

CITY OF TIMMINS
BY-LAW 2015-7623 (Unofficial – pending public feedback)

Public comment and feedback are welcome at cemetery@timmins.ca

BEING A BY-LAW to provide for the maintenance, management, regulation, operation and control of Timmins Memorial Cemetery, Tisdale Cemetery and Whitney Cemetery.

WHEREAS the Funeral, Burial and Cremation Services Act, 2002 as amended permits for the establishment of Cemeteries

AND WHEREAS the Funeral, Burial and Cremation Services Act 2002 requires the operator of a Cemetery to operate in accordance with the by-laws applying to that Cemetery.

NOW THEREFORE the Council of the Corporation of the City of Timmins enacts as follows:

SECTION 1 – DEFINITIONS

Act - the Funeral, Burial and Cremation Services Act 2002 and includes the regulations made there under.

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

By-Laws – The rules and regulations under which the Cemetery operates.

Care and Maintenance Fund – a requirement under the FBSCA that a percentage of the purchase price of all Interment Rights, and set amounts for marker and monument installations is contributed into the Care and Maintenance Fund. Interest earned from this fund is used to provide care and maintenance of plots, lots, markers, and monuments at the Cemeteries.

Cemetery Services – shall include the opening and closing of graves, niches or crypts, interring or disintering human remains, grave dressing and lowering devices for committal purposes, planting of trees, shrubs and grass, cutting the grass, general care of lots and any other services normally provided by the City, or that may be provided by the City in the future.

Certificate of Interment Rights – the certificate given by the City to the purchaser of Interment Rights in a lot, niche, or crypt, specifying the particulars of the interment rights purchased.

City – the Corporation of the City of Timmins

Contracts – for purposes of these by-laws, all purchasers of interment rights must sign a contract with the cemetery, detailing obligations of both parties and acceptance of the cemetery by-laws.

Crypt – a sealed compartment in a mausoleum containing or designed to contain human remains

Disinterment – removal of human remains from the ground

Entomb (Entombment) – Inurn (Inurnment) - placing of human remains in a crypt or niche.

Grave – any in-ground burial space intended for the interment of a child, adult or cremated human remains.

Interment – the process associated with the burial of human remains or the ashes of human remains in a lot, the process associated with the entombment of human remains or ashes of human remains in a crypt and the process of entombing ashes of human remains in a niche.

Interment Right – right to require or direct the interment of human remains or cremated human remains in a grave, lot, niche or crypt and direct the associated memorialization.

Interment Right Certificate – the document issued by the Cemetery to the purchaser once the interment rights have been paid in full, identifying ownership of the interment rights.

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

Lot – a lot, plot, grave, burial site, crypt or compartment to be used for the purposes of burial of the bodies or the cremated remains of deceased persons.

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

Mausoleum – a building or other structure used as a place for the entombment of the deceased in a sealed crypt or compartment.

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

Monument Care and Maintenance Fund – the fund in which all monies received by administration as levy on monuments and markers placed in cemeteries and is for the safety and not for the repair or them. This levy is mandated under the Funeral, Burial and Cremation Services Act, 2002.

Niche – an individual compartment in a columbarium for the entombment of cremated human remains.

Scattering – the act of spreading cremated remains over a designated area within a cemetery with the knowledge and permission of the cemetery operator and in keeping with the cemetery's by-law.

Scattering Rights Holder – any person designated to hold the right to scatter cremated human remains in a specified lot or other designated area within the cemetery.

Tariff – the list of prices in effect from time to time as set by the City and filed with the Registrar.

SECTION 2 – GENERAL

2.1 General Conduct.

- a) The cemetery reserves full control over the cemetery operations and management of land within the cemetery grounds
- b) No person may damage, destroy, remove or deface any property within the Cemetery.
- c) All visitors should conduct themselves in a quiet manner that shall not disturb any service being held.

2.2 The manager and/or their designate shall

- a) Ensure compliance to the provisions of this By-Law, the Funeral, Burial and Cremation Services Act, 2002, and its regulations, as the same may be from time to time amended
- b) Open and close all graves in the cemetery that may be required to be opened or closed and permit no other person to do so;

- c) Attend to all interments held in the cemetery and fills all graves immediately after interments;
 - d) Attend to the maintenance and care of the cemetery as required in this by-law and the Act;
 - e) Be the only persons authorized to sell or transfer burial rights to graves, lots, mausoleums and columbarium or to authorize digging of graves, erection of monuments, repairs thereto, or to enter into agreement for upkeep of lots or give valid receipts for any cemetery dues.
- 2.3 No person shall
- a) Operate an off-road or competition motorcycle, a motorized snow vehicle, ATV or any other form of off road vehicle within the cemetery grounds;
 - b) Bring or permit any animal in the cemetery unless consent from manager or designate;
 - c) Bring alcoholic beverages upon the cemetery grounds;
 - d) deposit rubbish or debris on the cemetery grounds, except in receptacles provided for that purpose;
 - e) Shall engage in soliciting of any kind in the cemetery;
 - f) Operate a vehicle in excess of twenty (20) kilometers per hour within the cemetery.
- 2.4 Every person working in a cemetery in any capacity including those in the capacity of mason, carter, stone cutter, erector or helper shall be subject to the direction of the Manager or their designate.
- 2.5 The manager or their designate may restrict vehicular traffic due to road conditions, climate or any other appropriate reason.
- 2.6 Every person found in violation of any of the aforementioned regulations by the Manager and/or designates of the Timmins Police shall be expelled from the cemetery grounds and be subject to prosecution under the Trespass to Property Act.
- 2.7 By-Law Amendments
- a) The cemetery shall be governed by these bylaws, and all procedures will comply with the Funeral, Burial and Cremation Services Act, 2002 and Ontario regulation 30/11, which may be amended periodically;
 - b) All by-law amendments must be:
 - i) published once in a newspaper with general circulation in the locality in which the cemetery is located;
 - ii) Conspicuously posed on a sign at the entrance of the cemetery; and
 - iii) Delivered to each supplier of markers who has delivered a marker to the cemetery during the previous year, if the by-law amendment pertains to markers or their installation.
 - c) All by-laws and by-law amendments are subject to the approval of the Registrar, Cemeteries Regulation Unit and the Ministry of Government and Consumer Services.
- 2.8 Liability. The cemetery operator will not be held liable for any loss or damage, with limitation (including damage by the elements, Acts of God or vandals) to, any lot, plot, columbarium, niche, mausoleum crypt, monument, marker, memorial wall or other article that has been placed in relation to an interment or scattering right save and except for direct loss or damage caused by gross negligence of the cemetery.
- 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 Disposition of Remains. No person shall dispose of any remains other than human remains in a cemetery and in accordance with this by-law.

- 2.11 Contract of Purchase. Every person purchasing interment rights or cemetery services for a cemetery, shall sign a contract of purchase in the presence of the cemetery manager and/or their designate. Every person who purchases interment rights or cemetery services shall be provided with a signed copy of the contract.
- 2.12 No person shall be entitled to receive and the Cemetery Manager shall not issue a Certificate of Interment Rights until payment has been made in full for the interment rights and no person shall be entitled to receive any cemetery services until payment has been made in full of the appropriate fee.

SECTION 3 –INTERMENT RIGHTS CERTIFICATES, CANCELLATION OR RESALE

- 3.1 Purchasers of interment or scattering rights holders acquire only the right to direct the burial of human remains and the scattering of cremated human remains, and the installation of monuments, markers and inscriptions, subject to the conditions set out in the cemetery by-laws.
- 3.2 In accordance with cemetery by-laws, no burial, entombment, scattering, or installation of any monument, marker, inscription, or memorialization is permitted until the interment rights have been paid in full.
- 3.3 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.
- 3.4 The manager may permit a purchaser to finance a purchase interest free for one year from the date of the execution of the contract upon payment of an administrative fee. If the purchaser does not pay the full purchase price within the one year of the signing of the contract then the contract shall be of no further effect and all monies paid by the purchase shall be refunded, except those which have been applied to the Care and Maintenance Fund
- 3.5 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.
- 3.6 Cancellation on Interment Rights within 30 Day Cooling-Off period.
A purchaser has the right to cancel an interment or scattering rights contract within thirty (30) days of signing the interment or scattering rights contract, by providing written notice of the cancellation to the cemetery operator. The cemetery operator will refund all monies paid by the purchaser within thirty (30) days from the date of the request for cancellation.
- 3.7 Resale of Interment or Scattering Rights after 30 Day Cooling-Off period
Unless the interment or scattering rights have been exercised the purchaser retains the right to cancel the contract or re-sell the interment or scattering rights. Once payment for the interment or scattering rights has been made in full, and an interment rights certificate has been issued, the interment or scattering 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 the cemetery by-laws and in keeping with the FBCSA.
- 3.8 Care and Maintenance Fund Contributions
As required by sections 166 and 168 of regulation 30/11, a percentage of the purchase price of all interment rights, scattering rights and a prescribed amount of \$25.00 where there was no scattering rights sold, 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 cemetery. Contributions to the care and maintenance fund are not refundable except with interment or scattering rights are cancelled within the 30 day cooling off period.

3.9 Resale of interment or scattering rights to a third party

NOTE: ALL REALES OF INTERMETN OR SCATTERING RIGHTS MUST BE CARRIED OUT THROUGH THE CEMETERY OPERATOR.

The interment or scattering rights holder(s) intending to sell their rights shall provide the following documents to the cemetery operator so that the operator can confirm the ownership of the rights and provide the third party purchaser with the required certificate.

1. An interment or scattering rights certificate endorsed by the current rights holder
2. If the resale involved 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
3. If the resale involves scattering rights, a written statement of the number of scattering rights.
4. Any other documentation in the interment or scattering rights holder(s) possession relating to the rights.

The third party purchaser will be provided with the following documents by the cemetery operator:

1. An interment or scattering rights certificate endorsed by the current rights holder
2. A copy of the cemetery's current by-laws
3. A copy of the cemetery's current price list
4. 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 remains available
5. If the resale involves scattering rights, a written statement of the number of scattering rights available.
6. Any other documentation in the interment rights holder(s) possession relating to the rights.

The cemetery operator will require:

1. A statement signed by the fights holder(s) selling the interment or scattering rights acknowledging the sale of the interment rights to the third party purchaser
2. Require confirmation that the person selling the interment or scattering rights is the person registered on the cemetery records and that they have the right to re-sell the interment or scattering rights.
3. Record the date of transfer of the interment or scattering rights to the third party
4. The name and address of the third party purchaser(s)
5. A statement of any money owing to the cemetery operator in respect to the interment or scattering rights.

Once the endorsed certificate and all required information has been received by the cemetery operator from the rights holder(s), the cemetery operator will issue a new interment or scattering rights certificate to the third party purchaser.

Upon completion of the above listed procedures, and upon the issuance of the new interment or scattering rights certificate, the third party purchaser or transferee(s) shall be considered the current interment or scattering rights holder(s) of the interment or scattering rights and the resale or transfer of the interment or scattering rights shall be considered final in accordance with the cemetery by-laws and the FBCSA.

The cemetery operator may charge an administration fee for the issuance of a duplicate certificate in accordance with the price listed on the cemetery operator's current price list.

Manager may permit a purchaser to finance a purchase interest free for one year from the date of the execution of the contract upon payment of an administration fee. If the purchaser does not pay the full purchase price within one year of the signing of the contract then the contract shall be of no further effect and all monies paid by the purchaser shall be refunded except those which have been applied to the Care and Maintenance Fund.

SECTION 4 – BURIAL, SCATTERING OF CREMATED REMAINS, ENTOMBMENT OR INURNMENTS

- 4.1 Interment or scattering rights holder(s) must provide written authorization prior to a burial, scattering, or an entombment taking place. Should the interment or scattering rights holder be deceased, authorization must be provided in writing by the person authorized to act on behalf of the interment rights holder i.e. personal representative, estate trustee, executor or next of kin.
- 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, scattering or entombment taking place. A Certificate of Cremation must be submitted to the cemetery office prior to the burial of cremated remains or scattering or cremated remains taking place.
- 4.3 In accordance with the FBCSA, the purchaser of interment or scattering rights must enter into a cemetery contract, providing such information as may be required by the cemetery operator for the completion of the contract and the public register prior to each burial or entombment of human remains, or each scattering or cremated human remains.
- 4.4 The cemetery shall be given 24 hours notice for each burial of human remains or scattering of cremated human remains.
- 4.5 No interment shall take place in any cemetery on any Sunday, Christmas Day or New Years day.
- 4.6 The opening and closing of graves, crypts and niches or the scattering of cremated remains may only be conducted by cemetery staff or those designated to do work on behalf of the cemetery
- 4.7 Cremated remains may be scattered within a designated area of the cemetery.
- 4.8 Cremated remains are not permitted to be scattered on a grave
- 4.9 A scattering rights contract must be completed and the payment of the scattering fee must be received before the scattering of cremated human remains can take place.
- 4.10 Once scattered, cremated remains cannot be retrieved
- 4.11 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.
- 4.12 No family or friends are permitted at the grave site during a disinterment.
- 4.13 The Funeral Director or the Cemetery Manager are to arrange for the time of funeral so as not to arrive at the Cemetery before nine (9:00) am and no later than three (3:00) pm. When this cannot be done an extra charge shall be administered as set forth in the tariff of rates.

- 4.14 The Cemetery Manager or their designate shall not be held responsible for errors in location of graves on lots arising from improper instructions from interment rights owners. Order from funeral directors shall be construed as orders from owners in the event interment rights owners do not appear in person.
- 4.15 Only one (1) casket interment shall be allowed in any one grave with three (3) additional cremations.
- 4.16 The lowering of a casket shall not proceed until such time as family and friends have left the cemetery grounds.
- 4.17 Winter interments
Will commence on December 1st until March 30th and will be charged for as set forth in the tariff of rates.

The committal service will be held in the mortuary chapel. The opening of a casket is strictly prohibited and burial will take place at such time that the family has left the cemetery grounds and at the discretion of the manager or their designate.
- 4.18 Entombment and Inurnment
Full payment must be made to the cemetery operator before an entombment or inurnment may take place

Only the cemetery operator may open and seal crypts or niches for entombments or inurnments. This applies to the inside sealer and the crypt or niche front

SECTION 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.
- 5.4 The cemetery operator will take reasonable precautions to protect the property of interment right holders, but is assumes 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.
- 5.6 All foundations for monuments and markers shall be built by, or contracted to be built for the cemetery operator.
- 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 of 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.
- 5.9 A monument, private mausoleum, or other structure shall be erected only after the specific design plans have been approved by the cemetery operator including: dimensions, material of structure, construction details and proposed location.
- 5.10 All monuments and markers shall be constructed of bronze or natural stone. (i.e. granite)
- 5.11 All monuments and markers of any kind shall be placed directly on the continuous foundation in the new expansion of the Timmins Memorial Cemetery. No installation of a marker or monument shall be permitted in front of the continuous foundation

SECTION 6 – CARE AND PLANTING

- 6.1 A portion of the price of interment and scattering rights is trusted into the Care and Maintenance Fund. The income generated from this fund is used to maintain, secure and preserve the cemetery grounds. Services that can be provided through this fund include:
- Re-leveling and sodding or seeding of lots or scattering grounds
 - Maintenance of cemetery roads, sewers and water systems
 - Maintenance of perimeter walls and fences
 - Maintenance of cemetery landscaping
 - Maintenance of mausoleum and columbarium
 - Repairs and general upkeep of cemetery maintenance building 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 Flowers placed on a grave for a funeral shall be removed by the cemetery staff after a reasonable time to protect the sod and maintain the tidy appearance of the cemetery.
- 6.5 Special Services may be provided subject to an hourly rate defined in Tariff of Rates for Cemetery Services. Special services may include tree trimming, shrub or tree removal and any other service that is above and beyond regular cemetery duties.
- 6.6 No persons shall erect, attach or place around or near columbarium and/or mausoleum solar lights, sheppards hooks, glass and/or plastic tributes of any kinds or any other equally perishable materials as determined at the sole discretion of the Cemetery manager. Potted seasonal plants are allowed at the base of the columbarium and/or mausoleum from May to October. Bouquets of fresh flowers may also be left at the base of the Columbarium/Mausoleum for a period not extending one week and will be removed by cemetery staff once they become unsightly.
- 6.7 No person shall place or plant any shrubs, flower beds, trees of any kind or any lot adornments in front of continuous foundation in the new expansion of the Timmins Memorial Cemetery. Vases, flower holders, etc. must be secured to the foundation or attached to the monument.

- 6.8 The cemetery reserves the right to regulate the articles placed on lots that pose a threat to the safety of all interment rights holders, visitors to the cemetery and cemetery employees, prevents the cemetery from performing general cemetery operations, or are not in keeping with the respect and dignity of the cemetery. Prohibited articles will be removed and disposed of without notification.
- 6.9 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.

SECTION 7 – CONTRACTOR/MONUMENT DEALER

- 7.1 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 includes but is not limited to: landscaping delivery of monuments and markers, inscriptions, designs, drawings, plans and detailed specifications relating to the work, proof of all applicable government approvals and permits, the location of the work to be performed. It is the responsibility of all contractors to report to the cemetery office and provide the necessary approvals before commencing work at any location on the cemetery property.
- 7.2 Prior to the start of any said work, contractors must provide proof of:
- WSIB coverage
 - WHMIS
 - Evidence of liability insurance of not less than \$2 million dollars
 - Contractor Training Course from City of Timmins
- 7.3 All cemetery by-laws apply to all contractors and all work carried out by contractors with the cemetery grounds.
- 7.4 Contractors, monument dealers and suppliers shall not enter the cemetery in the evening, weekends or statutory holidays, unless approval has been granted by the cemetery operator.
- 7.5 No work will be performed at the cemetery except during the regular business hours of the cemetery.
- 7.6 Contractors shall temporarily cease all operations if they are working within 100 meters of a funeral until the conclusion of the service. The cemetery reserves the right to temporarily cease contractor operations at their sole discretion if the noise of the work being performed by the contractor is deemed to be a disturbance to any funeral or public gathering with the cemetery.

SECTION 8 – REPEAL

- 8.1 That by-law no. 2006-6281 and amendments thereto, being By-law nos. 2011-7087, 2011-7134 and 2012-7230 are hereby repealed.

READ a first and second time on this 2nd day of February 2015.

READ a third and final time and enacted and passed this _____ day of _____ 2015.

MAYOR (Steve Black)

Clerk (Steph Palmateer)