

THE CORPORATION OF THE MUNICIPALITY OF BROOKE-ALVINSTON

BY-LAW NUMBER 55 OF 2013

A By-law to regulate the operation of the Alvinston Cemetery

WHEREAS it is deemed expedient to provide for the regulations of the Municipal Cemetery in the Municipality of Brooke-Alvinston,

AND WHEREAS, the above mentioned Cemetery if licensed to act as a cemetery in accordance with the Funeral, Burial and Cremations Services Act, 2002 (FBCSA)

NOW THEREFORE, the Council of the Municipality of Brooke-Alvinston enacts as follows:

A) ADMINISTRATION

1. The Municipality of Brooke-Alvinston directs the control and management of the Alvinston Cemetery to the "Alvinston Cemetery Board" including but without limiting the generality of the foregoing: land buildings, plantings, roads, utilities and records of the cemetery and the complete authority to administer this by-law.
2. The Caretaker shall have custody of the Cemetery under the direction of the Cemetery Board. No interment or removal of bodies shall take place without notice to the Caretaker, who shall see that a proper Burial permit or other certificate required is furnished in each instance.
3. The Cemetery Board shall take reasonable precautions to protect the property of Interment Rights Holders but it assumes no liability or responsibility for the loss or damage to any article of any type that is placed on any lot or grave.
4. The Caretaker of the Cemetery or his representative shall uphold the provisions of the By-laws and the FBCSA. The Caretaker has the authority to make final and binding decisions based on the by-law. Appeals to the Caretaker's decision can be made to the Alvinston Cemetery Board.
5. All notices by any By-law or regulation to be given to any Interment Rights Holder may be given personally, or may be mailed to the last known post office address of such Rights Holder or his/her legal personal representative and proof that such notice was so mailed shall be good and proof that such notice was given.

B) DEFINITIONS

1. **Alvinston Cemetery Board** - means a Board duly appointed by the Council of the Municipality of Brooke-Alvinston which shall be charged with the responsibility to operate the Cemetery in accordance with the By-laws of Brooke-Alvinston and the FBCSA and Regulations made under the FBCSA. And "Board" has the same meaning.
2. **Burial** - means the opening and closing of an in-ground lot or plot for the disposition of human remains or cremated human remains.
3. **By-laws** - means the rules and regulations under which the Cemetery operates.
4. **Caretaker** - means the person appointed by the Cemetery Board to care and supervise Cemetery works.
5. **Care and Maintenance Fund** - It is a requirement under the FBCSA 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 Cemetery.
6. **Contract**: 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.
7. **Corner Posts**: Shall mean any stone or other land markers set flush with the surface of the ground and used to indicate the location of lot or plot.
8. **Grave** : (Also unknown as Lot) means any in-ground burial space intended for the interment of a child, adult or cremated human remains.
9. **Interment Right**: The right to require or direct the interment of human remains or cremated human remains in a grave or lot and direct the associated memorialisation.



- 10. Interment Rights Certificate:** The document issued by the Cemetery to the purchaser on the interment rights have been paid in full, indentifying the ownership of the interment rights.
- 11. Interment Rights Holder:** Any person designated to hold the right to inter human remains in a specified lot.
- 12. Lot:** For the purposes of these By-laws, a lot is a single grave space.
- 13. Marker:** Shall mean any permanent memorial structure that is set flush and level with the ground, and used to mark the location of a burial lot.
- 14. Monument:** Any permanent memorial projecting above the ground installed within the designated space to mark the location of a burial or lot.
- 15. Non-Resident:** Means any person who resides beyond the corporate limits of the Municipality of Brooke-Alvinston and whose name does not appear on the last revised assessment roll.
- 16. Owner:** Means the "owner" of the Cemetery
- 17. Plan:** Means the plan of the cemetery approved by the Ministry of Government Services of Ontario.
- 18. Plot:** For the purpose of these by-laws, a plot is a parcel of land, sold as a single unit, containing multiple lots.
- 19. Register :** Means an electronic or written record kept in accordance with FBCSA.
- 20. Scattering:** Shall mean the act of spreading of 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-laws.
- 21. Schedule of Tariff:** Means the tariff of fees and charges set out by the Alvinston Cemetery Board and may be amended from time to time.
- 22. Transfer of burial rights** shall mean the transfer without exchange of money.

c) **GENERAL INFORMATION**

**HOURS OF OPERATION:**

Visitation Hours: Cemetery will be open to the public for visitation from sunrise to sunset.

Office Hours: Cemetery business will generally be conducted between 9:00 am and 5:00 pm

Burial Hours: Burials may be conducted between 9:00 am and 4 pm unless otherwise arranged.

**General Conduct:**

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

**By-law Amendments:**

The cemetery shall be governed by these by-laws, and all procedures will comply with the Funeral Burial & Cremation Services Act, 2002 and Ontario Regulation 30/11, which may be amended periodically.

**All by-law amendments must be:**

- a) Published once in a newspaper with general circulation in which the cemetery is located;
- b) Conspicuously posted on a sign at the entrance of the cemetery; and
- c) Delivered to each supplier of markers who has delivered a marker to the cemetery during the previous year, if the by-law or by-law amendment pertains to markers or their installation.

All by-laws and by-law amendments are subject to the approval of the Registrar, Cemeteries Regulation Unit, Ministry of Consumer Services.



**Liability:**

The cemetery operator will not be held liable for any loss or damage, without limitation (including damage by the elements, Acts of God, or vandals) to any lot, plot, monument, marker, or other article that has been placed in relation to an interment right save and except for direct loss or damage caused by gross negligence of the cemetery.

**Public Register:**

Provincial legislation – Section 110 of Ontario Regulation 30/11 requires all cemeteries and crematoriums to maintain a public register that is available to the public during regular office hours.

**Pets or Other Animals:**

Pets or other lower animals, including cremated animal remains, are not allowed to be buried on cemetery grounds.

**Rights to Re-Survey:**

The cemetery has the right at any time to re-survey, enlarge, diminish, re-plot, change or remove planting, 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.

**Notice of Resale and Transfer of Interment Rights:**

Interment rights holders may first offer the interment rights to the cemetery operator. If the cemetery operator does not wish to re-purchase the interment rights, the interment right may be sold to a third party for no more than the current price listed on the cemetery price list, as long as the sale or transfer is conducted through the cemetery operator and the purchaser meets the qualifications and requirements as outlined in the cemetery operator's by-law.

If the cemetery operator chooses to re-purchase the interment rights, the amount paid shall be determined as follows:

1. Interment rights purchased from the cemetery prior to July 1, 2012, the amount paid for interment rights as recorded in cemetery records less funds transferred to the Care and Maintenance Fund
2. Interment rights purchased from the cemetery after July 1, 2012, the amount paid shall be no more than the current price listed on the cemetery price list less funds transferred to the Care and Maintenance Fund/.

The cemetery operator prohibits the resale of interment rights to a third party and is not required to re-purchase unused interment rights in a plot (more than one lot) **if one of the interment rights in the plot has been exercised.**

**Cancellation of Interment Rights:**

Purchasers of interment rights acquire only the right to direct the burial of human remains and cremated human remains, and the installation of monuments, markers and inscriptions, subject to the conditions set out in the cemetery by-laws. In accordance with cemetery by-laws, no burial or installation of any monument, marker, inscription, or memorialisation is permitted until the interment rights have been paid in full. An interment rights certificate will be issued to the interment rights holder(s) when payment has been made in full. The purchase of interment rights is not a purchase of Real Estate or real property. An interment rights holder wishing to resell their interment rights may advise the cemetery operator of their intention prior to seeking a third party buyer for their interment rights.



#### **Cancellation of Interment Rights within 30 day Cooling-Off Period:**

- A purchaser has the right to cancel an interment rights contract within thirty (30) days of signing the interment rights contract, by providing written notice of the cancellation to the cemetery operator. The cemetery operator will refund all monies paid by the purchaser within thirty (30) days from the date of the request for cancellation.
- **If any portion of the interment rights has been exercised, the purchaser or interment rights holder(s) are not entitled to cancel the contract for interment rights.**

#### **Cancellation of Interments Rights after the 30 Day Cooling-Off Period:**

- Upon receiving written notice from the purchaser of the interment rights, the cemetery operator will cancel the contract and issue a refund to the purchaser for the amount paid for the interment rights less the 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.
- **If any portion of the interment rights has been exercised, the purchaser or interment rights holder(s) are not entitled to cancel the contract or re-sell the interment rights.**

#### **Resale of Interment Rights after 30 Day Cooling-Off Period:**

- Unless the interment rights has been exercised the purchaser retains the right to cancel the contract or re-sell the interment rights. Once payment for the interment rights has been made in full, and an interment rights certificate has been issued, the interment rights holder(s) as recorded on the cemetery records, has right to re-sell the interment rights. Any resale of the interment right shall be in accordance with the requirements of the cemetery by-laws and in keeping with the FBCSA.
- If any portion of the interment rights has been exercised, the purchaser or the interment rights holder(s) are not entitled to re-sell the interment rights.

#### **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, 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 when interment rights are cancelled within the thirty (30) day cooling-off period.**

#### **Requirements if resale of interment rights is permitted by the cemetery operator**

**NOTE: ALL REALES OF INTERMENT RIGHTS MUST BE CARRIED OUT THROUGH THE CEMETERY OPERATOR.**

- The interment rights hold(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 etc.
  1. An interment rights certificate endorsed by the current rights holder
  2. A written statement of the number of lots that have been used in the plot and the number of lots that remain available.
  3. Any other documentation in the interment 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 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. Any other documentation in the interment rights holder(s) possession relating to the 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 rights certificate to the third party purchaser.
- Upon completion of the above listed procedures, and upon issuance of the new interment rights certificate, the third party purchaser or transferee(s) shall be considered the current interment rights holder(s) of the interment rights, and the resale or transfer of the interment rights shall be considered final in accordance with the cemetery by-laws and the FBCSA.
- The cemetery operator may charge as administration fee for the issuance of a duplicate certificate in accordance with the price listed on the cemetery operator's current price list.
- The cemetery operator does not prohibit the resale of an interment rights and may repurchase the interment rights from the rights holder(s) if the cemetery operator so desires and may negotiate a purchase price so long as the seller acknowledges being aware of the cemetery operators current price list amounts for interment rights.

#### **Interment and Disinterment:**

- Winter burials may take place weather permitting. Winter burials are considered those burials between December 1 and March 31<sup>st</sup>. Extra charges for winter burials indicated on the price list of the cemetery apply.
- The cemetery operator will not do interments on Sunday, Christmas Day, New Years Day or Good Friday unless ordered to do so by a representative of the Ministry of Health.
- A SINGLE GRAVE SITE may contain:
  - a) A casket containing human remains and two cremated human remains.
  - b) The cremated remains of four persons
  - c) Two (2) still born remains in addition to a casket containing human remains.
- Remains to be buried in a grave site must be enclosed in a container, sealed securely and of sufficient strength to permit interment with the container intact. The container must be of a size to permit interment within the size of the lot. Concrete liners are recommended in all interments. The cemetery operator and/or employees and/or suppliers of monuments shall not be held responsible for incidents that are consequence from the failure to use a grave liner for interments.
- Interment rights holder(s) must provide written authorization prior to a burial taking place. Should the interment rights holder be deceased, authorization must be provided in writing by the person authorized to act on behalf of the interment rights holder i.e. Personal Representative, Estate Trustee, Executor of next of kin.
- A burial permit issued by the Registrar General or equivalent document showing that the death has been registered with the province must be provided to the cemetery office prior to a burial taking place. A Certificate of Cremation must be submitted to the cemetery office prior to the burial of cremated remains taking place.
- In accordance with the FBCSA the purchaser of interment rights must enter into a cemetery contract, providing such information as may be required by the cemetery operator for the completion of the contract and the public register prior to each burial of human remains or cremated human remains.



- Payment must be made to the cemetery before a burial can take place.
- The cemetery shall be given 24 business hours notice for each burial of human remains or burial of cremated human remains.
- The opening and closing of graves may only be conducted by cemetery staff or those designated to do work on behalf of the cemetery.
- Cremated remains are to be interred in a designated lot and are not permitted to be scattered on a grave.
- 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 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 take place. **A certificate from the local officer of health is not required for the removal of cremated remains.**
- In special circumstances the removal of human remains may also be ordered by certain public officials without the consent of the interment rights holder and/or next of kin(s).
- The cemetery operator will exercise all due care in making burial and interments, but is not responsible for damage to any casket, urn or other container sustained during disinterment.
- Funeral corteges within the cemetery shall follow the route indicated by the caretaker.

#### **Rules Pertaining to Memorialization**

- No memorial or other structure shall be erected or permitted on a lot until all charges have been paid in full.
- No monument, footstone, marker or memorial of any description shall be placed, moved or altered, or removed without permission from the cemetery operator.
- Minor scraping of the monument base of an upright monument due to grass/lawn maintenance is considered to be normal wear.
- The cemetery operator will take reasonable precautions to protect the property of the interment rights holders, but it assumes no liability for the loss of, or damages to, any monument, marker or other structure, or part thereof.
- The cemetery operator reserves the right to determine the maximum size of monuments, their number and their location on each lot or plot. They must not be a size that would interfere with any future interments.
  - ✓ monuments above the ground shall be permitted only in areas designated for more than two burials. The location of the monument on a plot will be in accordance with the placement determined by the cemetery operator in keeping with an established pattern within the cemetery.
  - ✓ In keeping with the cemetery by-laws only one (1) monument shall be erected within the designated space on any plot.
  - ✓ Flat markers flush with the ground shall be permitted in any area of the cemetery. The area designated as single and double (2) graves side by side, shall be permitted to have only flat markers flush with the ground.
- All foundations for monuments and markers shall be built by, or contracted to be built for, the cemetery operator at the expense of the interment rights holder.
- The minimum thickness for flat markers including footstones is 4 inches or 10 cm.



- All monuments and markers shall be constructed of bronze or natural stone (i.e. granite).
- No monument shall be delivered to the cemetery for installation until the monument foundation has been completed, and the interment rights holder(s) and/or marker retailer have been notified by the cemetery operator.
- Markers and footstones of bronze or granite are permitted with size and quantity restrictions according to cemetery by-laws and the placement of such memorials shall not interfere with future interments.
  - ✓ Single lot maximum – 36” in width including boarder
  - ✓ Double lot maximum – 36” in width including boarder – centred on two graves
  - ✓ Cremation lot maximum – up to 4 markers sufficient in size to fit on a 36” grave width.
- Should any monument or marker present a risk to public safety because it has become unstable, the cemetery operator shall do what it deems necessary by way of repairing, resetting or laying down the monument or marker or any other remedy so as to remove the risk.
- The cemetery operator reserves the right to remove at its sole discretion any marker, monument, or inscription which is not in keeping with the dignity and decorum of the cemetery as determined by the Board.
- A concrete base shall be installed a minimum of four (4) feet in depth and shall be a width sufficient to accommodate the base of the upright monument.
- The cemetery operator assumes no responsibility for the damage to pictures or photographs on markers.

#### Care and Planting of lots

- A portion of the price of interment rights is trusted in the Care and Maintenance Fund. 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.
  - ✓ Maintenance of cemetery roads, and water systems.
  - ✓ Maintenance of perimeter walls and fences if applicable.
  - ✓ Maintenance of cemetery landscaping
  - ✓ Repairs and general upkeep of cemetery maintenance building and equipment
- 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.
- No person shall plant trees, flower beds or shrubs in the cemetery except with the approval of the cemetery.
- 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.
- Dwarf evergreens are permitted only on lots having a monument and only one shall be planted either side of the monument. The caretaker must approve all planting
- If any trees or shrubs situated on any plot have become by means of their roots or branches or in any other way detrimental to the adjacent lots, or prejudicial to the general appearance of the grounds, the caretaker may remove such trees and shrubs or parts thereof. **The height of such trees or shrubs shall at no time exceed the height of the monument next to which it grows 30” inches in height which ever is the lesser. The diameter of such trees or shrubs at their widest point including foliage shall at no time exceed 18” inches or obstruct the adjacent lot(s).**
- Since borders, fence railings, walls, cut stone coping and hedges in or around plots or lots become unsightly, they are prohibited (except those in existence at the time of passing of



this by-law). **Decorative stone is not permitted. Organic mulching material will be allowed.**

#### **Items that are Prohibited and Permitted**

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

- Vases, urns, flower stands, other receptacle(s) for flowers not properly cared for and are unsightly or unsuitable may be prohibited or removed by the cemetery.
- Flower beds may be permitted in front of the base of a monument to a depth of one foot, and no wider than the width of the base.
- Potted plants are permitted to remain on lots for a period of two (2) days prior and four (4) days following occasions of Easter, Mothers Day, Fathers Day, Decoration Day and Remembrance Day. The caretaker may remove any potted plants after any of the above periods
- Rubbish shall not be thrown on roads, walk ways or any part of the grounds but must be placed in receptacles provided at convenient points on the grounds.
- Artificial wreaths without glass or plastic are allowed to be placed on the lot provided they are securely fastened to the monument or where there is no monument, mounted on a stand and securely anchored to the ground. To preserve the appearance of the grounds, any artificial wreaths that become unsightly, must be removed by April 1<sup>st</sup>, otherwise the cemetery caretaker will remove them. It is recommended that artificial wreaths be marked as to the name of the owner so that in the event they are blown away from the lot or monument, it may be returned to its rightful place.
- Placement of toys, figurines, solar lights etc. is not recommended. Such items may be removed and disposed of by the cemetery operator at any time they prevent the staff from performing general cemetery operations.
- The cemetery reserves the right to disallow or remove quantities of memorial wreaths or flowers or other decorative items considered to be excessive and that diminishes the otherwise tidy appearance of the cemetery.

#### **CONTRACTOR/MONUMENT DEALER REQUIREMENTS:**

- Any contract work to be performed within the cemetery requires the written pre-approval of the interment rights holder(s) 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, and the location of the work to be performed. It is the responsibility of contractors to report to the cemetery office and provide the necessary approvals before commencing work at any location on the cemetery property.

Prior to the start of any said work, contractors must provide proof of: a) WSIB coverage; b) Occupational Health and Safety compliance standards; c) Environmental Protection; d) WHMIS; e) Evidence of liability insurance of not less than \$1,000,000.

- All cemetery by-laws apply to all contractors and all work carried out by contractors within the cemetery grounds.
- No work will be performed at the cemetery except during the regular business hours of the cemetery.
- Contractors shall temporarily cease all operations if they are working within 100 metres of a funeral until the conclusion of the service. The cemetery reserves the right to temporarily cease contractor operation at their sole discretion if the noise of the work being performed by the contractor is deemed to be a disturbance to any funeral or public gathering within the cemetery.



- Contractors, monument dealers and suppliers shall lay wooden planks or use motorized carts on the burial lots and paths over which heavy materials are to be moved in order to protect the surface from damage during such times as wet weather conditions require.

**RULES FOR VISITORS:**

- The caretaker and his assistant(s) are empowered and are required to preserve order and decorum in the cemetery.
- Children under the age of twelve years are welcome in the cemetery grounds when accompanied by an adult, who shall be responsible for their good conduct and shall see that they do not run over lots or climb upon the monuments.
- Visitors are encouraged to walk on pathways and avoid waling over lots where possible.
- Vehicles within the cemetery shall be driven at a moderate rate of speed and shall not leave the road ways or park on the grass unless otherwise directed by the caretaker.
- ATV's, (all terrain vehicles), mini-bikes or snowmobiles are prohibited in the cemetery.
- Discharge of firearms, other than in regular volleys at burial services, is prohibited in and around the cemetery.
- No dogs or other pets shall be allowed in the cemetery.
- No picnic party shall be permitted in the cemetery grounds without prior authorization from the Board or caretaker
- Any person who damages or moves any tree, plant, marker, monument, fence, structure or other thing usually erected, planted or placed in the cemetery is liable to the Board and any Interment Rights Holder(s) who, as a result, incurs damage. The amount of damages shall be the amount required to restore the cemetery to the state that it was before anything was damaged or moved by the person liable.
- Any person disturbing the quiet and good order of the cemetery by noise or other improper conduct, or who violates these by-laws, must be expelled from the cemetery.
- The Board or caretaker may remove any article, which is detrimental to the efficient maintenance or constitutes a hazard to machinery, employees or visitors, or is unsightly or does not conform to the natural beauty or design of the cemetery. An article removed will be held at the cemetery office for collection. If not collected it will be disposed of after one month.

**DECORATION SUNDAY**

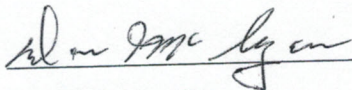
- The annual Decoration Day for the cemetery will be held on the 2<sup>nd</sup> (second) Sunday in June each year. All family and friends of deceased persons interred in Alvinston Cemetery are invited and welcome to attend.
- Donations will be received for the purpose of helping to maintain the beauty of the Cemetery. The Alvinston Cemetery is a Registered Charity and tax receipts will be issued for all donations.

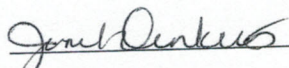
This by-law shall come into full force and effect upon the approval of the Registrar, *Funeral, Burial and Cremation Services Act 2002*

READ A FIRST AND SECOND TIME THIS 12<sup>th</sup> DAY OF DECEMBER, 2013.

READ A THIRD TIME AND FINALLY PASSED THIS 12<sup>th</sup> DAY OF DECEMBER, 2013.

This By-law approved February 19, 2014 by way of signature and approval stamp of Provincial Ministry of Government Services

  
 Don McGugan, Mayor

  
 Janet Denkers, Clerk