 Conc. 2 E.D.	Active Active	290-26200 290-20300

Legend:

Cemetery Name	Roll #
1. Greenhill Cemetery	2-003
2. Pearl Cemetery	9-083
3. Cottam Cemetery	57-054
4. Northridge Cemetery	57-055
5. Graceland Universalist Cemetery (or Fox)	58-041
6. Ruthven United Cemetery North	29-262
Ruthven United Cemetery South	29-203
7. Olinda United Church	40-052
8. Baptist Cemetery	40-025
9. Fairview Cemetery	34-005
10. Chippawa Indian Cemetery	39-035
11. Kenyon (Malott) Cemetery	39-022 (part)
	Rd. allowance w/s Kenyon Rd.
12. Augustine Cemetery	Pt. 22 12R17586
13. Negro Cemetery	37-086
14. Malott Cemetery	27-31502