

**THE CORPORATION OF THE
TOWNSHIP OF WELLESLEY BY-LAW**

NUMBER 44/2024

**Being a by-law to provide rules and regulates for the governance of all Cemeteries
owned by the Corporation of the Township of Wellesley
(Hawkesville Cemetery & Linwood union Cemetery)
and to Repeal By-law 22/01 and 21/2017**

WHEREAS section 4(1) of the *Funeral, Burial and Cremation Services Act, 2002*, S.O. 2002, c. 33, as amended (the "**Act**"), prohibits the operation of a cemetery without a license to do so;

AND WHEREAS section 150(1) of Ontario Regulation 30/11 under the Act, as amended ("O. Reg. 30/11") permits a cemetery operator to make by-laws governing the operation of the cemetery and, in particular, governing rights, entitlements and restrictions with respect to interment and scattering rights.

AND WHEREAS The Corporation of the Township of Wellesley (the "**Township**") owns and operates cemeteries within the Township as a licensee under the Act;

AND WHEREAS By-law 22/01 to maintain, manage, regulate, and control cemeteries in the Township was adopted by the Council of the Township on May 22, 2001 and came into force and effect upon approval of the Bereavement Authority of Ontario ;

AND WHEREAS the Council of the Township wishes to pass the subject by-law and to repeal By-law 22/01 to maintain, manage and regulate cemeteries in the Township, as well as all other by-laws amending same;

**THEREFORE THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE
TOWNSHIP OF WELLESLEY ENACTS AS FOLLOWS:**

**PART 1
SHORT TITLE, PURPOSE AND SCOPE**

Short Title

1.1 This by-law may be cited as the "Cemetery By-law".

Purpose

1.2 This By-law has been enacted to regulate Cemeteries (hereinafter defined) in the Township in order to:

1.2.1 protect the Cemeteries and those interred there; and

1.2.2 protect the families of those interred.

Scope

1.3 This By-law shall apply to the Cemeteries owned and/or operated by the Township.

1.4 This By-law shall not apply to Cemeteries not owned and/or operated by the Township.

PART 2 INTERPRETATION

Headings

- 2.1 The division of this by-law into parts and the insertion of headings are for convenient reference only and shall not affect interpretation of the by-law.

References to Applicable Law

- 2.2 All references to applicable law are ambulatory and apply as amended from time to time.

Definitions

- 2.3 For the purpose of this By-law:
- 2.3.1 **"Act"** means the *Funeral, Burial and Cremation Services Act, 2002*, S.O. 2002, c. 33, as amended;
- 2.3.2 **"Bereavement Authority of Ontario"** means the Bereavement Authority of Ontario which is the government delegated authority administering provisions of the Act on behalf of the Ontario Ministry of Government and Consumer Services;
- 2.3.2 **"Board"** means members appointed by Council to the Hawkesville Cemetery Board, for the Term of Council;
- 2.3.3 **"By-law"** means the rules under which the Cemetery is operated and approved by Council;
- 2.3.4 **"Care and Maintenance Fund"** It is a requirement under the Funeral, Burial and Cremation Services Act, 2002 (FBCSA) and Ontario Regulation 30/11 and 184/12 (O. Reg. 30/11 & 184/12) that a prescribed amount or a percentage of the purchase price (excluding tax) of all interment and scattering rights sold, transferred, assigned or permitted; and prescribed amounts for monuments and markers, is contributed into the care and maintenance fund. If no scattering rights are sold but scattering is permitted a prescribed amount must be contributed to the fund when the scattering is conducted. Interest earned from this fund is used to provide care and maintenance of lots, plots, markers and monuments at the cemetery;
- 2.3.5 **"Caretaker"** means the person or persons appointed by the Board as caretaker of the Cemetery;
- 2.3.6 **"Cemetery"** shall have the same meaning as in section 1(1) of the Act,
- (a) land that has been established as a cemetery under this Act, a private Act or a predecessor of one of them that related to cemeteries, or
 - (b) land that was recognized by the registrar as a cemetery under a predecessor of this Act that related to cemeteries, and
 - (c) land that, in prescribed circumstances, has been otherwise set aside for the interment of human remains;
- 2.3.7 **"Cemetery Services"** means the following services in respect of a lot or plot:
- (a) Opening and closing of a lot or plot
 - (b) Interring or disinterring human remains
 - (c) Construction of a foundation for a marker;

- 2.3.8 **"Cemetery Supplies"** means interment vaults, markers, liners flowers, artificial wreaths and other articles intended to be placed in a cemetery;
- 2.3.9 **"Clerk"** means the Clerk of the Corporation of the Township of Wellesley;
- 2.3.10 **"Consumer Information Guide"** means the guide published by the Bereavement Authority of Ontario for distribution to the public;
- 2.3.11 **"Director"** means the Director of Corporate Services/Treasurer or designate for the Township;
- 2.3.12 **"Fees & Charges By-law"** means the By-law passed by the Township including the price list of fees for cemetery services, as amended from time to time;
- 2.3.13 **"Grave"** means an in-ground portion of the lot to be used for an interment;
- 2.3.14 **"Green Burial"** means the placement if cremated remains in a designated cremation position within a burial lot;
- 2.3.15 **"Human Remains"** means a dead human body or the remains of a cremated human body;
- 2.3.16 **"Inter"** means the burial or internment in the Cemetery of the body or remains of a human being;
- 2.3.17 **"Interment Permission Form"** means the form to be completed by the Interment Rights Holder(s) or designate, in writing, if another person is to be buries on their lot or plot;
- 2.3.18 **"Interment Rights Certificate"** means the certificate issued to the Interment Rights Holder by the Cemetery and shall include the name of the Interment Rights Holder, the location and dimensions of the lot or plot, the date on which the interment rights are purchased, the amount paid by the purchaser, the amount deposited into the Care & Maintenance Fund, and a statement regarding transfer restrictions of said interment rights;
- 2.3.19 **"Interment Rights"** shall include the right or direct the interment of remains in a lot or plot;
- 2.3.20 **"Interment Rights Holder"** shall mean a person with interment rights with respect to a lot or plot and said Interment Rights Holder shall be listed in the records of the Cemetery;
- 2.3.21 **"Lot"** means an area of land in a cemetery containing, or set aside to contain human remains
- 2.3.22 **"Marker"** means any monument, tombstone, plaque, headstone, cornerstone or other structure or ornament affixed to or intended to be affixed to a burial Lot, mausoleum crypt, columbarium niche or other structure or place intended for the deposit of Human Remains
- 2.3.23 **"Operator"** means The Corporation of the Township of Wellesley as CEMETERY OWNER / OPERATOR and Public Works Department or Cemetery Board who facilitates the Maintenance of the named cemeteries;
- 2.3.24 **"Plot"** means two (2) or more lots in which the rights to inter have been sold as a unit;

- 2.3.25 **“Registrar”** means the Registrar appointed under the Cemeteries Act, R. S. O. 1990, c.C.4;
- 2.3.26 **“Row”** means a number of lots in a section configured in a straight line;
- 2.3.27 **“Section”** means an area of land sub-divided in a cemetery that includes lots;
- 2.3.28 **“Township”** means the Corporation of the Township of Wellesley, which includes its employees, contractors or agents;
- 2.3.29 **“Transfer Form”** means the form to be completed for an transfer made without consideration as a gift;
- 2.3.30 **“Treasurer”** means the Treasurer of the Cemetery Board or designate;
- 2.3.31 **“Trustee Act”** means the Trustee Act, R.S.O. 1990, c T.23;
- 2.3.32 **“Winter Interment”** means all interments between the 1st day of December in any year and the 30th day of April of the following year;
- 2.3.33 **“WSIB”** means the Workplace Safety and Insurance Board of Ontario.

Part 3 CEMETERIES

Active Cemeteries

- 3.1 Hawkesville Cemetery, 17 Chapel Street, Hawkesville, ON
- 3.2 Linwood Union Cemetery, 3667 Manser Road, Linwood ON

Part 4 ADMINISTRATION

Management of Township Owned Cemeteries:

- 4.1 The business and affairs of the Hawkesville Cemetery shall be managed and supervised by a Board composed of six members, maximum;
- 4.2 The business and affairs of the Linwood Union Cemetery shall be managed and supervised by the Clerk of the Township, or his/her designate and shall follow the same duties as the Board;
- 4.3 The Board shall be responsible for the administration, management, care, maintenance and improvements of the Cemetery;
- 4.4 The Board shall receive all monies for:
- 4.4.1. the sale of Interment Rights;
 - 4.4.2. the Care and Maintenance Fund; and,
 - 4.4.3. the upkeep or care of any lot, or portion of the Cemetery; and,
 - 4.4.4. the upkeep or care of any Marker.
- 4.5 The Board shall set aside:
- 4.5.1. for the Care and Maintenance Fund, Forty percent (40%) of all monies received from the sale of Interment Rights;

- 4.5.2. for the Care and Maintenance Fund, all monies received for the placement of Markers as prescribed by the regulations under the Act;
- 4.5.3. all other monies received for the Care and maintenance fund; and,
- 4.5.4. for the purpose of upkeep and care of any Lot or portion of the Cemetery, any monies or other properties given, allocated, bequeathed, or set aside for such purposes.
- 4.6 The Board shall have the authority to engage and authorize caretakers, employees or agents to carry out the duties of the Board;
- 4.7 The Board shall be responsible to Council for the execution of their duties;
- 4.8 The Board and the Clerk shall each keep such registers, records and books as are necessary for properly recording all matters, acts, interment rights certificates and matters pertaining to the Cemetery as come within their respective jurisdictions and as may be prescribed;
- 4.9 The Treasurer of the Board shall maintain, invest and administer the operation and Maintenance Funds in accordance with the provisions and regulations of the Act;
- 4.10 The Treasurer shall keep such books, accounts and records as are necessary for properly recording and exhibiting all financial matters pertaining to the Cemetery as may be prescribed;
- 4.11 The Board shall submit a yearly budget to Council setting out operating and capital expenses for the approval of Council. The application and use of said monies shall be under the control and management of the Board. In determining the budget, the Board shall not be bound to expend the whole of operating or capital revenues in any year or years but may accumulate and hold subsequently expend the same or any part thereof, or invest the same or any part thereof;
- 4.12 The Revenue derived from the Care and Maintenance Fund shall be applied at the discretion of the Board, subject to the approved budget, and shall be used for general maintenance and improvement of the Cemetery. The Board shall not be bound to expend the whole or any part of the interest or money earned, including the compounding thereof, but may accumulate and hold or subsequently expend the same or any part thereof, or invest the same or any part thereof;
- 4.13 The Clerk has the authority to make final and binding decisions on behalf of the Township;
- 4.14 The Township shall collect, use and disclose personal Information as required by governing Federal and Provincial legislation, in particular, the Township shall maintain a public register available for review by the public during regular business hours.
- 4.15 The Township assumes no liability or responsibility for the loss of, or damage to any lot, grave, monument, marker or any article that may be placed on a lot, grave, monument or marker from any causes beyond its reasonable control, except for;
 - 4.15.1 Damage to any lot, grave, monument or marker, caused by the Township or its employees or agents, in the course of performing cemetery maintenance, this liability to be limited to the cost of a reasonable repair effort to rectify the damage so caused.

4.15.2 The Township shall be required to and will have the first opportunity to make a reasonable effort to correct the damage described in (i) above; and,

4.15.3 For the purpose of the liability described in (i) above, no damages are payable, in the case of a reasonably successful repair performed on the part of the Township or its employees.

Part 5 GENERAL PROVISIONS

5. Fees and Charges:

- 5.1 All persons shall pay the applicable fees and charges set out in the Fees & Charges By-law, as amended from time to time, prior to the commencement of any work, or the provision of any service, or the purchase of any right contemplated in this By-law;
- 5.2 No interment, disinterment or placement of any type of Marker shall be allowed in any Lot against which there are any unpaid fees or charges.

Part 6 RESTRICTIONS

6. Restrictions (Rules & Regulations):

- 6.1 All persons entering the Cemetery shall behave with due order and decorum and with due respect to the dead;
- 6.2 Interment Rights Holders shall not permit interments to be made in their lots or plots for remuneration and shall not sell their lots or plots for remuneration;
- 6.3 Vehicles within the Cemetery shall be driven at a speed not exceeding 25 kilometres per hour and shall not allow wheels of any such vehicle to run on sod. All drivers of any vehicle shall respect all lots or plots as if they were their own. Vehicle owners and drivers shall be held responsible for any damage done by them;
- 6.4 Recreational vehicles are not permitted within the Cemetery;
- 6.5 No persons under the age of sixteen years shall be admitted within the Cemetery unless attended by an adult who shall be responsible for their conduct;
- 6.6 No person shall:
 - 6.6.1 place any fences, railings or other enclosures around any lot or plot;
 - 6.6.2 plant flowers, plants, shrubs or trees without the permission of the Board. The Board reserves the right to enter onto the lot or plot and remove said flowers, plants, shrubs or trees planted without the permission of the Board;
 - 6.6.3 write upon, deface, injure or damage any markers, railings, fence or other structure in the case or pick or cut flowers of any kind;
 - 6.6.4 have in their possession any firearm within the Cemetery enclosure except in the case of a Military or Police

Funeral;

- 6.6.5 enter into the Cemetery between 9:30pm and 7:00am the following day;
- 6.6.6 allow entry into the Cemetery of any animal under their ownership and/or control;
- 6.7 Conveyances heavily loaded shall not be permitted to enter the Cemetery without the approval and supervision of the Board;
- 6.8 Any person who damages any lot or plot, market or other structure or otherwise does any injury in the Cemetery shall be personally responsible for such damage or injury;
- 6.9 Any person violating any of the provisions of this By-law shall be deemed to be a trespasser and subject to immediate summary eviction from the Cemetery in addition to any and all other penalties provided by law.

Part 7 OPERATIONS

7. Sales

- 7.1 Lots or plots, subdivision of lots or plots may be purchased by individuals upon payment of the appropriate Tariff rate. At the time of sale, the Treasurer shall provide a copy of the following:
 - copy of the Contract, and
 - copy of the Cemetery By-lawUpon payment in full, the Treasurer shall provide an Interment Rights Certificate;
- 7.2 Purchasers of lots or plots acquire only the right and privilege of interment of the dead and of erecting markers, subject to the provisions of this By-law;
- 7.3 Each purchaser of a lot or plot shall be entitled to an Interment Rights Certificate, but only when all indebtedness has been satisfied and all charges on the lot or plot have been paid;
- 7.4 The Interment Rights Certificate shall specify the name of the Interment Rights Holder, the size of the lot or plot, the location of the lot or plot, the date of purchase, the amount paid, the amount deposited into the Care and Maintenance Fund and a statement regarding transfer restrictions or said interment rights;
- 7.5 The Interment Rights Holder must designate in writing, upon the Interment Permission Form, if another person is to be buried in their lot or plot;
- 7.6 The Board may restrict the sale of single lots to certain areas in the Cemetery.
- 7.7 The Treasurer will transfer forthwith to the office of the Township Director of Corporate Services/Treasurer Care & Maintenance monies received from the sale of interment rights and performance of Cemetery Services in accordance with The Fees & Charges By-law, as amended from time to time. Monies received as referred to above will be credited to the Municipality's current operating budget for upkeep of the Cemetery.

- 7.8 In the case of a traditional or cremation interment rights purchase, the Township will set aside for care and maintenance 40% of all prescribed by regulation under The Act for the purpose of the upkeep and care of the cemetery.

Contract:

- 7.9 The purchaser of Interment Rights shall be provided with a Contract at the time the Contract is made, which shall indicate the following:
- 7.9.1 the date Interment Rights were purchased;
 - 7.9.2 the name and address of the purchaser;
 - 7.9.3 the purchase price including an itemized breakdown of changes and all applicable taxes;
 - 7.9.4 the percentage of the purchase price being set aside for Care and Maintenance;
 - 7.9.5 the prohibition on the resale of the Interment Rights by the purchaser;
 - 7.9.6 the existence of a By-law that governs the operation of the Cemetery and includes restrictions on Interment Rights in the Cemetery; and
 - 7.9.7 a Certificate of Interment Rights will not be issued until the Interment Rights have been paid in full.
- 7.10 The department will keep available for inspection a map/spreadsheet showing all lots available for purchase.
- 7.11 Upon payment in full of the purchase price of the interment right the Treasurer will prepare an Interment Right Certificate and record the same in a Register kept for the purpose and will deliver the Certificate to the Interment Rights Holder.
- 7.12 Contract for the purchase of interment rights that are cancelled within thirty (30) days of the contract date are subject to a full refund of the amount paid providing no interment rights have been exercised on the lot.
- 7.13 Contract for the purchase of interment rights are cancelled after thirty (30) days of the contract date are subject to a refund of the amount paid less the amount that has been deposited into the cemetery's care and maintenance trust fund providing no interment rights have been exercised on the lot. Contributions to the Care and Maintenance Fund are non-refundable after thirty (30) day period.

7.14 Transfers

Only licensed cemeteries can sell Interment Rights.

7.14.1. Sale:

If an individual wishes to sell their lot or plot, they must sell their Interment Rights back to the Board. The Board will reimburse the individual the price paid for the lot or plot less the amount placed into the Care and Maintenance Fund.

7.14.2 Transfer:

For the purposes of this subsection, "transfer" means a gift, a

bequest or any other transfer made without consideration. If an Interment Rights Holder wishes to transfer their Interment Rights, notice must be given to the Treasurer and the original certificate must be returned. The Treasurer shall issue a new certificate or Interment Rights to the transferee. The transfer of ownership of Interment Rights is not binding upon the Board until a duly executed transfer has been deposited with the Treasurer.

7.15 Upon receipt of a request in writing from the Interment Rights Holder specifying the name and address of the transferor and the transferee and location of lot or plot, the Treasurer, upon payment of the administration fee in accordance with the Tariff, will perform the transfer.

7.16 In case of succession the following will be required in addition to Clause 5.3.2 above (unless otherwise ordered by the Township):

7.16.1 with a Last Will and Testament

- i) In case of a specific bequest of the lot or plot, a notarized Copy or Court Certified Copy of the Will or probate;
- ii) If no specific bequest, a request in writing from the Executors of the Will with consent of all or a majority of the beneficiaries;

7.16.2 Intestate

- i) A request in writing from the administrator with the consent of all or a majority of the heirs-at-law

Part 8 INTERMENT

8 Interment:

- 8.1 No interment shall take place until such time as the lot or plot has been paid for in full;
- 8.2 For every Interment a burial or cremation Certificate must be obtained;
- 8.3 No interment shall be made on Sunday or Statutory Holidays unless Cemetery Staff is available;
- 8.4 No more than one interment may be made in the same lot, ;
- 8.5 No more than two cremation interments shall be made in the cremation lots and no more than six cremation interments if placement allows, in the regular lots;
- 8.6 Workmen shall cease work, if in the immediate vicinity of a funeral, until the conclusion of the service;
- 8.7 All work must be done during Cemetery hours, unless by special permissions of the Board;
- 8.8 Notice of each interment shall be given to the Treasurer. A minimum of 24 hours' notice (not including Saturday, Sunday or holidays) is required unless otherwise ordered by the Medical Officer of Health.

8.9 It is the duty of the Public Works Department, or its designate to open all graves in the Linwood Union Cemetery and close all graves after interment;

8.10 It is the duty of the Public Works Department, or its designate to attend to the regular and proper maintenance of the Linwood Union Cemetery;

9. Disinterment

9.1 No disinterment shall be allowed in any lot or plot not any body removed therefrom unless in accordance with Section 51 of the "Act".

10. Markers:

10.1 The Board requires order forms from Monument Dealers showing the monument size, base size, property location and the fee for the Marker Care and Maintenance Fund before constructing the foundation for markers.

10.2 The Board reserves the right to determine the maximum size of markers, Their composition, their number and their location on each lot or plot.

10.2.1 not more than one marker shall be erected on any one lot;

10.2.2 the minimum thickness of a marker shall be 6 inches (6") at its narrowest point;

10.2.3 all markers, other than markers located on a single lot shall not exceed forty-eight inches (48") in height;

10.2.4 upright markers on a single lot shall not exceed thirty-six inches (36") deep by sixteen inches (16") deep by thirty-four inches (34") high, including the base;

10.2.5 flat markers on a single lot shall not exceed twenty-four inches (24") wide by eighteen inches (18") and be a minimum four inches (4") to a maximum of six inches (6") in thickness;

10.2.6 all markers shall be made of standard marble, granite or bronze;

10.2.7 all bronze castings shall be true, free from weakening or minor defects, blemishes or imperfections with smooth exposed surface, rough "sand-like" or painted or pigmented finishes or ornamentations are not permitted. The alloy used in bronze markers shall consist of 86% to 89% copper, 5% to 6.5% tin, 1.25% to 1.75% lead and 3.5% to 5% zinc with not more than 1.5% other elements;

10.2.8 no marker shall be allowed to stand on interment space in any lot or plot.

10.3 Markers to be erected shall be set upon adequate concrete foundation which shall be no less than five feet in depth or the full depth of the grave and must exceed the marker by a minimum of three inches on all sides. All foundations shall be set one inch above the surface of the ground. Foundation must be approved by the Board before the markers is erected thereon.

10.4 No markers shall be erected without the permission of the Board.

10.5 Any inscription placed in or upon any lot or plot must be in keeping

with the dignity and decorum of the Cemetery.

- 10.6 The Board assumes no liability or responsibility for loss of, or damage to, any Marker from any causes beyond its reasonable control.
- 10.7 The Board shall have the right to maintain, repair or lay down markers or parts of markers and to use or not to use the Care and Maintenance Funds for markers for such purposes.

11. Township Rights

- 11.1 The Township may, for any portion of a Cemetery where Interments Rights have not been sold, at any reasonable time:
 - 11.1.1 resurvey or alter any un-sold Lot or Plot;
 - 11.1.2 construct a building or structure;
 - 11.1.3 layout, establish, close, eliminate or otherwise modify or change the location of roads, walks or drives; or
 - 11.1.4 create or remove easements and rights of way over and through a Cemetery for the purposes of installing, maintaining or operating utility or communication lines, drains, irrigation systems or for any other Cemetery purpose.

12. Conflict

- 12.1 In the event the provisions of this By-law are inconsistent with the provisions of the Act or the Regulation, the provisions of the Act or the Regulation shall prevail.

13. Severability

- 13.1 The terms and provisions of this By-law shall be severable, and should any term or provision be found by a court of competent jurisdiction to be legally unenforceable, inoperative or invalid, the remainder of the By-law shall continue to be in full force and effect.

14. Repeal

- 14.1 By-law 22/2002 and By-law 21/2017 of the Township of Wellesley and all By-laws amending the same and any other By-law inconsistent with the provisions of this By-law are hereby repealed.

15. Effective Date

- 15.1 This By-law shall come into force and effect on the date it is passed by the Council of the Township of Wellesley.

Read a first and second time this 26th day of November, 2024.

Mayor Joe Nowak

Municipal Clerk, Grace Kosch

Read a third and final time and passed this 26th day of November, 2024.

Mayor Joe Nowak

Municipal Clerk, Grace Kosch

TOWNSHIP OF WELLESLEY
CONTRACT FOR PURCHASE OF INTERMENT RIGHTS
OR CEMETERY SUPPLIES OR SERVICES
HAWKESVILLE CEMETERY

DATE OF PURCHASE: _____/_____/_____
Day / Month / Year

BILL TO:

RIGHTS TO:

DECEASED: (At Need Only)

Name: _____

Place of Death: _____

Date of Death: _____
Day / Month / Year

Funeral Director/Transfer Services: _____

INTERMENT RIGHTS:

Adult: Row _____ Section _____ Lot/Plot _____

Cremation Lot: Row _____ Section _____ Lot/Plot _____

Amount of Care & Maintenance: \$ _____

Repurchase Price: \$ _____

SUBTOTAL (Interment Rights) \$ _____

SERVICES/SUPPLIES (At Need _____ Pre-Need _____)

Amount of Care & Maintenance (Markers):
(Cost to reflect price at time of placement as determined by the Ministry) \$ _____

TOTAL COSTS:

Subtotal (Interment rights & Services/Supplies)

HST (Where applicable)

TOTAL SALE

LESS DOWN PAYMENT

BALANCE DUE

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

It is agreed between the parties that the contract is subject to the By-laws of the cemetery and the Purchaser hereby acknowledges receipt of a copy of the By-laws and the “Conditions of Contract” attached have been read and understood.

ORDERED BY _____
(Signature of Purchaser)

(Signature of Cemetery Representative)