



**CITY OF HAMILTON**

**PUBLIC WORKS DEPARTMENT**  
**Operations and Waste Management Division**

<b>TO:</b> Chair and Members Public Works Committee	<b>WARD(S) AFFECTED:</b> CITY WIDE
<b>COMMITTEE DATE:</b> June 18, 2012	
<b>SUBJECT/REPORT NO:</b> Cemeteries Harmonized By-law and Ownership of City of Hamilton Cemeteries (PW12052) - (City Wide)	
<b>SUBMITTED BY:</b> E. (Beth) Goodger Acting General Manager Public Works Department	<b>PREPARED BY:</b> Crystabelle Fobler (905) 546-2424, Extension 4402
<b>SIGNATURE:</b>	

**RECOMMENDATION**

- (a) That the Hamilton Municipal Cemeteries By-law, attached as Appendix A to Report PW12052, be approved;
- (b) That the following by-laws be repealed:
  - (i) By-law 81-91 - Town of Ancaster;
  - (ii) By-law 4459-98 - Town of Dundas;
  - (iii) By-law 96-582 - Township of Flamborough;
  - (iv) By-law 500-94 - Township of Glanbrook;
  - (v) By-law 95-125 - City of Hamilton;
  - (vi) By-law 4402-96 - City of Stoney Creek;
- (c) That the General Manager of Public Works, or his designate be authorized to submit a copy of the harmonized Hamilton Municipal Cemeteries By-law, once passed by Council, to the Cemeteries Registrar, Cemeteries Regulation Unit, Consumer Protection Branch, Ministry of Consumer Services in the Province of Ontario for filing and approval,

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- (d) That the costs associated with the ownership and registration of the 28 cemeteries listed in Appendix B to Report PW12052, be funded up to \$100,000 from the Cemetery Building Fund - Niches Reserve 104105.

**EXECUTIVE SUMMARY**

The intent of this report is twofold: the first is to present a harmonized Hamilton Municipal Cemeteries By-law to replace the six by-laws of former municipalities currently governing the management, operation and maintenance of the City of Hamilton's 67 cemeteries in accordance with new legislation; the second is to propose and approach to having the City of Hamilton registered as the owner of 28 of these cemeteries that are the management responsibility of the City.

Harmonized Cemeteries By-law:

The new Funeral, Burial and Cremation Services Act, 2002 and its regulations will come into force on July 1, 2012. The harmonized Hamilton Municipal Cemeteries By-law has been written to conform with the new legislation and regulations.

The harmonized Cemeteries By-law includes a list of cemetery properties currently being maintained by the Hamilton Municipal Cemeteries, applicable definitions, regulations for monuments, markers and mausolea and for the care of lots.

Ownership of City of Hamilton Cemeteries:

As listed in Appendix B to Report PW12052, the City of Hamilton is the registered owner (holds the title under the appropriate documents filed at the Registry Office) of 39 of the 67 cemeteries it maintains. The remaining 28 cemeteries are either cemeteries in Land Titles where the City of Hamilton is not shown as the registered owner (as listed in Appendix B to Report PW12052 numbers 40 - 56) or cemeteries where the owner cannot be determined with certainty (as listed in Appendix B to Report PW12052 numbers 57 - 67), however by legislation it is the City's responsibility to maintain them. This occasionally causes problems particularly related to boundary issues and it is proposed that the process to transfer the ownership of these 28 cemeteries to the City be undertaken.

**Alternatives for Consideration - See Page 7**

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS**

**Financial:** There are no financial implications associated with the harmonized Hamilton Municipal Cemeteries By-law.

The financial implications related to the process of transferring ownership of 28 cemeteries to the City of Hamilton is a one-time cost estimated to be no greater than \$100,000 to cover the cost of the preparation of a court application by a lawyer, legal support staff, the lawyer's appearance in court and any costs incurred for the assistance of the Surveys / Technical Services Section of the Public Works Department. It is

recommended that this be funded from the Cemetery Building Fund – Niches Reserve 104105. There is sufficient funds in this reserve to cover this expenditure.

**Staffing:** There are no staffing implications associated with the recommendations in this report.

**Legal:** The City is legislated by the *Funeral, Burial and Cremation Services Act, 2002* and its regulations which come into force on July 1, 2012.

## **HISTORICAL BACKGROUND**

### **Harmonized Cemeteries By-law:**

On January 1, 2001, the former municipalities of Ancaster, Dundas, Flamborough, Glanbrook, Hamilton and Stoney Creek were amalgamated resulting in six different by-laws to regulate the management, operation and maintenance of cemeteries in the new City of Hamilton.

The new City assumed responsibility for six cemetery by-laws including:

- (i) By-law 81-91 - Town of Ancaster
- (ii) By-law 4459-98 - Town of Dundas
- (iii) By-law 96-582 - Township of Flamborough
- (iv) By-law 500-94 - Township of Glanbrook
- (v) By-law 95-125 - City of Hamilton
- (vi) By-law 4402-96 - City of Stoney Creek

The Cemeteries Task Force under the Transition Board for the New City of Hamilton recommended that, “a review and merging of existing by-laws” be undertaken. It was recognized that the preparation of a consolidated Hamilton Municipal Cemeteries By-law was necessary to harmonize the management, operation and maintenance of the City’s cemeteries. Changes in City personnel and delays to the enactment of new provincial legislation have prolonged the drafting process. Now that the new legislation, the *Funeral, Burial and Cremation Services Act, 2002* and its regulations are to come into force on July 1, 2012, we are able to request approval of the harmonized by-law.

The harmonized by-law will be an important tool for consistent management, operation and maintenance of the City’s cemeteries.

### **Ownership of City of Hamilton Cemeteries:**

The City of Hamilton is the registered owner (holds the title under the appropriate documents filed at the Registry Office) of 39 of the 67 cemeteries it is responsible for maintaining. It is proposed that the City of Hamilton be registered as the owner of the 28 remaining cemeteries.

Currently, the City is the owner of the remaining 28 cemeteries under a statutory provision which was in force from 1914 until 1990. The provision deemed the City to be the owner once it undertook the maintenance of the cemeteries. Around the time of

amalgamation, it appears that several of these cemeteries were sent to outside legal service providers to be registered, however the registration was not completed.

### **POLICY IMPLICATIONS**

A single, comprehensive and harmonized by-law respecting the administration, operation and maintenance of cemeteries will provide for a more effective, efficient and sustainable management tool that will meet the current and future bereavement requirements of the community. In addition, harmonizing the by-law and pursuing ownership of all cemeteries currently being maintained by City of Hamilton staff supports the Strategic Plan priority of Valued & Sustainable Services and the Public Works Business Plan “Innovate Now” priority of mutual beneficial charters with external customers.

The administration, operation and maintenance of cemeteries are regulated by the Province of Ontario through the current *Cemeteries Act* and will continue to be regulated by the new *Funeral, Burial and Cremation Services Act, 2002* that will come into force on July 1, 2012.

There are approximately 113 registered (licensed) cemeteries and burial sites located within the boundaries of the City of Hamilton. Of these, 67 cemeteries are maintained by the City of Hamilton, the rest being privately owned by religious institutions or families. Some cemeteries are not licensed. At any time, should any of these cemeteries become “abandoned”, the legislation obligates the municipality to own and assume responsibility for it. Under such circumstances, the current *Cemeteries Act* and the new *Funeral, Burial and Cremation Services Act, 2002* set out processes by which abandoned cemeteries must be looked after by the municipality in which it is located: “...the local municipality within whose geographic boundaries the land of the cemetery is located...becomes the owner of the cemetery with all the rights and obligations in respect of the cemetery...” O. Reg. 30/11, s.171 (8). The intent of the legislation and regulation is to ensure that abandoned cemeteries will continue to be maintained.

A harmonized by-law combined with the registration of the City of Hamilton as the owner of 28 of 67 cemeteries will position the City to efficiently and effectively deal with any potential future private cemetery abandonment issues should the need arise.

### **RELEVANT CONSULTATION**

Several discussions with industry professionals, such as Hilton Landmark Inc. and the Ontario Association of Cemetery and Funeral Professionals have taken place over a number of years related to the potential improvements and efficiencies in having one harmonized By-law to govern the management, operation and administration of the City of Hamilton’s 67 cemeteries.

In addition, the Legal Services Division of the City Manager’s Office and the Cemeteries Regulation Branch of the Ministry of Consumer Services for the Province of Ontario were extensively consulted in the preparation of this by-law and report.

**ANALYSIS / RATIONALE FOR RECOMMENDATION**

**Harmonized Cemeteries By-law:**

**By-law Structure:**

Currently, the policies, procedures and standards governing cemeteries in Hamilton vary greatly from one former municipality to another. As such, significant time, effort and resources are spent on ensuring accurate and relevant information is provided to the customer. In addition, the current by-laws will be out-dated due to the upcoming changes to the new *Funeral, Burial and Cremation Services Act, 2002* that will come into force on July 1, 2012.

There are two main areas of change in the consolidated By-Law, from the current by-laws:

- Number of interments allowed per grave
- Third party sales, which is a legislated requirement of the new Act.

The harmonized by-law proposes a maximum of 4 persons per grave (2 traditional casket burials and 2 cremated human remains). The table below outlines the existing by-law provisions. Customers who purchased plots before the new By-Law goes into effect, the number of interments are grandfathered back to the by-law in effect when they were purchased.

<b>By-law</b>	<b>Excerpt related to the number of interments allowed</b>
Town of Ancaster (By-law 81-91)	One full interment; or one full interment and cremated remains to a maximum of six
Town of Dundas (By-law 4459-98)	One interment plus two cremated remains unless specifically designated as a double depth lot
Township of Flamborough (By-law 96-582)	One burial except in areas designated for extra depth burial and the cremated remains of not more than five
Township of Glanbrook (By-law 500-94)	One coffin interment or three cremation interments
City of Hamilton (By-law 95-125)	Not more than two interments or the cremated remains of two persons
City of Stoney Creek (By-law 4402-96)	Single depth interments are allowed in a lot or plot and up to eight cremated remains.
Proposed Harmonized By-law	No more than two traditional casket burials plus two cremated human remains (max 4 persons)

Third party sales are now a requirement of the new Funeral, Burial and Cremation Services Act. This allows an interment rights holder or a scattering rights holder to re-sell their rights to a third party before the interment or scattering rights are exercised for no more than the current price listed on the Tariff of Charges.

A harmonized Cemeteries By-law will reduce the number and complexity of the existing (six) cemetery by-laws and result in a document that is easier to interpret by staff, by Interment Rights Holders, members of the public and by cemetery-related businesses. As well, this By-law will ensure that regulations relating to the management, operation and maintenance of the cemeteries are in compliance with the new legislation.

Providing high quality and diverse cemetery services are a hallmark of a caring City. A harmonized Cemeteries By-law will be an essential tool in providing consistent and fair management, operation and maintenance for all 67 cemeteries for which the City is responsible.

### **Ownership of City of Hamilton Cemeteries:**

Registering the City of Hamilton as the owner of 28 of 67 cemeteries is necessary for legal reasons, including facilitating real estate transactions involving a cemetery, as well as dispelling any uncertainty about ownership for the benefit of the public generally and Interment Rights Holders in particular.

All former municipalities have received cemeteries that were abandoned to them. In most cases, no funds or trust monies were received. The monies either did not exist or were spent on the upkeep of the cemetery. The City of Hamilton has recognized there are many private cemeteries that could potentially fall into this category. These properties have to be maintained and legislation requires that municipalities assume this responsibility in the event of abandonment.

The report of the Cemeteries Task Force under the Transition Board for the New City of Hamilton addressed this matter only to the extent of recommending that title searches be done to verify the ownership of all cemeteries.

Appendix B attached to this report lists all 67 cemeteries, showing those held by the City as the registered owner and those that are not. It also indicates where there are assumptions or operating by-laws demonstrating the City's ownership under the statutory provision in force from 1914 until 1990.

Starting in 1914, s.24 of Chapter 261 of the Revised Statutes of Ontario, entitled "Interment of the Dead", provided as follows:

*"24. Where the owner of a cemetery cannot be found or is unknown, or is unable to maintain it, the council of the local municipality in which the cemetery is situate may undertake the duty of maintaining it, and where a council so undertakes the corporation shall for the purposes of this Act be deemed to be the owner of the cemetery."*

By 1927, in the successor provisions to s. 24 (s.36(1) of *The Cemetery Act*) the duty to maintain such cemeteries had become mandatory:

*“36(1) Where the owner of a cemetery cannot be found or is unknown or is unable to maintain it, the council of the local municipality in which the cemetery is situate shall be charged with the duty of maintaining it and the corporation of the local municipality shall for the purposes of this Act be deemed to be owner of the cemetery.”*

This deeming provision then remained unchanged until 1990 when the *Cemeteries Act (Revised)*, c.C.4, R.S.O. 1990 was enacted. Under this legislation, the City became the owner of cemeteries without the requirement for any “paper trail”, such as registering documents or enacting by-laws. For a few of these cemeteries, transfers were registered and/or assumption or operating by-laws enacted even though they were not required. The result is that there are no records that transfer has ever been registered for 28 cemeteries currently being maintained by the City of Hamilton. When necessary, the City of Hamilton can demonstrate its ownership by pointing to the deeming provision, any assumption or operating by-laws and, for all 28 cemeteries, by means of an affidavit or statutory declaration showing that it has maintained a cemetery over time; managing its upkeep and meeting the requirements of the *Cemeteries Act (Revised)* and its predecessors. Ownership under the deeming provision is only “for the purposes of the Act” (currently the *Cemeteries Act (Revised)* or any successor Act).

In Sections 59 and 60 of the new *Cemeteries Act (Revised)* the City can no longer become an owner of a cemetery without being the registered owner even though the City is responsible for maintenance. Section 59 allows a municipality to order an owner who does not maintain a cemetery to restore it. The municipality may do the work and recover the costs from the owner if the owner fails to comply with the order without assuming ownership itself. Section 60 allows the owner, the municipality or the Registrar to make an application to the District Court to have a cemetery declared abandoned. When the declaration is made, it can be registered in the appropriate land registry office and the municipality becomes the registered owner.

Registering the City of Hamilton as the owner of the cemeteries can become necessary for legal reasons, for example to facilitate real estate transactions such as easements involving a cemetery or third party sales.

## **ALTERNATIVES FOR CONSIDERATION**

### **Harmonized Cemeteries By-law:**

Should Council elect to not approve the harmonization of the Hamilton Municipal Cemeteries By-law, the management, operation and maintenance of Hamilton’s 67 cemeteries would continue to be governed by the existing six by-laws of the former municipalities. To ensure consistency with the new Funeral, Burial and Cremation Services Act, 2002 and its regulations, some of the policies, procedures and standards in the existing by-laws would require updating due to the changes to legislation to accurately reflect statutory authority and to ensure consistency with the new Act. Changes would be required to all six (6) by-laws of the former municipality. A

harmonized by-law provides a streamlined approach to administering the legislation and regulations.

**Ownership of City of Hamilton Cemeteries:**

Should Council elect to not approve the proposal to transfer ownership of the 28 cemeteries, the City of Hamilton could continue to rely on current provisions in legislation that is sufficient for normal day-to-day operations of the cemetery. The City could counter any challenge to its ownership by means of an affidavit or statutory declaration. However registering the City of Hamilton as the owner of the cemeteries does become necessary for legal reasons under some circumstances.

**CORPORATE STRATEGIC PLAN**

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability, 3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Environmental Stewardship,

***Skilled, Innovative & Respectful Organization***

- ◆ A culture of excellence
- ◆ More innovation, greater teamwork, better client focus
- ◆ An enabling work environment - respectful culture, well-being and safety, effective communication

***Financial Sustainability***

- ◆ Effective and sustainable Growth Management
- ◆ Delivery of municipal services and management capital assets/liabilities in a sustainable, innovative and cost effective manner
- ◆ Generate assessment growth/non-tax revenues

***Intergovernmental Relationships***

- ◆ Maintain effective relationships with other public agencies

***Growing Our Economy***

- ◆ Competitive business environment
- ◆ An improved customer service

***Environmental Stewardship***

- ◆ Natural resources are protected and enhanced
- ◆ Aspiring to the highest environmental standards

**APPENDICES / SCHEDULES**

Appendix A - Hamilton Municipal Cemeteries By-law

Appendix B - List of Cemeteries Operated by the City of Hamilton

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City of Hamilton  
By-law No. \_\_\_\_\_

**A BY-LAW RESPECTING THE CITY OF HAMILTON'S CEMETERIES and REPEALING  
By-law 81-9 Town of Ancaster; By-law 4459-09 Town of Dundas; By-law 96-582 Township  
of Flamborough; By-law 500-94 Township of Glanbrook; By-law 95-125 City of Hamilton;  
By-law 4402-96 City of Stoney Creek**

**WHEREAS** the City of Hamilton owns cemeteries as identified in Part 2 for the benefit of its residents;

**AND WHEREAS** the *Funeral, Burial and Cremation Services Act, 2002* and its regulations imparts responsibility to the owners 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 the owners of cemeteries may make by-laws affecting the operation of the cemeteries;

**AND WHEREAS** sections 8, 9 and 10 of the *Municipal Act, 2001*, authorize the City of Hamilton to pass by-laws necessary and desirable for municipal purposes, and in particular paragraphs 5 through 7 of subsection 10(2) authorize by-laws respecting: the economic, social and environmental well-being of the municipality; the health, safety and well-being of persons; and the provision of any service or thing that it considers necessary or desirable for the public.

**AND WHEREAS** section 425 of the *Municipal Act, 2001*, authorizes the City of Hamilton pass by-laws providing that a person who contravenes a by-law of the City of Hamilton passed under that Act is guilty of an offence;

**AND WHEREAS** the *Municipal Act, 2001*, further authorizes the City of Hamilton amongst other things, to delegate its authority;

**AND WHEREAS** the *City of Hamilton Act, 1999*, did incorporate, as of January 1<sup>st</sup>, 2001, the municipality "City of Hamilton";

**AND WHEREAS** the City of Hamilton is successor to the following former area municipalities: The Corporation of the Town of Ancaster, The Corporation of the Town of Dundas, The Corporation of the Town of Flamborough, The Corporation of the Township of Glanbrook, The Corporation of the City of Hamilton and The Corporation of the City of Stoney Creek; and the successor to the former Regional Municipality of Hamilton Wentworth;

**AND WHEREAS** the *City of Hamilton Act, 1999*, provides that the by-laws of the former area municipalities and the former Regional Municipality of Hamilton Wentworth continue in force in the City of Hamilton until subsequently amended or repealed by the Council of the City of Hamilton;

**NOW THEREFORE** the Council of the City of Hamilton enacts as follows:

**Part 1 - Preamble**

The Council of the City of Hamilton passes and enacts this By-law for the operation of cemeteries owned by the City of Hamilton to keep them attractive and respectful places for the interment of the deceased.

**Part 2 - List of Cemeteries Owned and Operated by Hamilton Municipal Cemeteries**

	Name	Location
<b>Ancaster:</b>		
	Bethel Cemetery	Lot 1, Concession 1, Ancaster
	Book/Parkin Cemetery	Lot 46, Concession 4, Ancaster
	Bowman United Church	Lot 50/51, Concession 4, Ancaster
	Copetown Cemetery	Lot 32, North of Concession 1, Ancaster
	Dyment Cemetery	Lot 23, Concession 1, Ancaster
	File/Patterson Cemetery	Lot 20, Concession 4, Ancaster
	Garners Corners	Lot 47, Concession 3, Ancaster
	Jerseyville Cemetery	Lot 19, Concession 2, Ancaster
	Lynden Cemetery	Lot 13, Concession 1, Ancaster
	Myers/Bradshaw	Lot 24, Concession 5, Ancaster
<b>Dundas:</b>		
	Binkley Hollow Cemetery	Desjardins Avenue, Dundas
	Grove Cemetery	129 ½ York Road, Dundas
	Harkur Lyon's Cemetery	Forestview Drive, Dundas
	Hopkins Cemetery	York Rd. near Old Guelph Rd., Dundas
	Union Cemetery	Osler Drive, Dundas
<b>Flamborough:</b>		
	Carlisle Anglican Church Cem.	Carlisle Rd., S/S 9 <sup>th</sup> Concession W/of Beaumont
	Flamborough (Rockton) Cem.	Old Highway 8, Rockton Village, Beverly Twnshp
	Garden Lane Cemetery	181-7 <sup>th</sup> Conc., west of Garden Lane, E. Flam
	Lamb Cemetery	W/S Hwy 8, bet. Cooper/Seaton, W. Flamborough
	Mount Zion Cemetery	Hwy 52 & 2 <sup>nd</sup> Concession, Copetown
	Nisbet-Van Sickle Cemetery	W/S Lynden Rd., between Hwy 99 & 2 <sup>nd</sup> Conc
	Sheffield Cemetery	E/S Seaton Road, West Flamborough
	St. Albans Cemetery	#27 Rockton Road – No 8 Highway, Beverly
	Troy Cemetery	N/S Hwy 5, west of Lynden Road, W. Flam
	Union Cemetery	Margaret Street from Highway 5, Waterdown
	W. Flamborough Presbyterian	Hwy 8/Middletown Rd., Christie's Corner, W. Flam
	West Flamborough Cemetery	Bullock's Corners, Hwy 8, West Flamborough
	Westover United Church Cem.	S/S 6 <sup>th</sup> Concession, west of Westover W. Flam
<b>Glanbrook:</b>		
	Auld Kirk Cemetery	Kirk Road, Binbrook
	Binbrook Baptist Cemetery	Binbrook Road, Binbrook
	Binbrook United Cemetery	Highway 56, Binbrook
	Blackheath United Cemetery	Haldibrook Road, Binbrook
	Christ Church Woodburn Cem.	Woodburn Road
	Glanbrook Cemetery	Binbrook Road between Fletcher & Trinity Church
	Knox Presbyterian Cemetery	Binbrook Road, Binbrook
	North Glanford Cemetery	Dickenson Road
	Salem Cemetery	Salem Road, Glanford
	St. Paul's Anglican Cemetery	2869 Highway 6 South
	Swayze Cemetery	Highway #56 North of #380 Highway #56
	White Church Cemetery	White Church Road, Glanford

**Part 2 - List of Cemeteries Owned and Operated by Hamilton Municipal Cemeteries**

	Name	Location
<b>Hamilton:</b>		
	Bartonstone Cemetery	Stone Church Rd & Upper James Streets
	Bartonville Cemetery	1955 King St., East at Bell Avenue
	Binkley Cemetery	End of Lakelet Dr, off Binkley Crescent
	Burkholder United Church	441 Mohawk Road East
	Eastlawn Cemetery	Corner of Barton & Nash
	Hamilton Cemetery	777 York Boulevard
	Mt. Hamilton Cemetery	Highway 53 at Upper Wellington
	Ryckman Family Cemetery	E/S of Upper James at rear of #1517
	Smith Cemetery	Kennedy Road off Upper James
	St. George's Cemetery	Rymal Road East bet. Nebo & Dartnall
	St. Peter's Cemetery	534 Mohawk Road West
	Stoney Creek Cemetery	King Street at Highway 20
	Trinity Church Cemetery	Highway 53 at Trinity Church Road
	Woodland Cemetery	700 Spring Garden Road, Burlington
	Young Family Cemetery	Upper Wellington at Stone Church
<b>Stoney Creek:</b>		
	Cline Cemetery	73 Highway #20 – Stoney Creek
	Felker Cemetery	120 Mud Street East at First Road West
	Fruitland Cemetery	631 Highway #8 at Fruitland
	Hannon Free Methodist Cem.	1957 Highway 53 at Fletcher, Hannon
	Mountview Gardens	735 Highway #8, west of Jones Road, St.Creek
	Mt. Albion Cemetery	225 Upper Mt. Albion Road, Stoney Creek
	Smith's Knoll (Battlefield)	
	St. George's Anglican	651 Mud St., East at 6 <sup>th</sup> Road East
	Tapleystown Cemetery	385 Mud St., East – West of Tapleystown Road
	Tweedside Cemetery	1145 Mud Street – West of Eleventh Road
	Van Dusen Cemetery	216 Upper Mt. Albion Road
	Winona (Fifty)	1465 Highway #8 – East of Fifty Road

And any other cemetery which may become the responsibility of the City of Hamilton.

**Part 3 - Definitions**

3.1 In this By-law:

**“Business Day”** means 8:30 a.m. to 4:30 p.m. on any day on which the Administrative Office of Hamilton Municipal Cemeteries is open for business;

**“Care and Maintenance Trust Fund”** means the trust fund in which all monies received by the City of Hamilton for the care and maintenance of lots, monuments, markers and mausolea have been invested;

**“Funeral, Burial and Cremation Services Act, 2002”** means the *Funeral, Burial and Cremation Services Act, 2002* and its regulations and, if applicable, any predecessor or successor Act and its regulations, all as amended;

**“cemetery”** means land set aside to be used either for the interment of human remains or for the scattering of cremated human remains (in designated sections, only) and includes a mausoleum, columbarium or any other structure or building intended for the interment of human remains that is situated on the land;

**“Certificate of Interment Rights”** means the certificate issued by the City of Hamilton to the purchaser of interment rights to a lot, once payment has been made in full;

**“columbarium”** means a structure designed for the purpose of interring cremated human remains in niches or compartments;

**“Council”** means the Council of the City of Hamilton;

**“Director”** means the Senior Director of Operations and Waste Management of the Public Works Department of the City of Hamilton or his or her designate or successor;

**“Filming Event”** means filming, videotaping, photography or any other form of visual recording for a feature film, television film, television program, documentary, commercial, music video, educational film or other purpose outside a studio or film laboratory, but does not include street interviews, newscasts, press conferences or visual recordings for personal purposes only;

**“Grave”** means a lot in the ground which has a minimum size of:

<b>“Adult Grave” (more than 15 years of age):</b>	91cm x 274cm (36 inches x 96 inches)
<b>“Child Grave” (from 1 to 15 years of age):</b>	30cm x 121cm (12 inches x 48 inches)
<b>“Infant Grave” (less than 1 year of age):</b>	30cm x 91cm (12 inches x 36 inches)
<b>“Cremation Grave:</b>	36cm x 71cm (14 inches x 28 inches);

**“Hamilton Municipal Cemeteries”** means the Hamilton Municipal Cemeteries Section of the Operations and Waste Management Division of the Public Works Department of the City of Hamilton that has responsibility for the administration, operation and maintenance of cemeteries;

**“human remains”** means a dead human body or the remains of a cremated human body;

**“inter”** means the burial of human remains and includes the placing of human remains in a grave, lot, columbarium niche or mausoleum crypt;

**“Interment Rights”** means the right to require or direct the interment of human remains or cremated human remains in a grave, lot, niche or crypt and to direct the associated memorialization subject to the conditions set out in the cemetery by-law;

**“Interment Rights/Scattering Rights Contract”** means the contract entered into by a purchaser of Interment Rights, Scattering Rights, cemetery products or other cemetery services, as required under the Funeral, Burial and Cremation Services Act, 2002.

**“Interment Rights Holder”** means the person who holds the interment rights with respect to a lot, whether the person be the purchaser of the rights, the person named in the Certificate of Interment Rights or such other person to whom the Interment Rights have been assigned;

**“lot”** means an area of land in a cemetery containing, or set aside to contain, human remains and includes a tomb, crypt or compartment in a mausoleum and a niche or compartment in a columbarium or any other similar facility or receptacle;

**“marker”** means any permanent tombstone, plaque, headstone, cornerstone or ornament that is set flush with the surface of the ground and is used to mark the location of a grave;

**“mausoleum”** means a structure or building, other than a columbarium, used as place for the interment of human remains in sealed crypts or compartments;

**“monument”** means any permanent tombstone, plaque, headstone, cornerstone or ornament that projects from the surface of the ground and is used to mark the location of a lot or plot;

**“Officer”** means a Municipal Law Enforcement Officer appointed under any City by-law or any other person assigned or appointed by the Director to administer or enforce this By-law and includes a person employed by the City whose duties are to enforce this By-law and a Police Officer;

**“plot”** means 2 or more lots in which the rights to inter have been sold as a unit;

**“Pre-Need Purchase”** means the purchase of services for a person who is alive;

**“Registrar”** means the Registrar appointed under the Funeral, Burial and Cremation Services Act, 2002;

**“scattering ground”** means land within a cemetery set aside for the scattering of cremated human remains;

**“Scattering Rights”** means the right to require or direct the scattering of cremated human remains;

**“Scattering Rights Holder”** means the person who holds the scattering rights with respect to a scattering ground, whether the person be the purchaser of the Rights, the person named in the Certificate of Scattering Rights or such other person to whom the Interment Rights have been assigned; and

**“Tariff of Charges”** means the price list for interment rights, cemetery supplies and services set in accordance with the Funeral, Burial and Cremation Services Act, 2002 and passed by Council.

**Part 4 - INTERPRETATION AND ADMINISTRATION**

**4.1 Plural**

In this By-law a word defined in the singular number has a corresponding meaning when used in the plural and *vice versa*.

**4.2 Table of Contents, etc.**

The Table of Contents, headings and subheadings used in this By-law shall not form a part of it, but shall be deemed to be inserted for convenience of reference only.

**4.3 Schedules**

The Schedules attached to this By-law form a part of it.

**4.4 Application**

The provisions of this By-law apply to cemeteries owned by the City of Hamilton.

**4.5 Director Responsibility**

The Director is responsible for the management, operation and maintenance of cemeteries owned by the City of Hamilton and is authorized to administer and enforce this By-law with delegated authority granted by Council to execute the provisions of the By-law, including the imposition of conditions as necessary to ensure compliance with this By-law.

**4.6 Director Delegation**

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

**4.7 Director Discretion**

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

**4.8 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 or Scattering Rights Holder may be given personally, or by regular mail to the last known address of the Interment Rights Holder, Scattering Rights Holder or their heir or representative;
- (b) the Director or Hamilton Municipal Cemeteries may be given by registered mail, by fax or in person during a business day at the Administrative Office of Hamilton Municipal Cemeteries.

**4.9 Director Permission**

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.

**Part 5 - INTERMENT RIGHTS and SCATTERING RIGHTS**

**Sale and Purchase**

**5.1 Sale**

No person shall sell Interment Rights or Scattering Rights except a person authorized by the Director.

**5.2 Single-in-a-Row Grave**

The purchaser of a single-in-a-row grave, as set out in the Tariff of Charges, may not:

- (a) choose the location of the grave; or
- (b) be a Pre-Need purchaser.

**5.3 Preferred Single Grave**

The purchaser of a preferred single grave, as set out in the Tariff of Charges, may:

- (a) choose the location of the grave;
- (b) be a Pre-Need purchaser; and
- (c) pay in installments, as determined by the Director in accordance with the Funeral, Burial and Cremation Services Act, 2002 and the Tariff of Charges.

**5.4 Interment Rights/Scattering Rights Contract**

At the time Interment Rights or Scattering Rights are purchased and paid in full, the Director or his or her designate shall provide the Interment Rights Holder with a copy of the Interment Rights/Scattering Rights Contract signed by the Director and the Interment Rights or Scattering Rights Holder and a copy of the Hamilton Municipal Cemeteries By-law.

**5.5 Interment Rights Certificate and Scattering Rights Certificate**

At the time Interment Rights or Scattering Rights are paid for in full, the Director shall provide the Interment Rights Holder with a Certificate of Interment Rights or Certificate of Scattering Rights or a Prepayment Certificate.

**5.6 Change of Address**

An Interment Rights Holder or Scattering Rights Holder shall inform Hamilton Municipal Cemeteries forthwith of any changes to the information contained in their Interment Rights/Scattering Rights Contract, including changes to their address or telephone number.

**Transfer**

**5.7 Transfer to Others**

An Interment Rights Holder or Scattering Rights Holder may transfer their Interment Rights or Scattering Rights by:

- (a) giving written notice to Hamilton Municipal Cemeteries of the name and address of the transferee and the date of the transfer; and
- (b) paying the transfer fee as set out in the Tariff of Charges.

**5.8 Transfer by Heirs**

An heir or representative of a deceased Interment Rights Holder may transfer the deceased Interment Rights Holder's Interment Rights or deceased Scattering Right Holder's Scattering Rights by:

- (a) giving proof in writing satisfactory to the Director that they have the right to transfer the Interment Rights or Scattering Rights.
- (b) giving notice to Hamilton Municipal Cemeteries of the name and address of the transferee and the date of the transfer; and
- (c) paying the transfer fee as set out in the Tariff of Charges.

### **Third-Party Resale**

#### **5.9 Re-Sale of Rights – Third Party:**

An Interment Rights Holder or a Scattering Rights Holder may re-sell their Interment Rights or Scattering Rights to a third party before the Interment Rights or Scattering Rights are exercised for no more than the current price listed on the Tariff of Charges.

#### **5.10 Re-sale of Rights Requirements:**

Interment Rights or Scattering Rights are transferred to a third party only when:

- (a) all of the following, if applicable, have been provided to the satisfaction of the Director:
  - (i) written confirmation from the Interment Rights Holder or the Scattering Rights Holder of their intent to sell the Interment Rights or the Scattering Rights to a named purchaser.
  - (ii) written proof that the person intending to sell Interment Rights or Scattering Rights is the Interment Rights Holder or the Scattering Rights Holder;
  - (iii) the original Interment Rights Certificate or Scattering Rights Certificate endorsed by the current Interment Rights Holder or Scattering Rights Holder
  - (iv) payment of the administration fee as set out in the Tariff of Charges;
  - (v) any other documentation in the Interment Rights Holder's or the Scattering Rights Holder's possession relating to the Interment Rights or Scattering Rights.
- (b) a new Interment Rights Certificate or Scattering Rights Certificate has been issued to the named purchaser.

### **Cancellation of Interment Rights or Scattering Rights:**

#### **5.11 Cancellation of Interment Rights within 30-Days:**

An Interment Rights/Scattering Rights Contract may be cancelled within 30 days of signing if the purchaser provides 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 or Scattering Rights have been exercised, the purchaser or the Interment Rights Holder or Scattering Rights Holder is not entitled to cancel the Interment Rights/Scattering Rights Contract or re-sell the Interment Rights or Scattering Rights.

#### **5.12 Cancellation of Interment Rights After 30-Days:**

An Interment Rights or Scattering Rights contract may be cancelled after 30 days of signing if the purchaser provides written notice of the cancellation to the Director. A refund will be issued to the purchaser for the amount paid for the Interment Rights or Scattering Rights less the appropriate amount required to be deposited into the Care and Maintenance Trust Fund. If an Interment Rights Certificate or Scattering Rights Certificate has been issued to the Interment Rights Holder or Scattering Rights Holder, the certificate must be returned to the Director together with the written notice of cancellation. If any portion of the Interment Rights or Scattering Rights have been

exercised, the purchaser or the Interment Rights Holder or the Scattering Rights Holder is not entitled to cancel the Interment Rights/Scattering Rights Contract or re-sell the Interment Rights or Scattering Rights.

**5.13 Rights Abandoned:**

The City of Hamilton may apply for a declaration that Interment Rights are abandoned and then resell the Interment Rights in accordance with the Funeral, Burial and Cremation Services Act, 2002.

**Corrections**

**5.14 Corrections:**

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

**Part 6- INTERMENTS AND DISINTERMENTS**

**General**

**6.1 Director Approval**

The Director:

- (a) may decide that an interment or disinterment shall not take place due to weather or ground conditions; and
- (b) shall be in attendance at each interment or disinterment.

**6.2 Opening a Lot**

No person shall prepare a lot for interment or disinterment except a person authorized by the Director.

**6.3 Damage to Containers**

Containers holding human remains may be damaged during interment or disinterment and the City of Hamilton shall not be responsible for repairing or replacing such containers or paying any compensation.

**Interments**

**6.4 Notice in Advance**

An Interment Rights Holder or Scattering Rights Holder, their heir or representative, or a Funeral Director shall, at least 1 business day in advance of an interment, give notice to Hamilton Municipal Cemeteries:

- (a) authorizing any interment in the Interment Rights Holder's lot or, for a Scattering Rights Holder, in a scattering ground; and,
- (b) requesting that the lot be prepared for the interment; and
- (c) giving the particulars as to the location, depth, width and length of the container holding the human remains to be interred.

**6.5 Notice not Provided in Advance**

Where an Interment Rights Holder or Scattering Rights Holder, their heir or representative, or a Funeral Director gives notice under section 6.4 less than 1 business day in advance, a lot may be prepared for the interment at the discretion of the Director.

**6.6 Notice of Arrangements by Telephone:**

An Interment Rights Holder or Scattering Rights Holder, their heir or representative, or a Funeral Director may make required interment arrangements with the Hamilton Municipal Cemetery Administrative Office via telephone (but not Voice Mail); or fax during regular business hours provided that adequate notice is given under section 6.4.

**6.7 Authorization**

Notice under section 6.4 or section 6.5 shall be given by all of the Interment Rights Holders for a lot or Scattering Rights Holder for a scattering ground and, if one or more of the Interment Rights Holder or Scattering Rights Holder are dead, notice shall instead be given by their heir or representative. In the alternative, notice under section 6.4 or section 6.5 may be given by a Funeral Director.

**6.8 Human Remains**

Only human remains shall be interred in a lot.

**6.9 No Interment**

No interment shall take place except where:

- (a) a burial permit or Certificate of Cremation under the *Vital Statistics Act* has been issued;
- (b) all applicable fees under the Tariff of Charges have been paid; and
- (c) an Interment Rights/Scattering Rights Contract has been signed.

**6.10 Limits – Cremation Grave**

No more than 2 interments of cremated human remains shall take place in any 1 cremation grave purchased on or after the date this By-law is in force.

**6.11 Limits – Preferred Single Grave**

No more than 2 interments of human remains that are not cremated and 2 interments of cremated human remains (for a maximum of 4 persons) shall take place in any 1 preferred single grave purchased on or after the date this By-law is in force.

**6.12 Limits – Single-in-a-Row Grave**

No more than 2 interments of human remains that are not cremated and 2 interments of cremated human remains (for a maximum of 4 persons) shall take place in any 1 preferred single grave purchased on or after the date this By-law is in force.

**6.13 Limits – Columbarium Niche or Compartment**

No more than 2 interments of cremated human remains shall take place in any 1 niche or compartment in a columbarium purchased on or after the date this By-law is in force.

**6.14 Limits – Mausoleum Crypt**

No more than 1 interment of human remains that are not cremated shall take place in any 1 crypt in a mausoleum purchased on or after the date this By-law is in force.

**6.15 By-law Repeal**

Notwithstanding the repeal of a by-law under Section 12.1, the by-law shall continue to apply in respect of the number of interments in any lot purchased before the date this By-law is in force.

**6.16 Container Requirement**

Human remains to be interred in a lot shall be in a container:

- (a) that is securely sealed;
- (b) of sufficient strength to remain intact during interment; and
- (c) of a size to permit interment within the lot.

**6.17 Hours for Interments**

Interments may take place between the hours of 9:00 a.m. and 3:30 p.m. from Monday to Friday and between the hours of 8:30 a.m. and 11:30 a.m. on Saturdays of three-day weekends provided that:

- (a) no interment shall take place on a statutory or proclaimed holiday;
- (b) an interment may take place on any day and at any time set out in a certificate issued by the Ministry of Health or an order issued by the Coroner's Office; and
- (c) an interment may take place between the hours of 9:00 a.m. and Noon on a Saturday of two-day weekends with the advance permission of the Director and for an additional fee.

**6.18 Scattering**

No person shall scatter cremated human remains in a cemetery, provided that if scattering grounds have been set aside, cremated human remains may be scattered in such scattering grounds with the advance notice; and,

- (a) a Certificate of Cremation under the *Vital Statistics Act* has been issued;
- (b) all applicable fees under the Tariff of Charges have been paid; and,
- (c) a Scattering Rights Contract has been signed.

**Disinterments**

**6.19 Disinterment**

No disinterment shall take place except where:

- (a) a certificate issued by the Medical Officer of Health and the Director, confirming the Funeral, Burial and Cremation Services Act, 2002 has been complied with, is affixed to the container holding the disinterred human remains;
- (b) all applicable fees under the Tariff of Charges have been paid; and
- (c) the disinterred human remains are placed in a concrete crypt or vault after disinterment and before reinterment.

**6.20 Corrections**

The Director may correct any error made in an interment. The Director shall give notice to the Interment Rights Holder or Scattering 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 Direction shall first obtain the approval of any regulatory authority and the Interment Rights Holder or Scattering Rights Holder.

**Part 7 - MONUMENTS, MARKERS AND MAUSOLEA**

**7.1 Schedule A**

All monuments, markers and mausolea, where installed, altered, repaired or removed by a person other than an employee or contractor of Hamilton Municipal Cemeteries, shall be installed, altered, repaired or removed in accordance with Schedule A.

**7.2 Prohibition**

No person shall install or continue to install, alter, repair or remove a monument, marker or mausoleum while an interment or disinterment is taking place in the vicinity until the conclusion of the interment or disinterment.

**Part 8 - CARE OF LOTS**

**8.1 Schedule B**

All lots, where cared for by a person other than an employee or contractor of Hamilton Municipal Cemeteries, shall be cared for in accordance with Schedule B.

**Part 9 - RULES**

**Entry**

**9.1 Cemetery Hours**

No person:

- (a) shall enter or exit a cemetery except through established gates and roadways;
- (b) shall enter or remain in a cemetery before sunrise or after sundown except for employees or contractors of Hamilton Municipal Cemeteries and emergency personnel including, but not limited to, police and firefighters;
- (c) responsible for the care of a child under the age of 12 years, shall permit such child to enter or remain in a cemetery unless they are accompanied and supervised by an adult; or
- (d) shall permit an animal to enter or remain in a cemetery except an animal that is leashed and under the control of a person in accordance with any applicable animal control by-law or legislation.

**General Conduct**

**9.2 Rules for Visitors**

While in a cemetery, no person shall:

**Injury or Damage**

- (a) engage in activity that may cause injury to any person or damage to any property including any vegetation, monument, marker, mausoleum, columbarium or other structure or building;

**Climbing**

- (b) climb any vegetation, monument, marker, mausoleum, columbarium or other structure;

**Sports**

- (c) play any game or sport including, but not limited to, skateboarding, roller-blading or tobogganing;

**Firearms**

- (d) discharge any firearm, except with the advance, written permission of the Director for a funeral or to control wildlife;

**Disturbance**

- (e) disturb any person attending an interment;

**Nuisance**

- (f) commit a nuisance or create a disturbance;

**Rubbish**

- (g) throw or deposit or cause to be deposited any rubbish, refuse, waste or litter, except in receptacles provided for the purpose;

**Food and Drink**

- (h) consume any food or drink, except food or drink consumed as part of a religious or cultural interment rite; or

**Alcohol**

- (i) have or consume an alcoholic beverage.

**Commercial Activity**

**9.3 Rules for Commercial Activities**

While in a cemetery, no person shall

**Filming**

- (a) undertake or permit the undertaking of a filming event without a valid film permit issued for the filming event under the Hamilton Film Permit By-law;

**Solicitation**

- (b) solicit work of any kind; or

**Gratuities**

- (c) give a gratuity to any employee or contractor of Hamilton Municipal Cemeteries.

**Vehicles**

**9.4 Vehicular Activity**

While in a cemetery, no person shall:

**Recreational Vehicles**

- (a) drive, stop or park a motorized snow vehicle or off-road vehicle;

**Speed Limit**

- (b) drive a vehicle at a speed of more than 10 kilometres per hour or a speed as otherwise posted;

**Grass or Flower Beds**

- (c) drive, stop or park a vehicle on the grass or a flower bed except with the advance, written permission of the Director; or

**Heavy Loads**

- (d) drive, stop or park a heavy load in a cemetery except with the advance, written permission of the Director.

**Part 10 - ENFORCEMENT**

**10.1 Enforcement**

The By-law may be enforced by an Officer.

**10.2 Authority**

Cemetery staff authorized by the Director and Officers have authority to direct any person who does not comply with this By-law to leave a cemetery.

**10.3 Offence**

Every person who contravenes any provision of this By-law is, upon conviction, guilty of an offence and is liable to a fine of not more than:

- (a) \$5,000 for a first offence;  
(b) \$25,000 for a second offence; or  
(c) \$100,000 for a third or subsequent offence.

**10.4 Penalty**

Where a person has been convicted of an offence, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may, in addition to any other remedy or penalty provided for by law, make an order prohibiting the continuation or repetition of the offence by the person convicted.

**PART 11 - GENERAL PROVISIONS**

**11.1 By-law Name**

This By-law may be referred to as the Hamilton Municipal Cemeteries By-law.

**11.2 Validity of By-law**

If a court of competent jurisdiction declares any subsection, section or part of this By-law invalid, it is the intention of Council that the remainder of the By-law shall continue to be in force.

**PART 12 - REPEALS & ENACTMENTS**

**12.1 By-laws Repealed**

The following by-laws, all as amended, are repealed.

- (i) By-law 81-91 – Town of Ancaster
- (ii) By-law 4459-98 – Town of Dundas
- (iii) By-law 96-582 – Township of Flamborough
- (iv) By-law 500-94 – Township of Glanbrook
- (v) By-law 95-125 – City of Hamilton
- (vi) By-law 4402-96 – City of Stoney Creek

**12.2 By-law in Force**

This By-law shall come into force on the day the Registrar approves it.

**PASSED** this                      day of                      , 20   .

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R. Bratina  
MAYOR

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Rose Caterini  
CITY CLERK

**SCHEDULE A**  
**MONUMENTS, MARKERS AND MAUSOLEA**  
**DELIVERY, INSTALLATION, ALTERATION, REPAIR AND REMOVAL**

**General**

**1.1 Authorization**

The installation of a monument, marker or mausoleum shall be arranged by the Interment Rights Holder or Scattering Rights Holder or their heir or representative with Hamilton Municipal Cemeteries.

**1.2 Contracts and Fees**

Before a monument, marker or mausoleum is installed, all contracts shall be signed and all fees, including fees for the installation of a foundation, paid as required under this By-law and the Tariff of Charges.

**1.3 Foundation/Marker Permit**

A monument, marker or mausoleum shall be delivered to the cemetery with a Foundation/Marker Permit that includes:

- (a) the name and address of the Interment Rights Holder or Scattering Rights Holder or their heir or representative;
- (b) instructions for the placement of the monument, marker or mausoleum;
- (c) for a monument:
  - (i) the height, width and length of the die;
  - (ii) the height, width and length of the base;
  - (iii) the overall size; and
  - (iv) the design and inscription;
- (d) for a marker, the width and length;
- (e) for a mausoleum, a work plan including the building specifications approved in advance by the Director; and
- (f) the fee as required under the Tariff of Charges.

**1.4 Composition**

A monument, marker or mausoleum:

- (a) shall be constructed of granite or other industry standard material that is free from defects affecting durability, provided that where bronze is used:
  - (i) it shall be used only for the fixtures such as doors, window grilles or statuary of mausoleums or for tablets attached to markers;
  - (ii) it shall meet industry standards for bronze; and
  - (iii) its casting shall be true and without any sand-like roughness; and
- (b) shall not be constructed of veneered marble, wood, iron or artificial stone.

**1.5 Inscriptions**

Any inscription on a monument, marker or mausoleum:

- (a) shall be in keeping with the dignity and decorum of the cemetery. If, in the opinion of the Director, an inscription is not in keeping with the dignity and decorum of the cemetery, he or she may have such inscription removed at the cost of the Interment Rights Holder or Scattering Rights Holder or their heir or representative;
- (b) where monuments are located back-to-back, shall not be on the back of a monument; and
- (c) where monuments are not located back-to-back, may be on the back of a monument with the advance, written permission of the Director. In giving or

refusing his or her permission, the Director may consider, amongst other things, the number, size, location and character of existing monuments, markers or mausoleums on the lot and adjoining lots.

**1.6 Time of Installation**

All foundations for monuments and mausoleums shall be installed by the employees or contractors of Hamilton Municipal Cemeteries from April 1 to November 15 of each year and shall not be installed by any other person

**1.7 Alteration**

A monument, marker or mausoleum shall not be altered or removed without the advance, written permission of the Director.

**1.8 Surface Protection**

A monument, marker or mausoleum shall not be installed, altered or removed unless plywood is laid over the ground to protect the surface from damage.

**1.9 Safety**

If, in the opinion of the Director, any monument, marker or mausoleum is or could become hazardous to any person in a cemetery, such monument, marker or mausoleum may be repaired, reset or laid down by the employees or contractors of Hamilton Municipal Cemeteries.

**1.10 Risk**

Any person other than an employee or contractor of Hamilton Municipal Cemeteries installing, altering or removing a monument, marker or mausoleum does so entirely at their own risk, including assuming the risk for any loss of or damage to a monument, marker or mausoleum or any injury to themselves occurring during or after installation or repair.

**Monuments**

**1.11 Monument Delivery**

A monument shall not be delivered to a cemetery for installation unless the foundation has been completed.

**1.12 Monument Installation**

In addition to meeting the applicable requirements of Part 1 of this Schedule:

**Monument Placement**

(a) for a single-grave lot in locations designated by the Director or for a two-grave plot, no more than 1 monument shall be placed at the head of a lot or plot;

**Thickness**

(b) for a monument of a height of 123 centimetres (48 inches) or less, the die shall be no less than 20.50 centimetres (10 inches) thick;

(c) for a monument of a height more than 123 centimetres (48 inches), the die shall be no less than 25.40 centimetres (10 inches) thick;

**Dowels**

(d) a monument shall have dowels made of a non-corrosive material (preferably 300 series stainless steel or bronze) of no less than 1.27 centimetres (1/2 inch) in diameter, 7.63 centimetres (3 inches) in length inserted in a hole no more than .32 centimetres (1/8 inch) larger than the dowel;

- (e) **Bases**  
a monument shall have a base of at least 20.32 centimetres (8 inches) in height, that is wider and longer than the die providing a border of at least 7.6 centimetres (3 inches) on all sides, shall be smooth sawn on the bottom, and shall be no more than 7.6 centimetres (3 inches) from the side lot lines of the grave;
- (f) **Height**  
for a two-grave plot, a monument shall have a height of no more than 122.98 centimetres (48 inches) including the base; a base of no more than 96.52 by 35.56 centimetres (38 by 14 inches);
- (g) **Horizontal Force**  
a monument shall be able to withstand a minimum of 45.36 kilograms (100 pounds) of horizontal force without toppling before caulking;
- (h) **Vertical Joints**  
a monument shall have no exposed vertical joints; and
- (i) **Overall Restriction**  
notwithstanding any other provision of this By-law, a monument shall cover no more than 10 percent of a lot.

## Markers

### 1.13 Time of Installation

Markers shall be delivered to cemeteries for installation between April 1 and November 1 of each year.

### 1.14 Marker Installation

In addition to meeting the applicable requirements of Part I of this Schedule:

#### **Marker Sizes**

- (a) for a lot with no monument, no more than 1 marker shall be placed at the head of a lot and:
- Adult Grave**  
(i) for an adult grave, a marker shall have a surface area of no more than 60.96 by 45.72 centimetres (24 by 18 inches) or 10 percent of the lot, whichever is less;
- Cremation Grave**  
(ii) for a cremation grave, a marker shall have a surface area no more than 30.48 by 24.40 centimetres (12 by 10 inches); and
- Child or Infant Grave**  
(iii) for a child or infant grave, a marker shall have a surface area of no more than 30.48 by 24.40 centimetres (12 by 10 inches) to 45.72 by 35.56 centimetres (18 by 14 inches) depending on the size of the grave;

#### **Marker Sizes for Plots**

- (b) for 2, 3 or 4 grave plots, no more than 1 marker shall be placed at the foot of each grave and the marker shall have a surface area of no more than 60.96 by 45.72 centimetres (24 by 18 inches);

#### **Cornerstones for Plots**

- (c) for 2, 3 or 4 grave plots, no more than 4 cornerstones shall be placed on a plot and each cornerstone shall have a surface area of no more than 15.24 by 15.24 centimetres (6 by 6 inches);

**Set Level**

- (d) a marker shall be flat on top and flush with the ground so that a lawn mower can pass safely over it; and

**Use of Bronze**

- (e) where a marker is bronze:
  - (i) the marker shall be cast with integral bosses on the back as specified by Hamilton Municipal Cemeteries such bosses being capable of receiving anchor lugs, supplied by the dealer, of brass or bronze of .95 centimetres (3/8 inch) in diameter and maximum size of 7.6 centimetres (3 inches) in length; and,
  - (ii) the marker shall be bolted through granite having a surface area of 45.72 by 60.96 centimetres (18 by 24) inches and a thickness of 10.16 centimetres (4 inches).

**Mausolea**

**1.15 Delivery**

In addition to meeting the applicable requirements of Part 1 of this Schedule, a mausoleum shall not be delivered to a cemetery unless:

- (a) a work plan including the building specifications has first been submitted to and approved by the Director;
- (b) the foundation has been completed; and
- (c) the mausoleum has no exposed vertical joints.

**SCHEDULE B**  
**CARE OF LOTS**

**General**

**Risk**

Any person other than an employee or contractor of Hamilton Municipal Cemeteries, including an Interment Rights Holder or Scattering Rights Holder or their heir or representative, caring for a lot does so entirely at their own risk, including assuming the risk for any loss of or damage to an item placed, planted or installed on a lot or attached to a monument or any injury to themselves.

**Restrictions**

Nothing, including but not limited to nails, wire, glass, pottery or a container that retains water, that is or could become hazardous to any person in a cemetery, shall be placed, planted or installed on a lot or attached to a monument, marker or mausolea.

**Cemeteries Operated by the City of Hamilton**

<b>Cemeteries Where City of Hamilton or Predecessor Municipality Shown as Registered Owner</b>						
	<b>Name</b>	<b>Address</b>	<b>PIN</b>	<b>Registered Owner</b>	<b>Cemetery By-law No. (if any)</b>	<b>Further Comments</b>
1.	Auld Kirk	Kirk Road	17382-0046(LT)	The Corporation of the Township of Binbrook	Township of Binbrook Operating By-law No. 1056  Township of Binbrook Assuming By-law No. 1061	Transfer to Township registered as Instrument No. AB276839 on 1972/12/29
2.	Bartonville	2001 King E.	17273-0130 (LT)	The Corporation of the City of Hamilton	Corporation of the City of Hamilton Operating By-law No. 8861  Corporation of the City of Hamilton Operating By-law No. 95-125	Transfer to City registered as Instrument No. AB207033 on 1971/06/01
3	Binbrook Baptist	Binbrook Road	17384-0150 (LT)	The Corporation of the Township of Binbrook	Township of Binbrook Operating By-law No. 1056  Township of Binbrook Assuming by-law No. 1064	Transfer to Township registered as Instrument No. AB276835 on 1972/12/29
4.	Binbrook United	Hwy 56	17384-0192 (LT)	The Corporation of the Township of Binbrook	Township of Binbrook Operating By-law No. 1056  Township of Binbrook Operating By-law 1060	Transfer to Township registered as Instrument No. AB276840 on 1972/12/29
5.	Blackheath United	Haldibrook Rd.	17383-0089 (LT)	The Corporation of the Township of Binbrook	Township of Binbrook Operating By-law No. 1056  Township of Binbrook Assuming By-law 1058	Transfer to Township registered as Instrument No. AB276838 on 1972/12/29
6.	Bowman United	880 Garner Rd E.	17081-0021 (LT)	The Corporation of the Town of Ancaster	Town of Ancaster Assuming By-law No. 77-53	Transfer to Town registered as CD52149 on 1977/06/06  <b>GIS states wrong PIN (17081-0022) for cemetery lands</b>

<b>Cemeteries Where City of Hamilton or Predecessor Municipality Shown as Registered Owner</b>						
	<b>Name</b>	<b>Address</b>	<b>PIN</b>	<b>Registered Owner</b>	<b>Cemetery By-law No. (if any)</b>	<b>Further Comments</b>
7.	Burkholder United	443 & 447 Mohawk Rd. E.	17013-0067 (LT) 17013-0068 (LT)	The Corporation of the City of Hamilton	Corporation of the City of Hamilton Operating By-law No. 8861  Corporation of the City of Hamilton Operating By-law No. 95-125	Transfer to City registered as Instrument No. NS280977 on 1956/02/13
8.	Christ Church Woodburn	Woodburn Rd.	17380-0317 (LT)	The Corporation of the Township of Binbrook	Township of Binbrook Operating By-law No. 1056  Township of Binbrook Assuming By-law No. 1063	Transfer to City registered as Instrument No. AB276836 on 1972/12/29
9.	Cline	73 Upper Centennial Pkwy.	17088-0330 (R)	City of Hamilton	Town of Stoney Creek Operating By-law No. 251-75	Transfer to City registered as VM276841 on 2008/07/07
10.	Copetown	1925 Governors Rd.	17420-0049 (LT)	The Corporation of the Township of Ancaster		Transfer to Township registered as CD20909 on 1976/08/09  PIN as stated on GIS (17420-9501) is incorrect
11.	Eastlawn	2280 Barton St. E.	17296-0001 (LT)	The Corporation of the City of Hamilton	Corporation of the City of Hamilton Operating By-law No. 95-125	Transfer to Township registered as Instrument No. SA23947 on 1928/06/08
12.	Flamborough/Rockton	Old Hwy 8	17555-0026 (LT)	The Corporation of the Township of Flamborough		Transfer to Township registered as Instrument No. CD295899 on 1984/10/23
13.	Fruitland	631 Hwy 8	17350-0054 (R)	The Corporation of the Township of Saltfleet	Township of Saltfleet Assuming By-law No. 701	Transfer to Township registered as Instrument No. SA13596 on 1915/07/16

<b>Cemeteries Where City of Hamilton or Predecessor Municipality Shown as Registered Owner</b>						
	<b>Name</b>	<b>Address</b>	<b>PIN</b>	<b>Registered Owner</b>	<b>Cemetery By-law No. (if any)</b>	<b>Further Comments</b>
14.	Garden Lane	Garden Lane	17583-0095 (LT)	The Corporation of the Town of Flamborough		Transfer to Township registered as Instrument No. VM165535 on 1993/09/30
15.	Glanbrook	4300 Binbrook Rd.	17384-0250 (LT)	The Corporation of the Township of Glanbrook		Transfer to Township registered as Instrument Nos. AB359281 on 1974/12/09; CD422329 on 1987/08/04 And VM101778 On 1991/10/31
16.	Grove	129 York Rd	17584-0308 (LT)	The Corporation of the Town of Dundas	Town of Dundas Operating By-law No. 115	Transfer to Town registered as Instrument No. DN14858 on 1932/06/08
17.	Hannon Free Methodist	1967 Hwy 53	17086-0054 (LT)	The Corporation of the Township of Saltfleet	Township of Saltfleet Assuming By-law No. 701	Transfer to Township registered as Instrument No. AB176517 on 1970/07/27
18.	Harker Lyons	b/w 35 and 41 Forestview Dr.	17471-0225 (LT)	The Corporation of the Town of Dundas	Town of Dundas Assuming By-law No. 2771-75	No Transfer registered
19.	Knox Presbyterian	Binbrook Rd. (west of Hendershot Rd.)	17384-0316 (LT)	The Corporation of the Township of Binbrook	Township of Binbrook Operating By-law No. 1056  Township of Binbrook Assuming By-law No. 1059	Transfer to Township registered as Instrument Nos. AB68663 on 1967/10/11 and AB276837 on 1972/12/29
20.	Mt. Albion	225 Upper Mount Albion Rd.	16933-0046 (LT)	The Corporation of the Township of Saltfleet	Township of Saltfleet Assuming By-law No. 701	Transfer to Township registered as Instrument No. SA13579 on 1915/07/08
21.	Mountview Gardens	735 Hwy 8	17354-0091 (LT)	The Corporation of the City of Stoney Creek	Town of Stoney Creek Operating By-law No. 251-75	No Transfer registered

<b>Cemeteries Where City of Hamilton or Predecessor Municipality Shown as Registered Owner</b>						
	<b>Name</b>	<b>Address</b>	<b>PIN</b>	<b>Registered Owner</b>	<b>Cemetery By-law No. (if any)</b>	<b>Further Comments</b>
22.	Mount Zion	244 Hwy 52	17551-0049 (LT)	The Corporation of the Township of Beverly The Cemetery Board of the Township of Beverly	Township of Flamborough Operating By-law No. 74-76	Transfer to Township registered as Instrument Nos. BV17225 on 1935/08/14; BV17226 on 1935/08/14 And HL271700 on 1964/05/05
23.	Old Union	Osler Dr.	17477-0006 (LT)	The Corporation of the Town of Dundas	Town of Dundas Assuming By-law No. 2771-75	No Transfer Registered
24.	Ryckman Family	1505 Upper James St.	16913-0346 (LT)	The Corporation of the City of Hamilton	Corporation of the City of Hamilton Operating By-law No. 95-125	No Transfer Registered
25.	Smith	155 Rymal Rd. W.	16907-0248 (LT)	The Corporation of the City of Hamilton	Corporation of the City of Hamilton Operating By-law No. 95-125	Transfer to Township registered as Instrument No. AB286460 on 1973/03/30
26.	Smith Knoll Battlefield	70 King St. W.	17305-0224 (LT)	The Corporation of the City of Stoney Creek		No Transfer Registered
27.	St. Albans	758 Old Hwy 8	17555-0243 (LT) and 17555-0026 (LT)  **2 PINS per David Lamont  GIS shows wrong PIN (17555-0242) for cemetery lands	17555-0243 – Margaret Blackburn – see “Further Comments”  17555-0026 – The Corporation of the Township of Flamborough		17555-0243: Registered owner shows as Margaret Blackburn, however Court Order ordering cemetery as abandoned pursuant to s.60 of Cemeteries Act registered as WE65468 on 2001/11/14  17555-0026 – Transfer to Township registered as CD295899 ON 1984/10/23
28.	St. George’s Anglican	1307 Rymal Rd. E.	16930-0050 (LT)	The Corporation of the City of Hamilton	Township of Saltfleet Assuming By-law No. 913	Transfer to Township registered as Instrument No. CD248917 on 1983/06/27

<b>Cemeteries Where City of Hamilton or Predecessor Municipality Shown as Registered Owner</b>						
	<b>Name</b>	<b>Address</b>	<b>PIN</b>	<b>Registered Owner</b>	<b>Cemetery By-law No. (if any)</b>	<b>Further Comments</b>
29.	St. George's	651 Mud St.	17379-0002 (LT)	Municipal Corporation of the Township of Saltfleet	Corporation of the City of Hamilton Operating By-law No. 95-125	Quit Claim Transfer SA23940 on 1928/06/07
30.	St. Paul's Anglican	2869 Hwy 6 (now Upper James)	17395-0005 (LT)	The Corporation of the Township of Glanbrook	Township of Glanbrook Assuming By-law No. 442-91	Transfer to Township registered as Instrument No. VM104174 on 1991/11/26
31.	St. Peter's	550 Mohawk Rd. W.	17032-0022 (LT)	The Corporation of the City of Hamilton	Corporation of the City of Hamilton Operating By-law No. 8861  Corporation of the City of Hamilton Operating By-law No. 95-125	Transfer to Township registered as Instrument No. HL13263 on 1957/06/20
32.	Stoney Creek	2860 King St. E.	17098-0004 (LT)	The Corporation of the City of Hamilton	Corporation of the City of Hamilton Operating By-law No. 8861  Corporation of the City of Hamilton Operating By-law No. 95-125	Transfer to Township registered as Instrument No. AB165312 on 1970/04/03
33.	Swayze	Hwy 56	17385-0115 (LT)	The Corporation of the Township of Binbrook	Township of Binbrook Operating By-law No. 1056  Township of Binbrook Assuming By-law No. 1062	Transfer to Township registered as Instrument No. AB281293 on 1973/02/13
34.	Tapleystown	385 Mud St.	17377-0083 (LT)	The Corporation of the Township of Saltfleet	Township of Saltfleet Assuming By-law No. 701	Transfer to Township registered as Instrument No. SA13588 on 1915/07/12
36.	Trinity Church	12 Trinity Church Rd.	17386-0020 (LT)	The Corporation of the City of Hamilton	Corporation of the City of Hamilton Operating By-law No. 95-125	Transfer to Township registered as Instrument No. AB209185 on 1971/06/17

<b>Cemeteries Where City of Hamilton or Predecessor Municipality Shown as Registered Owner</b>						
	<b>Name</b>	<b>Address</b>	<b>PIN</b>	<b>Registered Owner</b>	<b>Cemetery By-law No. (if any)</b>	<b>Further Comments</b>
36.	Tweedside	1145 Mud St. E.	17379-0132 (LT)	The Corporation of the City of Stoney Creek	Town of Stoney Creek Operating By-law 251-75	Transfer to Township registered as Instrument Nos. SA13587 on 1915/07/12 And CD500143 on 1989/03/31
37.	Union Cemetery	Margaret St. from Hwy 5, Waterdown	17506-0219 (LT)	The Corporation of the Village of Waterdown		Not listed at all on GIS as a cemetery
38.	Winona (Fifty)	1465 Hwy 8	17371-0034 (LT)	The Corporation of the Township of Saltfleet	Township of Saltfleet Assuming By-law No. 701	Transfer to Township registered as Instrument No. SA13576 on 1915/07/08
39.	Young Family	1541 Upper Wellington	16916-0236 (LT)	The Corporation of the City of Hamilton		No Transfer Registered

**Cemeteries in Land Titles Where City of Hamilton NOT Shown as Registered Owner**

	<b>Name</b>	<b>Address</b>	<b>PIN</b>	<b>Registered Owner</b>	<b>Cemetery By-law No. (if any)</b>	<b>Further Comments</b>
40.	Barton Stone	21 Stone Church Rd. W.	16912-0049 (LT)	Trustees of the Barton Stone United Church	Corporation of the City of Hamilton Operating By-law No. 95-125	
41.	Bethel	4413 Powerline Rd. W.	17407-0026 (LT)	Davidson, Theresa Marie Barrie, Brian William		PIN taken from GIS – may not be as accurate as unable to get info just for cemetery lands – seems to include parcel of land abutting cemetery lands
42.	Binkley (Marx)	Lakelet Dr. & Binkley Cres.	17474-0098 (LT)	Binkley, Norman George Borer, Gladys Thayer	Corporation of the City of Hamilton Operating By-law No. 95-125	
43.	Binkley Hollow (Henry)	Desjardins Ave.	17475-0024 (LT)	Grant, Donald A.		
44.	Book/Parkin	Book Rd. E., (n/s)	17313-0065 (LT)	Siwsscan Developments Inc., & Duck's Landing Inc.		
45.	Felker	120 Mud St. W.	17091-0065 (LT)	Felker, Frederick	Township of Saltfleet Assuming By-law No. 1513	
46.	Garners Corner	Southcote Rd.	17414-0476 (LT)	Trustees of the Canadian Wesleyan and Methodists		
47.	Jerseyville	Field Rd.	17409-0095 (LT)	Trustees of the Jerseyville Methodist Church		
48.	Lamb	s/s of Hwy 8 (east of Sheffield)	17540-0004 (LT)	Sobisch, Edwin Sobisch, Louis Sobisch, August	Township of Flamborough Assuming By-law No. 83-88-C	
49.	Lynden	Lynden Rd.	17408-0003 (LT)	Trustees for the Methodist Episcopal Church in Canada		
50.	Myers / Bradshaw	1910 Book Rd. W.	17405-0085 (LT)	Moffat, Walter John Moffat, Eunice Marie Moffat, John Leslie	Town of Ancaster By-law No. 81-59 authorizing execution of Quit Claim Deed for Bradshaw Cemetery	PIN taken from GIS – may not be accurate as unable to get info just for cemetery lands – seems to include parcel of land abutting cemetery lands

**Cemeteries in Land Titles Where City of Hamilton NOT Shown as Registered Owner**

**Cemeteries Where City of Hamilton or Predecessor Municipality Shown as Registered Owner**

	<b>Name</b>	<b>Address</b>	<b>PIN</b>	<b>Registered Owner</b>	<b>Cemetery By-law No. (if any)</b>	<b>Further Comments</b>
51.	Nisbet-Van Sickle	Lynden Rd.	17557-0102 (LT)	Samuel J. Atkin, Trustee of the Heirs of Benoni Vansickle		By-law No. HL104092 registered on more than 1000 properties – not specific to the cemetery lands
52.	Troy	2175 Hwy 5 W.	17556-0133 (LT)	Mulholland, Hugh Stenabough, Joseph Sager, Malich Trustees for a Cemetery Clement, Emerson Mulholland, George A. Misener, Nicholas Trustees of a Public Cemetery or Burying Ground		By-law No. HL104092 registered on more than 1000 properties – not specific to the cemetery lands
53.	Van Dusen	216 Upper Mount Albion	17094-0002 (LT)	Vandusen, Robert (Estate) Vandusen, Ann	Town of Stoney Creek Assuming By-law No. 160-75	Assumed by Town pursuant to Section 62 of Cemetery Act, R.S.O. 1970, Chapter 57
54.	West Flamborough Presbyterian	Hwy 8 & Middleton Rd.	17490-0056 (LT)	The Trustees of West Flamborough Presbyterian Church		
55.	Westover United Church	1368 6 <sup>th</sup> Concession Rd. W.	17542-0016 (LT)	The Trustees of the Methodist Episcopal Church in Canada		
56.	White Church	White Church Rd.	17400-0169 (LT)	The Trustees of Glanford Congregation of the Wesleyan Methodist Church in Canada The Trustees of the Congregation of the Wesleyan Methodist Church in Canada Trustees of the Wesleyan Methodist Church in Canada	Township of Glanbrook Operating By-law No. 153-78	

<b>Cemeteries Where Owner Cannot Be Determined With Certainty</b>						
	<b>Name</b>	<b>Address</b>	<b>PIN</b>	<b>Registered Owner</b>	<b>Cemetery By-law No. (if any)</b>	<b>Further Comments</b>
57.	Carlisle Anglican	Carlisle Rd.	17519-0020 (R)	Not able to tell by PIN abstract		
58.	Dyment	Governors Rd.	17409-0032 (R)	Ashlee Farms Limited		
59.	File / Patterson	Vanderlip Rd.	17405-0108 (R)	Not able to tell by PIN abstract		
60.	Hamilton	655 York Blvd.	17592-0001 (R)	Not able to tell by PIN abstract  By-law registered as VM247767 on 2000/03/29 re: <i>NO. 99-167 – TO DESIGNATE 777 YORK BOULEVARD AS HISTORIC &amp; ARCHITECTURAL VALUE &amp; INTEREST</i>	Corporation of the City of Hamilton Operating By-law No. 53  Corporation of the City of Hamilton Operating By-law 95-125	GIS has no info for this cemetery
61.	Hopkins	s/s of York Rd. (b/w Old Guelph Rd. and Hwy 6 N.)	17495-0082 (R)	Not able to tell by PIN abstract		R-Plan registered as 62R-8981 – No Transfer registered
62.	Mount Hamilton	260 Ryman Rd.	GIS has no info for this cemetery to do title search		Corporation of the City of Hamilton Operating By-law No. 95.125	
63.	North Glanford	Dickenson Rd.	17398-0229 (R)	Not able to tell by PIN abstract	Township of Glanbrook Operating By-law No. 153-78	
64.	Salem	Salem Rd.	17399-0217 (R)	Trustees of the Methodist Episcopal Church	Township of Glanbrook Operating By-law No. 153-78	Township of Glanbrook By-law No. 386-89 states this Cemetery was taken over by Township in accordance with Section 62 of Cemeteries Act, R.S.O. 1980, Chapter 59 ( <i>but it was not being assumed by this by-law</i> )

<b>Cemeteries Where Owner Cannot Be Determined With Certainty</b>						
	<b>Name</b>	<b>Address</b>	<b>PIN</b>	<b>Registered Owner</b>	<b>Cemetery By-law No. (if any)</b>	<b>Further Comments</b>
65.	Sheffield	e/s of Seaton Rd.	17538-0002 (R)	Not able to tell by PIN abstract		
66.	West Flamborough	Hwy 8	17491-0140 (R)	The Incumbent and Church Wardens of Christ Church		
67.	Woodland	700 Spring Garden Rd.	17130-0012 (R)  **PIN provided by David Lamont	Not able to tell by PIN abstract	Corporation of the City of Hamilton Operating By-law No. 8861  Corporation of the City of Hamilton Operating By-law No. 95-125	GIS has no info for this cemetery