

City of Burlington By-law 102-2012

Description

A by-law to establish rules and regulations for City of Burlington Cemeteries and to repeal By-law 89-2009. Files: 110-04-1, 720-01 (RPM-17-12)

Preamble

Whereas the Corporation of the City of Burlington operates cemeteries, pursuant to the Funeral, Burial and Cremation Services Act, 2002, as identified in Schedule "A";

And Whereas the Funeral, Burial and Cremation Services Act, 2002 and its regulations imparts responsibilities to the owners and operators of cemeteries for their management, operation and care;

And Whereas section 150 (1) of Ontario Regulation 30/11 under the Funeral, Burial and Cremation Services Act, 2002, provides that an operator of a cemetery may make by-laws governing the operation of the cemetery;

And Whereas sections 8, 9 and 11 of the Municipal Act, 2001, S.O. 2001, c.25, authorizes the Corporation of the City of Burlington to pass by-laws necessary and desirable for municipal purposes;

And Whereas the Municipal Act, 2001, authorizes 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 section 425 of the Municipal Act, 2001 authorizes the Corporation of the City of Burlington to pass by-laws providing that a person who contravenes a by-law of the Corporation of the City of Burlington passed under the Act is guilty of an offence.

Therefore the Council of The Corporation of the City of Burlington hereby enacts as follows:

Content

Definitions

For the purposes of this By-law, and any forms, contracts or policies prepared in relation to this By-law:

Act: shall mean the *Funeral, Burial and Cremation Services Act, 2002*, as amended and the Regulations thereto, and if applicable, any predecessor or successor Act and its regulations, all as amended;

Adult Lot: shall mean a Lot designed for the in-ground interment of a full sized adult casket;

Business Hours: shall mean any hour between 7:30 a.m. and 4:00 p.m. on Mondays through Fridays excluding statutory and designated holidays;

By-law: shall mean this By-law;

Care and Maintenance Fund: shall mean the trust fund established pursuant to the Act and Regulations thereto for the purpose of providing money for the care and maintenance of the Cemeteries;

Care and Maintenance Fund - Markers: shall mean the trust fund established pursuant to the Act and the Regulations thereto for the purpose of providing funds to maintain, stabilize, secure and preserve markers in the Cemeteries;

Cemetery / Cemeteries: means land set aside to be used for the Interment of human remains and includes a columbarium or any other structure or building intended for the Interment of human remains that is situated on the land, and the Cemetery is operated by the City pursuant to the Act;

Certificate of Internment Rights: shall mean the certificate or deed issued by the City to the purchaser, once Interment Rights have been paid in full, of the right to Inter human remains in a Lot, specifying the ownership of the Interment Rights and memorialization options;

Certificate of Cremation: shall mean the certificate of cremated human remains issued by a crematorium;

Child Lot: shall mean a Lot designed for the in-ground interment of a child sized casket not less than 5 feet by 2 feet 6 inches (1.52m x .61m x .15.24cm) and intended for burial of children;

City: shall mean The Corporation of the City of Burlington;

City Staff: shall mean employees of the City;

Columbarium: shall mean an above ground structure designed for the purpose of placing cremated human remains in a compartment or niche;

Corner Marker / Cornerstone: shall mean a Flat Marker placed in the corner of an Adult or Child Lot;

Council: shall mean the Council of the City;

Cremated Remains Lot: shall mean a Lot designated in the Master Plan for the in-ground interment of cremated remains not less than 2 feet by 2 feet (.61m x .61m);

Cremated Remains Interment: shall mean the in-ground interment of cremated human remains in a Lot;

Cremated Remains Enrichment: shall mean the placing of cremated remains into a Columbarium niche;

Designated Holiday: shall mean a day recognized by the City to be observed as a holiday;

Director: shall mean the Director of the Roads and Parks Maintenance for the City or his or her designate(s);

Disinterment: shall mean the exhumation (removal) of a casket or cremated remains from a Lot or Columbarium niche and **Disinter** shall have the corresponding meaning;

Flat Marker: is a marker placed so that the surface of the Marker does not project above the surface of the ground;

Foot Marker: shall mean a Flat Marker placed at the Foot of an in-ground Lot;

Funeral Director: shall mean the third party representative responsible for the coordination of the Interment;

Head of the Lot: shall mean the end of the in-ground Lot designated as the head of the Lot by the Master Plan or by the Director, and **Foot of the Lot** shall have the corresponding meaning for the opposite end of the in-ground Lot;

Interment: shall mean the burial of human remains and includes the placing of human remains in a Lot and **Inter** shall have the corresponding meaning;

Interment Rights: shall mean the right to require or direct the Interment of human remains in a Lot;

Interment Rights Holder: shall mean a person with Interment Rights with respect to a Lot;

Lot: means an area of land in a Cemetery containing, or set aside to contain, human remains and includes a niche or compartment in a Columbarium and any other similar facility or receptacle;

Marker: shall mean any memorial, Upright Marker, Flat Marker, Pillow Marker, Plaque, Headstone, Cornerstone, or any other structure or ornament affixed to or intended to be affixed to a Lot;

Master Plan: in respect of each City Cemetery shall mean the applicable plan of the City Cemetery filed with the Registrar showing the division of the City Cemetery into Lots and describing the restrictions on use, if any, which relate to the Lots;

Outer Container: shall mean any shell (usually a crypt or vault) to be placed entirely below the surface of the ground for the purpose of containing a casket or urn;

Personal Representative: shall have the same meaning as in the Act;

Pillow Marker: shall mean a low tilted Marker with a base similar to a Flat Marker and not exceeding 1 ft. (30 cm) in overall height;

Policy or Policies: shall mean such policies regarding City Cemeteries which may be adopted by Council from time to time;

Price List: shall mean the current Cemetery price list for Interment Lots, services and supplies available from the City and approved by Council during the City's budget process;

Procedure or Procedures: shall mean such procedures regarding Cemeteries which may be adopted by the City from time to time;

Registrar: shall mean the Registrar appointed under the Act;

Rubbish: shall mean any discarded waste or material that includes paper, cardboard, plastic, metal, plant material, tobacco items, and construction material;

Transfer: shall mean a gift, a bequest or any other transfer made without consideration as may be permitted under the Act;

Upright Marker: shall mean a Marker other than a Pillow Marker which projects above the surface of the ground not greater than 3' 6" (1.10m) in height including the base;

Upright Marker Base: shall mean the portion of the Upright Marker, constructed of granite, and set on the concrete Upright Marker foundation to provide stability for the Upright Marker; and

Upright Marker Foundation: shall mean the in-ground concrete foundation, constructed the equivalent size of the Upright Marker base to a minimum of 39" (1.0 m) in depth.

1. General Information

1.1 Hours of Operation

Office hours and Visitation: The Greenwood Cemetery Office, which coordinates the operation of all City Cemeteries, is located at 1030 Greenwood Drive and is open between 7:30 a.m. and 4:00 p.m. on Mondays through Fridays excluding statutory and designated holidays as recognized by the City. Interment Rights Holders and the general public may visit any Cemetery during daylight hours except:

- a) For City employees or contractors of the City and emergency personnel including police and firefighters; **or**
- b) With the advance permission of the Director.

Interment hours: Interments will be carried out between the hours of 8:00 am and 3:00 pm Monday through Friday, excluding statutory and designated holidays as recognized by the City. Additional service charges will apply for Interments requiring City resources outside of the specified Interment Hours.

1.2 City of Burlington Property:

All City of Burlington operated Cemeteries are listed in Schedule "A". Interment Rights Holders and public visitors enjoy the use of the City Cemeteries at their OWN RISK and shall be governed by the following:

- c) **Vehicles:** Vehicles are permitted on designated roadways and parking areas within the City Cemeteries, and vehicles shall not be permitted to travel in excess of 15 kilometres per hour. The owners of vehicles which cause damage to any Cemetery shall be liable to the City for the cost of repair of any damage caused by their vehicle;
- d) **Firearms:** No person shall bring into or discharge firearms in the Cemeteries, except as may be authorized by the Director in writing in connection with volleys at funeral services;
- e) **Dogs, Cats, Pets, etc.:** No person shall permit a dog, cat, horse or other pet to enter into or remain within a Cemetery;
- f) **No Damages to Property:** No person shall pick or direct a person to pick flowers or any other plants, wild or cultivated, or break or damage in any way any tree, shrub or plant in the Cemetery, or write upon, deface, or cause damage in any way to any Marker, fence or other structure in the Cemeteries;
- g) **Soliciting:** No person shall solicit in any manner within the Cemeteries;
- h) **Conduct on Cemetery Property:** Visitors to the Cemetery shall behave in a manner in keeping with the dignity of the Cemetery. Persons behaving in a manner which is not in keeping with the dignity of the Cemetery shall be required to leave the Cemetery;

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- i) **Alcohol/Drugs:** No person shall bring alcohol or illegal drugs into any Cemetery;
- j) **Photography:** Filming, photographing or video-taping of any part of the Cemetery may only take place with the prior approval of the Director and a permit may be required; and
- k) **Encroachment:** No person shall cause or permit any encroachment onto Cemetery lands including, but not limited to, compost piles or compost containers, woodpiles, fences, gates, sheds or any other buildings or structures.

- 1.3 **Liability for Loss or Damage:** The City assumes no liability or responsibility for the loss of, or damage to, any Lot, Columbarium Niche, Marker, garden bed (including border and plant material), shrubs or articles that may be placed in a Cemetery save and except as noted below.

The City only assumes liability if, during the course of performing routine Cemetery operations, the City or its employees should cause damage to any Lot, Columbarium Niche, or Marker.

The City is not responsible for loss or damage from any causes beyond its reasonable control, whether the damage or loss is direct or collateral.

Any articles of remembrance placed on Lot's or at Columbarium niches are the sole responsibility of the Interment Rights Holder(s). The City is not responsible for the loss of or damage to any articles placed within a Cemetery.

- 1.4 **By-Law Changes and Adherence:** The City may, from time to time, change the By-Laws in order to best serve the interests of its Cemeteries and the Interment Rights Holders. All changes to the By-Laws are subject to the approval of Council and the Registrar.

- a) All by-laws governing the Cemeteries shall be strictly adhered to. Where there is any doubt as to the interpretation of this By-law or the Master Plan, the Director shall provide the necessary clarification. In the application and administration of this By-law, all procedures will be conducted in accordance with Provincial regulatory statutes and requirements.
- b) The purchaser of Interment Rights, in respect of any Lot purchases only the right to Inter subject to the various by-laws governing the Cemetery and according to applicable statutes of the Government of Ontario.

- 1.5 **Director Responsibility and Authority:** The Director is responsible for the management, operation and maintenance of the Cemeteries operated by the City and is authorized to administer and enforce this By-law with delegated authority granted by Council to execute provisions of the By-law, including the imposition of conditions as necessary to ensure compliance with this By-law.

The Director may assign duties or delegate tasks under this By-law whether in his or her absence or otherwise.

The Director may enlarge, reduce, re-plot, change the boundaries of, or grade a cemetery upon approval of the Registrar as required under the *Funeral, Burial and Cremation Services Act, 2002*.

Where approval of any type from the Director is required under this By-law, such permission may be refused or withdrawn by the Director at any time in his or her sole discretion.

The Director may correct any error made in the sale, purchase, transfer, repurchase or resale of Interment Rights and in correcting such error he or she may substitute a Lot of equivalent value and similar location or cancel the transaction and refund all payments, The Director shall give notice to the Interment Rights Holder of both the error and the correction of the error, provided that no notice shall be required to be given in regard to a typographical error, error of calculation or similar error.

The Director may correct any error made in an Interment. The Director shall give notice to the Interment Rights Holder of both the error and the correction to the error once the error has been corrected, provided that no notice shall be required to be given in regard to a typographical error, error of calculation or similar error. In the event an error may involve the Disinterment of human remains, the Director shall first obtain the approval of any regulatory authority and the Interment Rights Holder.

- 1.6 **Care & Maintenance Fund Contribution:** All Interment Lot and Columbarium niche sales are subject to a contribution to the Care and Maintenance Fund in accordance with the Act. Interment Rights Holders of Lots acquired prior to the introduction of the Care and Maintenance Fund in 1955 are encouraged to contribute to this fund in accordance with the Care and Maintenance price list; however the Lots in which Interments took place prior to the introduction of the Care and Maintenance Fund in 1955 shall be maintained regardless of whether such payment is made.
- 1.7 **Right to Resurvey:** The City expressly reserves the following rights and privileges to be exercised from time-to-time in accordance with any governing Provincial legislation in effect at the time:
- a) To resurvey, enlarge, construct a building or structure, alter and/or diminish all or any portion of the Cemetery;
 - b) To lay out, establish, close, eliminate, or otherwise modify or change the location of roads, walks or drives; and
 - c) To create or remove easements and rights of way over and through all of the Cemetery premises for the purpose of installing, maintaining, or operating utility or communication lines, drains, irrigation systems, or for any other

Cemetery purpose provided that no Interments or sale of Interment Rights have taken place in these areas.

1.8 **Cemetery Restrictions:** Except in accordance with the provisions of this By-law, no person shall:

- a) Inter or place human remains in a Lot;
- b) Disinter human remains;
- c) Install or direct the installation of any Marker;
- d) Place decorations in the Cemetery;
- e) Landscape any area in the Cemetery; OR
- f) Drive or park a vehicle in the Cemetery.

1.9 **Notices:** All notices required by this By-law or by the *Funeral, Burial and Cremation Services Act, 2002* to be given to:

- a) An Interment Rights Holder, may be given personally or by regular mail to the last known address of the Interment Rights Holder, or his or her heir or representative;
- b) The Director or the City, may be given by registered mail, by fax, by e-mail or in person during a business day at the Greenwood Cemetery Office.

2.0 **Purchase of Interment Rights**

2.1 **Lot Sizes:** Lot sizes may vary according to the specific Lot. The Master Plan of the Cemetery shall be used to verify locations of Lots and their sizes.

2.2 **Purchase of Interment Rights:** Interment Rights may be purchased from the City at the price set out in the price list. 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 relevant legislation and this By-law. The purchase of Interment Rights is not a purchase of Real Estate or real property.

2.3 **Care and Maintenance Amount:** Lots sold shall be covered by a rate of care and maintenance set forth in the price list applicable at the time of purchase, as prescribed in accordance with the Act.

2.4 **Certificate of Interment Rights:** Each purchaser of Interment Rights shall be entitled to a Certificate of Interment and signed contract for the purchase of Interment Rights. The Certificate of Interment Rights shall only be provided to the Interment Rights Holder when all indebtedness has been satisfied and all charges on the Lot or Lots have been paid. The Certificate of Interment Rights shall specify: the date on which the Interment Rights are purchased or transferred; the name of the purchaser; the name and location of the Cemetery; the size of the Lot(s); the number and location of the Lot; the amount paid;

Marker restrictions; the amount deposited into the Care and Maintenance Fund and shall be subject to the existing regulations under the Act and City policies.

2.5 Cancellation of Interment Rights within 30 day Cooling-off Period: a purchaser has the right to cancel an Interment contract with the City within thirty (30) days of signing the contract, by providing written notice of the cancellation to the Director. A refund of all monies paid by the purchaser will be made in accordance with the *Funeral, Burial and Cremation Services Act, 2002*. If any portion of the Interment Rights have been exercised, the purchaser or the Interment Rights holder is not entitled to cancel the contract or re-sell the Interment Rights.

2.6 Resale of Interment Rights: The resale of Interment Rights by the Interment Rights Holder to a third party is permitted, in accordance with the Act, before the rights are exercised. The original Interment Rights Holder must transfer the rights (see Section 2.7 of this By-law) and a new certificate would be issued to the third party through the City. No person shall purchase Interment Rights for the sole or primary purpose of reselling the rights with a view to making a financial gain. The Interment Rights holder shall not sell rights to a third party for more than the price set out in the price list.

2.7 Transfer of Interment Rights: In accordance with the City's "Cemetery Operations - Transfer of Interment Rights Procedure", an Interment Rights Holder may transfer Interment Rights, however, no such transfer of Interment Rights shall be binding upon the City until:

- (a) Notice in writing has been given to the Director specifying the name, address or other description of the proposed transferee and date of transfer;
- (b) Evidence satisfactory to the Director of the ownership and transfer of Interment Rights has been filed with the City; and
- (c) Payment of a transfer fee has been made in accordance with the price list.

Upon receipt of the required documentation and payment the City shall amend its records and issue a new Certificate of Interment Rights. The original Certificate of Interment Rights cannot be transferred but must be returned to the City.

2.8 Exchange of Interment Rights: In accordance with the City's "Cemetery Operations - Exchange of Interment Rights Procedure," if the Interment Rights Holder(s) wishes to exchange or upgrade their Interment Rights within any Cemetery, the Interment Rights Holder(s) must make a request to the Director in writing, which the Director may grant or deny. Where there is more than one Interment Rights Holder, the consent of all Interment Rights Holders shall be required.

2.9 Interment Rights Holders must notify the City of change of mailing address within 90 days of the change.

2.10 **Repurchase:** The City may repurchase unused Interment Lots or Columbarium Niches that were sold prior to July 1, 2012. The repurchase price will be the amount paid at the time of purchase LESS the contribution amount paid into the applicable Care and Maintenance Fund.

3.0 Interments

3.1 **Written Direction:** No Interment shall take place without the written direction of the Interment Rights Holder or the Personal Representative of the Interment Rights Holder.

3.2 **Burial Permit:** Prior to an in-ground interment a burial permit issued by the Division Registrar under the *Vital Statistics Act*, R.S.O. 1990, c. V.4 shall be deposited with the Director.

3.3 **Cremation Certificate:** Prior to a Cremated Remains Interment, a certificate of cremation shall be provided to the Director.

3.4 **Contract Requirement:** Prior to Interment, the Interment Rights Holder or the Personal Representative shall enter into a contract for cemetery services in a form provided by the City.

3.5 **Verbal Instruction:** In the event that special instructions are taken verbally by the Director regarding the particulars or details of any Interment, the City shall not be responsible for errors. Verbal instructions shall, whenever possible, be confirmed in writing by the Interment Rights Holder(s) or Personal Representative of the deceased prior to a service being rendered by the City by entering into a contract for cemetery services in a form provided by the City.

3.6 **Notification:** At least 1 business day advance notice of a proposed Interment at Greenwood Cemetery shall be provided to the City, and 2 business days advance notice of a proposed Interment for all other Cemeteries, except in exceptional circumstances including a certificate of a medical practitioner requiring that Interment be made within 24 hours of death as a matter of the control of a communicable disease within the meaning of the *Health Protection and Promotion Act*, R.S.O. 1990, c. H.7. All necessary certificates and permits shall be deposited with the Director prior to the Interment.

3.7 **Right to Schedule:** The City shall reserve the right to schedule times of Interments.

3.8 **Outer Containers:** No Outer Container for the purpose of containing a casket or urn shall be placed in an in-ground lot without prior notice to the Director and unless such Outer Container is made of metal, concrete, stone or other material approved by the City. Where an Outer Container is placed in an in-ground lot it shall be placed entirely below the surface of the ground in accordance with the Act.

- 3.9 **Number of Interments Permitted in Lots:** The Interment of human remains in Lots shall be subject to the following restrictions:
- 3.9.1 Only one casket interment may be made in any Adult Lot unless specific written permission has been given by the Director at the time of the purchase of Interment Rights.
- 3.9.2 No more than two Cremated Remains Interments shall be allowed in any Cremated Remains Lot, except for the New Urn Garden located at Greenwood Cemetery (NUG on the Master Plan) where no more than three Cremated Remains Interments shall be allowed.
- 3.9.3 No more than eight Interments shall be allowed in any Adult Lot with the following combinations: eight Cremated Remains Interments; or one casket interment and two Cremated Remains Interments.
- 3.9.4 No more than three Interments shall take place in a Child Lot in the following combinations: one child interment and two Cremated Remains Interments.
- 3.9.6 No more than two Cremated Remains Interments shall be allowed in any Columbarium niche. The combined size of any containers to be placed in the Columbarium niche must be no greater than the total internal dimensions available within the niche.
- 3.9.7 The Director shall have discretion to permit alternative Interment combinations.
- 3.9.8 In-ground interments of cremated remains between January 1 and March 31 may be delayed until suitable ground conditions exist as determined by the Director.
- 3.10 **Service Charges:** The purchase of Interment Rights does not include the opening and closing of the Lot. Additional charges shall be incurred based on the supplies or services provided in connection with the Interment in accordance with the price list.
- 3.11 **Funeral Processions:** Funeral processions within the Cemetery shall follow any specified route within the Cemetery indicated by the Director prior to Interment.
- 3.12 **Apparatus and Marquees:** The use of any apparatus by the Funeral Director such as marquees is permitted only with the prior verbal authorization of the Director. The Funeral Director shall be responsible for the installation and removal of any such apparatus and any repairs to the Cemetery which may be required as a result of the use of such apparatus.
- 3.13 **No Interment of Pets or Other Animals:** Only human remains may be Interred or placed in the Cemeteries. Interment or placement of animal remains shall not be permitted in the Cemeteries.
- 3.14 **Opening and Closing of Interment Rights:** Interment Lots shall be opened and closed only by the City.

- 3.14.1 To ensure safe conditions are maintained at all times, families wishing to witness the closing of an in-ground lot or Columbarium niche shall keep a safe distance from the open Lot as directed by the City.
- 3.14.2 Every effort will be made to complete an Interment on the scheduled day and time. If, due to inclement weather conditions, health and safety concerns, or conditions beyond the City's control, an Interment cannot be made at the scheduled time, the City reserves the right to establish a temporary set up and the Interment shall be completed as soon as possible at a later time.
- 3.14.3 The City reserves the right to temporarily relocate any Marker or decoration so that Cemetery operations involving the opening and closing of an in-ground lot may be performed.
- 3.14.4 The opening of an in-ground lot for Interment or Disinterment may necessitate the temporary mounding of earth on adjacent Lots. The City reserves the right to determine the location for 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.
- 3.14.5 Funeral flowers placed as decoration on an in-ground lot will remain for a minimum of five (5) days following the Interment and will be removed at any time thereafter and disposed of by the City.

4.0 Disinterments

- 4.1 **Requirements for a Disinterment:** Disinterment's shall be conducted in accordance with the requirements of the Act, and shall be subject to the prevailing price list of rates. An agent or employee of the City shall be in attendance at all times during a Disinterment.
- 4.2 **Written Consent Required:** No Disinterment shall take place without the written direction of the Interment Rights Holder or Personal Representative by entering into a contract for cemetery services in a form provided by the City except as otherwise permitted by the Act or required by law. Evidence satisfactory to the Director of the ownership of the Interment Rights may be necessary.
- 4.3 The City reserves the right to close a Cemetery for the purposes of Disinterment. Only those persons required or permitted by the Act shall be allowed entry to the Cemetery during a Disinterment.
 - 4.3.1 The City reserves the right to disallow any witnessing of the Disinterment if it feels, at its sole discretion, that the health or safety of anyone present may be at risk.
 - 4.3.2 Disinterments will be completed at a day and time designated by the City.
- 4.4 **Damages to Outer Containers:** The City will not be responsible for damage to any casket or Outer Container which occurs during the course of the

Disinterment. A new casket or Outer Container may be required to facilitate a removal for which additional charges to the Interment Rights Holder or Personal Representative will apply.

4.4.1 The City will not be responsible for damage to any cremation urn or cremation Outer Container which occurs during the course of the Disinterment. Due to the length of time a cremation urn has been buried and/or the conditions to which it has been exposed, the City cannot guarantee that it can retrieve a cremation urn or cremation container buried in a Lot. The condition of any cremation urn or cremation Outer Container Disinterred may be unstable, in which case, a replacement urn may be required at the expense of the party authorizing the Disinterment.

4.5 **Removal of Markers from Lot(s):** If Interment Rights are transferred, any Markers are to be removed before the transfer can be completed. The cost for the removal of the Markers and any foundations shall be paid for by the individual(s) authorizing the transfer.

4.6 **Transportation out of Cemetery:** The transporting of the human remains out of the Cemetery is the responsibility of the party authorizing the Disinterment, including all costs associated therein. All required documentation (i.e. burial permit or certificate of cremation) will be provided to the authorized person on the day of the Disinterment.

5.0 Care of the Cemetery

5.1 **Health and Safety of Visitors and Workers:** The City reserves the right to regulate the articles placed on a Lot that pose a threat to the safety of all Interment Rights Holders, visitors to the Cemetery and City Staff that; prevent the City from performing general cemetery operations; or, are not in keeping with the dignity and decorum of the Cemetery. Prohibited articles will be removed and disposed of without notification. Prohibited items include, but are not limited to, the following: glass containers; shepherd's hooks; metal stakes; plastic and glass solar lamps; ceramic items; loose stones, and such other objects as may cause a hazard at the discretion of the City.

5.2 **Maintenance of Grounds:** The City shall maintain the grounds of the Cemetery, including all Lots, structures and Markers, to ensure the safety of the public and to preserve the dignity of the Cemetery. The City, or authorized contractors, shall keep all in-ground lots graded, sodded and mowed and shall keep cultivated and trimmed all trees, shrubs, flowering or other plants of the Cemetery that are planted by the City.

5.2.1 The City will establish turf for burial interments that take place between the months of September through April by the end of the following June. Due to inclement weather conditions, delays may occur.

5.2.2 All landscaping and maintenance of the Cemetery shall be performed by the City or authorized contractors. No person other than City Staff shall perform any

landscaping or maintenance work within the Cemetery without the written authorization of the City.

5.2.3 No person shall make any walkway, cut any sod, change the grade of any in-ground lot, cause to be moved any corner post, memorial or Marker in the Cemetery or change or tamper in any way with the landscaping or fixtures of the Cemetery without the authorization of the City. Any restoration work required in connection with any such change or tampering shall be at the expense of the person responsible.

5.2.4 No person shall enclose an in-ground lot except as permitted in this By-law.

5.3 **Planting and Care of In-Ground Lots:** Pruning of shrubs, and the installation and maintenance of flower beds is not provided under the care & maintenance of the Cemetery. Flowerbed maintenance, pruning, watering, etc. are the sole responsibility of the Interment Rights Holder(s).

5.3.1 **Flowers in Vases and Potted Plants:** Fresh cut and artificial flowers as well as potted plants are permitted on in-ground lots designated for Flat Markers, Upright Markers or Pillow Markers, according to the Master Plan, provided the flowers are placed in vases approved by the City. Vases may be incorporated as part of a Marker or installed as a separate assembly. Such flowers will be removed by the City as they wilt and become unsightly. All vases must be turned down seasonally from November 1 to Easter. Potted plants will be removed by the City as they wilt and become unsightly or upon the expiration of two weeks following placement, whichever is sooner.

5.3.2 **Flower Beds:** Flower beds are permitted on in-ground lots designated for Upright or Pillow Markers, at the discretion of the City, provided the flower bed is installed immediately in front of the Marker and does not exceed 18 inches (45.72 cm) in depth from the base of the Marker toward the Foot of the in-ground lot (including any border) and is no wider than the base of an Upright Marker or the width of a Pillow Marker. Flower beds must have an approved border constructed of pre-cast concrete or similar product. The height of such borders shall not exceed 3" (7.62 cm) above the surface of the ground and shall not be attached to the base of the Marker, in any way. The City shall not be responsible for damages to any flower bed or border, except as may be caused by City Staff. In the event that such flower beds are not properly maintained in a manner which respects the dignity of the Cemetery, such flower beds will be removed by the City, without notice. No flower beds shall be permitted on in-ground lots designated for Flat Markers.

5.3.3 **Shrubs:** Dwarf shrubs may be planted on in-ground lots where an Upright or Pillow Marker is centered between two or more Lots only, provided such shrubs are planted at the Head of the Lot and placed on either side of the Marker, according to the Master Plan. Such shrubs must be planted so as not to encroach into adjacent Lots. No shrubs are permitted on single Lots designated for single Upright or Pillow Markers, and Flat Marker Lots.

- 5.3.4 **Memorial Wreaths:** Wreaths on stands shall be permitted to be placed on in-ground lots seasonally from November 1 to the first Tuesday after Easter. Wreaths and stands will be removed by City Staff, without notification, after the winter or sooner in the event that they become unsightly.
- 5.3.5 **Candles:** Lighted candles, incense, or other flammable articles may be placed on an in-ground lot only when attended by an adult. All lighted candles and incense must be extinguished prior to leaving the Cemetery. Any damage caused by candles, incense or flammable articles is the direct and total responsibility of the Interment Rights Holder(s). The City does not assume any liability in this regard.
- 5.3.6 **Columbariums:** Wreaths, flowers, and potted plants shall be permitted in an area designated by the Director near the Columbarium niche units, subject to any restrictions or limits otherwise applicable under this By-law. Flowers, potted plants, artificial plant displays, stickers, letters, ceramic decorations, photographs or other items of remembrance are not permitted to be attached to or placed upon the Columbarium.
- 5.5 **Possible Removal of Flower Beds or Decorations:** Plant material, flower beds and other approved decorations may have to be removed to facilitate an Interment within an in-ground lot. The City will make reasonable efforts to preserve and reinstall the plant material, but does not assume responsibility or liability in this regard. Any reinstallations will be completed using dimensions as specified in section 5.3.2.
- 5.6 **Refuse in Cemetery:** All Rubbish shall be placed in receptacles provided by the City at various locations in the Cemetery. No person shall litter within a Cemetery.
- 5.7 **Personal Property Left on Lot(s):** The City shall not be responsible in any way for personal property lost or damaged in the Cemetery. Implements, materials or any other articles of personal property left in the Cemetery are subject to removal by City Staff, without return or compensation therefore.

6.0 Markers

Markers are permitted to be installed on Lots in accordance with the Master Plan and any restrictions on the type of Marker or location of Marker that may be specified therein. Lots shall be designated for Flat, Upright or Pillow Markers in accordance with the Master Plan applicable at the time of sale of the Interment Rights in connection with the Lot. Unless otherwise specified in this Bylaw, Markers shall only be installed at the Head of Lots or as approved by the City.

- 6.1 **Requirement Before Installation:** Markers and foundations will only be installed on Lots when all indebtedness to the City for the purchase of Cemetery products and services has been completed.

- 6.2 **Temporary Marker:** Following an Interment in an unmarked in-ground lot, a temporary Marker, on the Lot, is permitted and may remain in place for up to 90 days following the Interment. A temporary Marker will not be installed where there is already a permanent Marker on the Lot(s).
- 6.3 **Care and Maintenance Fund – Markers:** Every person wishing to install a Marker in a Cemetery shall pay to the City the amount prescribed by the Act to be deposited in the Care and Maintenance Fund - Markers. The maintenance, stabilization, security and preservation of all Markers in the Cemetery shall be the responsibility of the City.
- 6.3.1 In the event that Care and Maintenance funds were not collected in connection with Markers sold prior to 1992, the Interment Rights Holder may be requested to contribute on a purely voluntary basis to the Care and Maintenance Fund - Markers at the prevailing rate set out in the Act.
- 6.4 **Unstable Markers:** In the event that a Marker presents a risk to public safety because it is unstable, the City, shall make such repairs, or reset the Marker or lay it down so as to remove the risk. Any and all work is at the discretion of the City and subject to available funding.
- 6.4.1 **Preservation:** The City shall use only reversible processes to preserve a Marker subject to available funding. The City shall only remove a Marker if it cannot be preserved.
- 6.5 **Removal of a Marker:** Markers may be removed by City Staff on a temporary basis where necessary for the ongoing operation of the Cemetery.
- 6.5.1 The City reserves the right to remove, at its sole discretion, any Marker which is not in keeping with the dignity and decorum of the Cemetery.
- 6.6 **Installation must be completed by City Staff:** The installation, care and maintenance of Markers, foundations or accessories thereto, including vases, shall be performed only by City Staff or such other persons as may be authorized by the City. Any such work undertaken or agreed to be performed by any such other person shall be performed under the direction of the City. All Markers installed by the City shall be at the expense of the purchaser of the Marker in accordance with the price list.
- 6.7 **Written Consent:** The City requires the Interment Rights Holder(s) to complete a provided form that outlines the details of the inscription to be placed on the Marker, size dimensions, Lot location(s) and finish, prior to the manufacture of such Marker. All Markers shall be approved by the City prior to installation.
- 6.7.1 All inscriptions must be in keeping with the dignity and decorum of the Cemetery. A manufacturer's identification is not permitted.
- 6.7.2 Written consent is also required for any additional inscription to be placed on any Marker within the Cemetery prior to the inscription being completed.

- 6.7.3 Unique designs for Upright Markers (including a boulder used as a memorial and memorial benches), which deviate from this By-law, must be submitted to and approved by the City.
- 6.8 **Material and Finish of Markers:** All Markers shall be constructed of granite and/or bronze material unless otherwise approved in Section 6.7.
- 6.9 **Upright Marker Bases:** Minor scraping of the Upright Marker base due to grass cutting is considered to be normal wear and no repairs will be undertaken.
- 6.10 **Specifications for Upright Markers:**
- 6.10.1 **Single In-Ground Lot:** The base shall be a maximum of 30" (76.2cm) in width, 14" (35.56 cm) in depth with a minimum height of 6" (15.24 cm) and the Marker shall be a maximum of 3'6" (1.10 m) in overall height including the base.
- 6.10.2 **Double In-Ground Lot:** The base shall be a maximum of 39" (1.0 m) in width, 14" (35.56 cm) in depth with a minimum height of 6" (15.24 cm) and the Marker shall be a maximum of 3'6" (1.10 m) in overall height including the base.
- 6.10.3 **Other Multiple In-Ground Lot Groupings:** All designs for Upright Markers for any other type of multiple Lot blocks will be subject to approval by the City on the basis of individual merit prior to construction.
- 6.11 **Upright Marker Foundations:** Foundations for all Upright Markers will be installed by the City to a depth of 39" (1.0 m) and shall be the same dimensions as the base of the Marker. Foundation installation will be at the expense of the purchaser.
- 6.11.1 Foundations will be installed on an intermittent basis only from June to November each year depending on the number of applications received. A minimum of two weeks prior written notice is required for installation of a foundation.
- 6.12 **Ceramic photographs:** Ceramic photographs are permitted to be affixed to Upright Markers provided the following conditions are met:
- 6.12.1 Any photograph shall be recessed in the face of the Marker so that no part of the photograph projects beyond the face of the Marker.
- 6.12.2 The purchaser of the Marker shall execute a release of the City saving the City harmless from responsibility for damage to the photograph and the repair thereof, regardless of cause.
- 6.12.3 The City does not accept any responsibility or liability for a ceramic photograph should it become faded, cracked, damaged or need to be removed.
- 6.13 **Inscriptions on the Back of Upright Markers:** All inscriptions to be placed on the back of Upright Markers must have written approval by the City prior to the inscription being completed. Each in-ground lot location site must be checked for

suitability. The City reserves the right to decline a request for inscriptions on the back of Upright Markers based upon the Master Plan of the Cemetery as well as adjacent Lots.

6.14 Specifications for Flat Markers and Pillow Markers:

6.14.1 Flat Markers shall be flat and set flush with the surface of the ground. The upper surface of Flat Markers shall not contain projections with the exception of lettering or other embellishments which shall not project more than 1/4" (5mm) above the surface of the Flat Marker.

6.14.2 All Flat and Pillow Markers must be made of granite and/or bronze.

6.14.3 In addition to the requirements of this section, bronze Flat Markers shall have a granite base with a border of up to 2" (5.08 cm).

6.14.4 **Single In-Ground Lot:** Flat Markers and Pillow Markers shall not exceed 24" in width and 18" in depth (60.96 cm x 45.72 cm) (including any border) with a minimum thickness of 4" (10.16 cm) for a single Lot.

6.14.5 **Double In-Ground Lot:** Flat Markers and Pillow Markers shall not exceed 48" in width and 18" in depth (121.92 cm x 45.72 cm) (including any border) with a minimum thickness of 4" (10.16 cm) for a double Lot.

6.14.6 Ceramic photographs or attachments are permitted to be affixed to Flat or Pillow Markers subject to approval by the City. Ceramic photographs are subject to the conditions outlined in sections 6.12 through 6.12.3 of this By-law.

6.14.7 Pillow Markers shall be 8" / 5" (20 cm / 13 cm) slant with 2" (5 cm) set in ground. Refer to Sections 6.14.4 and 6.14.5 for width and depth measurements.

6.15 Vases:

6.15.1 A vase may be permitted to be incorporated into a Flat Marker provided the vase is turned down or inverted or otherwise set flush with the surface of the Flat Marker when not in use.

6.15.2 Vases must be turned down, flush with the earth surface, during the winter months, which is November 1st to Easter of the following year. Any vases remaining upright after November 1st will be turned down by City Staff and any flowers will be removed and discarded. In the event that an existing Marker has been installed without a vase being incorporated into same, approved separate assemblies may be installed as space permits at the discretion of the Director.

6.16 **Foot Markers:** One Flat Marker may be installed as a Foot Marker at the Foot of an Adult Lot or Child Lot, provided such Marker shall not exceed 24" in width and 18" in depth (60.96 cm x 45.72 cm) (including any border) with a minimum thickness of 4" (10.16 cm). Vases shall not be permitted to be incorporated into a Foot Marker.

6.17 **Corner Markers:** Flat Markers may be installed as Corner Markers on Adult Lots or Child Lots, provided they do not exceed 6" x 6" (15.24 cm x 15.24 cm) with a minimum thickness of 4" (10.16 cm.) Vases shall not be permitted to be incorporated into a Corner Marker.

6.18 **Markers on Columbarium Niches:** One bronze memorial wreath Plaque measuring exactly 11" in width and 7 3/4" in height (28 cm x 19.5 cm) shall be purchased through the City of Burlington and affixed on each Columbarium niche.

7.0 **Conduct of Contractors and Suppliers**

7.1 **Deliveries of Markers:** Flat Markers shall be delivered to the Greenwood Cemetery Operations Area as directed by the City. Upright Markers shall be delivered to the Cemetery location designated on the Certificate of Interment Rights, only after the Upright Marker foundation has been installed and the Marker retailer has been notified by the City.

7.2 **Performing Work on Cemetery Grounds:** All authorized persons performing work in the Cemetery shall conduct themselves in a manner in keeping with the dignity of the Cemetery and shall respect any restrictions, policies or regulations which may be required by the City in the performance of their work.

7.2.1 Contractors shall temporarily cease all operations if they are working within proximity of a funeral until the conclusion of the service. The City reserves the right to temporarily cease contractor operations at its 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.

7.2.2 All Marker cleaning and or restorative processes undertaken by a person(s) or contractor, other than the City, requires prior approval of the Director to ensure the methods and techniques will not irreversibly damage the Marker.

7.3 **Vehicle Weights:** Contractor vehicles in excess of 10,000 kg G.V.W. shall not enter the Cemetery without the prior authorization of the Director.

7.4 **Contractor's Liability:** Contractors will conduct their operations to prevent damage to any grounds, turf, shrubs, trees, flowerbeds, Upright Markers, Flat Markers, Pillow Markers, vases, or any other article or natural feature in the Cemetery. Contractors shall lay planks on the in-ground lots and paths over which heavy materials are to be moved in order to prevent damage. Any damage caused by contractors shall be rectified by the City at the expense of the contractors or the Interment Right Holder who hired the contractor.

7.5 **Attire and Conduct:** Contractors performing work within the Cemetery are responsible for their actions, conduct, behaviour and attire. Shirts and pants or shorts (where appropriate) must be worn at all times. Additional personal protective equipment must be worn when the work being performed requires it in

accordance with the *Occupational Health and Safety Act*. Contractors who fail to comply will be asked to leave the Cemetery grounds.

7.6 **Removal of Implements and Rubbish:** Contractors working within the Cemetery must remove all implements, equipment and Rubbish from the Cemetery at the conclusion of the work and at the end of each work day, unless prior permission to leave materials and equipment has been obtained from the City. All work sites must be secured when left unattended.

8.0 **Administration and Enforcement**

8.1 Any by-law enforcement officer or police officer is hereby authorized and directed to administer and enforce this by-law.

8.2 No person shall hinder or obstruct an officer in the exercise of a power or the performance of a duty under the By-law, including refusing to provide his or her correct name, address and date of birth upon request by the officer.

8.4 An officer may, upon producing proper identification, enter upon any property at any reasonable time without a warrant for the purpose of inspecting the Cemetery to determine,

- a) Whether the property or behavior of individuals conform with the standards prescribed in the By-law; or
- b) Whether an Order made under this By-law has been complied with.

9.0 **ORDER TO REMEDY**

9.1 An officer who finds an infraction under this By-law may make an order:

- a) Stating the municipal address, Lot number or Columbarium niche, or other description of the area where the infraction occurred;
- b) Giving reasonable particulars of the repairs to be made or stating that the site is to be cleared of all rubbish or other prohibited material and left in a graded and leveled condition, as appropriate;
- c) Indicating the time for complying with the terms and conditions of the Order and giving notice that, if the repair or clearance is not carried out within that time, the municipality may carry out the repair or clearance at the person's expense.

9.2 The Order shall be served on the Interment Rights Holder, the contractor or the individual caught violating this By-law.

9.3 An Order required by this By-law may be served personally or by registered mail sent to the last known address of the person to whom notice is to be given or to that person's agent for service.

- 9.4 If a notice or Order is served by registered mail, the service shall be deemed to have been made on the fifth day after the day of mailing.

10.0 Emergency Remediation

- 10.1 If upon inspection, the officer is satisfied that there is non-conformance with this By-law to such extent as to pose an immediate danger or health and safety risk, the City may remedy the situation immediately and may invoice the Interment Rights Holder, Contractor or person responsible for the infraction.

11.0 Penalty for Non-Compliance

- 11.1 Every person who contravenes a provision of this By-law is guilty of an offence and upon conviction is liable to a fine of not more than \$5,000.00 as provided for in the *Provincial Offences Act*, R.S.O. 1990, c.P.33.
- 11.2 Every person who fails to comply with an Order made by an officer is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 as provided for in the *Provincial Offences Act*.
- 11.3 If a conviction is entered, in addition to any other remedy and to any penalty imposed by this By-law, the court in which the conviction is entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted.

12.0 Validity

- 12.1 If a court of competent jurisdiction declares any provision, or any part of a provision, of this By-law to be invalid, or to be of no force and effect, it is the intention of the Council in enacting this By-law that each and every other provision of this By-law authorized by law, be applied and enforced in accordance with its terms to the extent possible according to law.

13.0 By-law Name

- 13.1 This By-law may be referred to as the City of Burlington Cemeteries By-law.

14.0 Repeal

- 14.1 By-law number 89-2009 and all of its amendments are hereby repealed.
- 14.2 Notwithstanding the repeal of By-law 89-2009, By-law 89-2009 shall continue to apply in respect of the number of Interments in any Lot purchased before the date this By-law is in force.

15.0 Effective Date

- 15.1 The provisions of this By-law shall become effective subsequent to the approval of the Registrar as defined in the *Funeral, Burial and Cremation Services Act*,

The Corporation of the City of Burlington By-law 102-2012

Enactment

Enacted and passed this 10th day of December, 2012.

Mayor Rick Goldring _____

Deputy Clerk Grant Bivol _____

Online version of this document does not contain signatures. Please contact City Clerk to obtain a copy of the signed original.

Schedule A

List of Cemeteries Operated by the City of Burlington

	Name of Cemetery	Municipal Address	Legal Description	Owner of Land on Title
1	Appleby Cemetery	Appleby Line & Harvester Road	Pt Lt 6, Con 3 SDS, as in NU10195 PIN 07035-0021	The Appleby Cemetery Company
			Pt Lt 6, Con 3 SDS, as in NU4314 PIN 07035-0039	John Fothergill John Breckon
2	Bradt Cemetery	5511 Guelph Line (Part of farm)	Pt Lt 4, Con 4 NS, as in 49910 PIN 07198-0015	Ellen Shaheen Nizar Shaheen
			Pt Lt 4, Con 4 NS, as in NU12083 PIN 07198-0018	William Howell Powell
3	Colling Cemetery	5544 Guelph Line	Pt Lt 4, Con 3 NS, designated as PART 4, 20R8981 PIN 07204-0095	Ewart Cyril Colling
4	Davidson's Cemetery	5561 Appleby Line	Pt Lt 4, Con 6 NS, as in NS278 PIN 07205-0015	Trustees of the Davison Congregation of the Wesleyan Methodist Church
5	Greenwood Cemetery	591 Oneida Drive Greenwood Drive	Plan 99, Pt Lt 27, Plan 99, Pt Blk 2, Plan 47, Pt Lt 7, Plan 97, as in 287898 PIN 07087-0152 Pt Lt 4, Plan 97, and Pt Private Lane, Plan 97, designated as PART 1, 20R18885 PIN 07087-0409	City of Burlington

	Name of Cemetery	Municipal Address	Legal Description	Owner of Land on Title
6	Kilbride Presbyterian Cemetery	2166 No. 8 Side Road	Pt Lt 8 Con 2 NS, as in NQ247 PIN 07208-0052	Trustees of the Presbyterian Congregation of Cumminsville
7	Kilbride United Cemetery	2235 No. 8 Side Road	Pt Lt 9, Con 2 NS, as in NS189 PIN 07211-0029	Trustees of the Chapel of the Canadian Wesleyan Methodist New Connexion
8	Mount Vernon Cemetery	5098 South Service Road	Pt Lt 4 & 5, Con 3 SDS, as in NU16176 PIN 07016-0025	Trustees of the Appleby Cemetery Company
9	Nelson United Church & Cemetery	2437 Dundas Street	Pt Lt 16, Con 1 NDS, as in NG452 PIN 07196-0140	Trustees of the Methodist Episcopal Church Nelson United Church
10	Salem United Church	4151 No. 2 Side Road	Pt Lt 1, Con 5 NS, as in NR530 PIN 07206-0036	Trustees of the Chapel of the Canadian Wesleyan Methodist New Connexion
11	St. Paul's Presbyterian Cemetery	3318 Dundas	Pt Lt 1, Plan 242, as in NU16010; Pt Lt 12, Con 1 SDS, as in NI866; Pt Lt 13, Con 1 SDS, as in NU12E and NU7006 PIN 07222-0181	Trustees of the Presbyterian Congregation in Nelson Trustees of the Congregation of "The Presbyterian Church of Canada in Connection with The Church of Scotland" Trustees of the Congregation of St. Paul's Presbyterian Church.
		Neighbouring land	Blk 17, Plan 20M519 07222-0176	Trustees of St. Paul's Presbyterian Church