

The Corporation of the Town of Essex

By-Law Number 1812

Being a by-law respecting the maintenance, management, regulation and control of any cemetery owned or operated by The Corporation of the Town of Essex

Whereas, the Corporation of the Town of Essex (the "Town") is the owner or operator of certain cemeteries within the boundaries of the Town as listed in Schedule "C" attached hereto and forming part of this By-Law (the "Cemeteries");

And Whereas section 151(1) of the Regulations provides that no cemetery by-law is effective until the cemetery operator has filed it with the registrar appointed under section 3 of the Act (the "Registrar") in an approved form and manner; provided notice of the filing in accordance with subsection 151(3) of the Regulations; and the Registrar has approved it;

And Whereas Section 150 of the Funeral, Burial and Cremation Services Act, 2002 permits the owner to make by-laws affecting the operation of the cemetery upon approval of the Registrar, Bereavement Authority of Ontario;

And Whereas Council deems it necessary to update the rules and regulations pertaining to cemetery lots and services;

Now therefore the Council of the Corporation of the Town of Essex enacts as follows:

1. That the Corporation of the Town of Essex shall maintain, manage, regulate and control the cemeteries it presently owns and that the regulations attached hereto as Schedule "A" and forming part of this By-Law shall apply to the said cemeteries;
2. That the Tariff of Rates attached hereto as Schedule "B" (as may be amended from time to time) and forming part of this By-Law shall apply to the said cemeteries;
3. This By-Law shall come into effect upon approval by the Bereavement Authority of Ontario and upon third and final reading; and
4. Whereas it is expedient to hereby repeal By-Law 1186 and any amendments thereto.

Read a first and a second and provisionally adopted on July 20, 2020.



Mayor



Clerk

Read a third time and finally passed on November 20, 2020



Mayor



Clerk

By-Law 1812
Schedule "A"
Cemetery Regulations

These by-laws are the rules and regulations that govern the Town of Essex and its cemeteries and which have been approved by the Registrar, *Funeral, Burial and Cremation Services Act, 2002* (FBCSA), Bereavement Authority of Ontario (BAO). This by-law and all procedures will comply with the FBCSA and O. Reg. 30/11 and 184/12 which may be amended periodically.

Part I. Preamble and Defined Terms

Short Title

1. This by-law may be referred to as the "Cemetery By-Law"

Purpose

2. This by-law has been enacted to establish a policy and procedures regulating the management and control of the Town of Essex Cemeteries as listed in Schedule C.

Heading

3. 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

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

Interpretation

5. For the purposes of this by-law:

Burial/Interment. The opening of a lot and then the placing of dead human remains and cremated human remains in that lot, followed by closing the lot. The lot may be in a grave in the ground, a crypt in the ground, a crypt in a mausoleum or a niche in a columbarium.

Care and Maintenance Fund. It is a requirement under the FBCSA and O. Reg. 30/11 and 184/12 that a prescribed amount or 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.

Caretaker. The person who maintains the cemetery grounds, opens and closes graves; and represents the municipality for all interments in accordance with By-Law 1804.

Cemetery Manager. The Clerk or his/her designate appointed to oversee the operations of the cemeteries.

Cemetery Operator. The Corporation of the Town of Essex. Municipal office is located at 33 Talbot Street South, Essex, Ontario. N8M 1A8 (the "Corporation" or the "Town").

Columbarium. A structure designed for the inurnment of cremated human remains in sealed compartments above ground.

Contract. For purposes of this by-law, all purchasers of interment or scattering rights, or other cemetery supplies and services must receive a copy of the contract they and the cemetery operator have both signed detailing the rights and obligations of both parties, and

acknowledging receipt and acceptance of the cemetery by-laws, a copy of the Consumer Information Guide and the Price List.

Corner Posts/Marker. Any stone or other land markers which shall be set flush with the surface of the ground and used to indicate the location of a lot or plot.

Cremated Remains. The residue after cremation of the body or the casket or container in which it was received.

Disinterment. The removal of human remains or cremated human remains.

Enforcement Officer. A police officer or an employee of the Corporation who has been designated as a municipal by-law enforcement officer by by-law.

Foundation. The below-ground concrete structure upon which rests the base of stone of a monument.

Grave. (Also known as a Lot) Any in-ground burial space intended for the interment of a child, adult or cremated human remains.

Interment Rights. The right to require or direct the interment of human remains or cremated human remains in a grave, lot, niche, or crypt and to authorize the installation of a monument or marker.

Interment Rights Certificate. The document issued by the cemetery operator to the purchaser once the interment rights to a specific lot have been paid in full, identifying ownership and authority over those specific interment rights.

Interment Rights Holder. The person(s) authorized or entitled to inter human remains in a specified lot. They may be the person named in the Interment Rights Certificate or such other person to whom the rights have been assigned.

Inurnment. The placing of cremated human remains in a niche.

Lot. For the purposes of this By-Law, a lot is a single grave space.

Monument/Marker. Shall mean any permanent memorial structure – monument, plaque, headstone, cornerstone or other structure or ornament affixed 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 and may be used to indicate the location of a burial.

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

Plot. For the purposes of this By-Law, a plot means two or more lots in respect of which the rights to inter have been sold as a unit.

Trust Funds. The funds in which a trustee may invest, which are defined in the *Trustee Act, R.S.O. 1980*.

Urn. Any container used to hold cremated remains.

Scope

6. This by-law shall apply to all activities, business, interments, inurnments, Cemetery staff and all persons visiting the Cemetery.

Part II. Cemetery Rules

General

7. The Town reserves full and complete control and management of the land, buildings, plantings, roads, utilities, books and records of its cemeteries and complete authority to administer this By-Law in accordance with the Act.
8. The Clerk shall be authorized to execute on behalf of the Town, those documents necessary to undertake the daily operations of its cemeteries.
9. The purchase of interment rights for the sole purpose of reselling the rights to make a profit i.e. financial gain, is prohibited.
10. The Corporation recommends interment rights holders to bequeath their plots and to reference their plot number in their will. Rights holders, or their legal heirs or representatives, only are allowed to sign for any interment in the plot. In the event of the death of a rights owner, the Corporation will require that letters of probate, of administration or other sufficient proof of inheritance be submitted to the Corporation by the estate of the deceased before the Ownership of the Rights is assigned or transferred to any beneficiary, heir or next of kin of the deceased Rights Owner.
11. No person shall disturb the quiet or good order of the cemetery with excessive noise or other nuisance or inappropriate conduct. Persons causing such a disturbance may be expelled from the ground.
12. No person shall cause any litter, refuse, wrapper, container, waste or garbage to be thrown out on roads, walks or any part of the cemetery grounds.
13. No person shall possess any alcoholic beverage on cemetery property.
14. The Town reserves full control over the cemetery operations and management of land within the cemetery grounds.
15. The Town will not be held liable for any loss or damage, without limitation (including damage by the elements, Act of God, or vandals) to, any lot, plot, columbarium niche, monument, marker, or other article that has been placed in relation to an interment right, save and except for direct loss or damage caused by gross negligence of the cemetery.
16. Children under the age of 12 years of age are not admitted to the grounds, except in the charge of an adult, who shall remain responsible for their good conduct and shall see that they do not run over lots and graves.
17. Parades and Processions. No person shall, within a cemetery take part in any parade or procession, except a funeral procession unless approved by the Caretaker.
18. All persons are prohibited from writing upon, defacing or injuring any monument, marker, fence, or other structure in or belonging to the cemetery or from making any paths or short cuts across any part of the cemetery.

Visitation Times

19. Cemeteries are open for visitation from dawn to dusk or otherwise by appointment.

By-Law Amendments

20. The cemetery shall be governed by these by-laws, and all procedures will comply with the Funeral, Burial and Cremation Services Act and O. Reg. 30/11 and 184/12, which may be amended periodically.
21. Any By-law amendments must be:
 - a. Published once in a newspaper with general circulation in the locality in which the cemetery is located;
 - b. Conspicuously posted on a sign at the entrance of the cemetery; and
 - c. Delivered to each supplier of markers who has delivered a marker to the cemetery during the previous year, if the by-law or by-law amendment pertains to markers or their installation.

22. All by-laws and by-law amendments are subject to the approval of the Registrar, FBCSA, and Bereavement Authority of Ontario.

Vehicular Parking and Traffic

23. Vehicles within a cemetery shall not be driven at a speed of more than 10 (ten) kilometers per hour, or elsewhere than upon the roadways provided for vehicles. Owners of vehicles and their drivers shall be held responsible for any damage done by them.

Lot Alteration

24. Without written authorization from Cemetery staff, no person shall:
- a. Change the grade of a lot;
 - b. Cut any sod;
 - c. Move corner posts, markers or monuments; or
 - d. Remove any flower, shrub or planter from a lot other than their own.
25. In the event that a person alters a lot contrary to section 22 of this by-law, the cost of any work undertaken by Cemetery staff to restore the lot to its original condition shall be paid for by the person who contravened section 22 or the owner of the lot.

Staff Exempt

26. While performing the duties of their job, Cemetery staff are exempt from Part 2 of this by-law.

Part III. Interment Rights

Sale by Town

27. The Town may sell Interment Rights for lots for a fee prescribed by Schedule A: Tariff of Rates of this By-law.
28. The payment of all fees owed to the Town shall be made directly to the Town.
29. Extra depth Interment rights shall no longer be sold.
30. All person purchasing Interment Rights shall be required to sign a contract with the Town agreeing to follow all obligations of an Interment Rights Holder and all policies, rules and regulations of the Cemetery.

Notice of Resale and Transfer of Interment Rights

31. The Town of Essex permits the Interment rights holder to sell or transfer their interment rights to a third party, as at no more than the current price listed on the cemetery price list, so long as the sale or transfer is conducted through the cemetery operator and the interment rights holder and purchaser meet the qualifications and requirements as outlined in the Town of Essex By-Laws.
32. The interment rights holder(s) who intends to sell their rights shall provide the following documents to the cemetery operator so that the operator can be satisfied with the authority and identity of the seller, confirm the ownership of the rights and provide the third-party purchaser with the required certificate etc.:
- a. An interment rights certificate endorsed by the current rights holder.
 - b. A written statement of the number of lots that have been used in the plot and the number of lots that remain available.
 - c. Any other documentation in the interment rights holder(s) possession relating to the rights.
33. The original Interment Rights Certificate that was issued to the interment rights holder(s) must be returned.

34. A new Interment Rights Certificate will be issued to the third party purchaser upon receiving the transfer fee and registration of the transfer.
35. The cemetery operator will require:
- a. A statement signed by the rights holder(s) selling the interment rights acknowledging the sale of the interment rights to the third-party purchaser.
 - b. Require confirmation that the person selling the interment rights is the person registered in the cemetery records and that they have the right to re-sell the interment rights.
 - c. Record the date of transfer of the interment rights of the third party.
 - d. The name and address of the third-party purchaser(s).
 - e. A statement of any money owing to the cemetery operator in respect to the interment rights.
36. Once the endorsed certificate and all required authorization and information has been received by the cemetery operator from the rights holder(s), the cemetery operator will issue a new interment rights certificate to the third-party purchaser.
37. Upon completion of the above listed procedures, and upon the issuance of the new interment rights certificate, the third-party purchaser(s) or transferee(s) shall be considered the current interment rights holder(s) of the interment rights, and the resale or transfer of the interment rights shall be considered final in accordance with the cemetery by-laws and the FBCSA.

Rights and Privileges

38. The purchase of interment rights in accordance with this by-law:
- a. May be at any time prior to need or use;
 - b. Provides the purchaser with the right and privilege to:
 - i. The interment of human remains; and
 - ii. Install monuments or markers, subject to the provisions of this by-law.
39. The purchase of Interment Rights in accordance with this by-law, does not permit the Interment Rights Holder to:
- a. Resell any Interment Rights which have been used; and
 - b. Sub-divide any Interment Rights.
40. If any portion of the interment rights has been exercised, the purchaser or the interment rights holder(s) are not entitled to cancel the contract or re-sell the interment rights.
41. The purchase of interment rights is not a purchase of Real Estate or real property.
42. Pets or other lower animals, including cremated animal remains, are not allowed to be buried on cemetery grounds.

Service Fees

43. The sale of Interment Rights by the Town shall include:
- a. Conducting an interment;
 - b. Mowing and trimming of the grass in the cemetery and around monument and markers;
 - c. Refilling of sunken lots; and
 - d. General upkeep of lots conducted at the discretion of the Caretaker.
44. Schedule A: Tariff of Rates may prescribe additional fees for:
- a. Care and maintenance and Interment services where Interment Rights have been sold without said provisions;
 - b. Interments conducted on weekends or statutory holidays; and
 - c. Other requested services which are performed by the Caretaker.

Cancellation of Interment Rights within 30 Day Cooling Off Period

45. A purchaser has the right to cancel an interment rights contract within thirty (30) days of signing the interment rights contract, by providing written notice of the cancellation to the cemetery operator.
46. The Interment Rights Certificate shall be returned to the Town along with the written notification of cancellation.
47. Within 30 days of receipt of the written notice of cancellation, the Town shall refund to the purchaser all money received under the contract, any income earned on that money and any other amount prescribed by law.
48. If a portion of the Interment Rights has been exercised, no cancellation or refund will be permitted.

Interment Documentation Proof Required

49. The Town has the authority to make decisions regarding situations which do not clearly fall within one of the fact situations described in this document.
50. Where there is more than one owner of interment rights, the required proof must be obtained in relation to each Registered Interment Rights Holder.
51. All documents must be original documents, and retained by the Municipality, save for a Certificate of Appointment of Estate Trustee, where the original must be viewed by the staff and a copy retained and initialed by staff after review of the original.
52. Where a letter of permission has been submitted by an original Interment Rights Holder, that letter of permission continues to be binding and enforceable unless revoked by the original Registered Interment Rights Holder. A subsequent individual who becomes an Interment Rights Holder by virtue of this policy, does not have authority to revoke an existing letter of permission.
53. If, despite individuals being able to meet the proof required by the Town, another person or person assert(s) a right to the interment rights or raises an objection to the Cemetery staff regarding the proof being provided, the matter must be referred to the Town.
54. The Town of Essex may require an indemnity agreement be provided by anyone other than the Registered Interment Rights Holder at any time.
55. The interment rights holder(s) must provide written authorization prior to burial taking place. Should the interment rights holder(s) be deceased, authorization must be provided in writing by the person authorized to act on behalf of the interment rights holder(s) in keeping with the *Succession Law Reform Act* i.e. Personal Representative, Estate Trustee, Executor or next of kin.
56. In accordance with the FBCSA and O. Reg. 30/11 and 184/12 the purchaser of interment rights must enter into a cemetery contract, providing such information as may be required by the cemetery operator for the completion of the contract and the public register prior to each burial of human remains or cremated human remains.

Part IV. Interment Procedures

Conditions Required Prior to Interment

57. The Caretaker shall be in attendance at each Interment and Disinterment.
58. Prior to conducting any Interment, all of the following preconditions shall be met:
 - a. Notice given to Caretaker at least three (3) business days prior to the proposed Interment;
 - b. Submission of the Burial Permit or Cremation Certificate to the Town;
 - c. Submission of the Interment Request/Authorization and Payment form;
 - d. Payment of all fees and service charges owed to the Town;

- e. Verification that all caskets, cement vaults/liners (where required) and urns will fit the Interment space provided; and
- f. Written authorization from the Interment Rights Holder to proceed and confirmation of purchase of Interment Rights by:
 - i. a executed Interment Rights Certificate (Deed) and contract indicating the rightful owner of the Interment Rights; or
 - ii. such other documentation reasonably required by the Town.
- g. Where orders are given by telephone for interment, the Town will not be responsible for any errors or misunderstanding that may arise.

Public Register

59. Section 110 of Ontario Regulation 30/11 requires all cemeteries to maintain a public register that is available to the public during regular business hours.

Right to Re-Survey

60. The municipality has the right at any time to re-survey, enlarge, diminish, re-plot, change or remove planting, grade, close pathways or roads, alter in shape or size, or otherwise change alter any part of the cemetery, subject to approval of the appropriate authorities.

Ownership of Lots

Charges

- 61. All prices for cemetery lots and services shall be as set out in the most recent Schedule B: Tariff of Rates. Prices for lots shall include the applicable portion for deposit to the cemeteries Care and Maintenance Fund.
- 62. Unless the full purchase price of the contract is paid in full within 30 days after the application for purchase is made, the contract shall be null and void and no further effect and all monies paid by the applicant shall be refunded by the Corporation unless other satisfactory arrangements have been approved by the Town.
- 63. The deposit to Care and Maintenance Fund shall be as specified in the regulations made under the *Funeral, Burial and Cremation Services Act, 2002*:
 - a. In the case of an in-ground grave that is 2.23 square metres or 24 square feet or larger, the greater of 40 per cent of the price of the interment rights as set out in the price list and \$250;
 - b. In the case of an in-ground grave that is smaller than 2.23 square metres or 24 square feet, the greater of 40 per cent of the price of the interment rights as set out in the price list and \$150;
 - c. In the case of a tomb, crypt or compartment in a public mausoleum, the greater of 20 per cent of the price of the interment rights as set out on the price list and \$500;
 - d. In the case of a niche or compartment in a public columbarium, the greater of 15 per cent of the price of the interment rights as set out on the price list and \$100;
 - e. In the case of a scattering ground for which there will be only one scattering rights holder, the greater of 40 per cent of the price of the scattering rights as set out on the price list and \$100;
 - f. In the case of a scattering ground for which there will be more than one scattering rights holder, the greater of 15 per cent of the price of the scattering rights as set out on the price list and \$25;
 - g. In the case of a scattering ground for which there will be no scattering rights holder, \$25.

64. In accordance with Section 30 of the *Act* and Regulations, a prescribed amount shall be paid into the Care and Maintenance Fund of the cemetery upon the installation of a marker;
- a. \$0, in the case of a flat marker measuring less than 1,116.13 square centimeters (173 square inches);
 - b. \$50, in the case of a flat marker measuring at least 1,116.13 square centimeters (173 square inches);
 - c. \$100, in the case of an upright marker measuring 1.22 meters (four feet) or less in height and 1.22 meters (four feet) or less in length, including the base;
 - d. \$200, in the case of an upright marker measuring more than 1.22 meters (four feet) in either height or length, including the base.

Interment (Burial) Rights

65. Interment Rights (lot/plot) may be sold only by the Town or an appointed designate.
66. Right holders are required to provide timely written advisement to the Town of a change of mailing address.
67. The Town shall provide each right (lot/plot) owner at the time of the same with a copy of the Contract.
68. No interment will be made until payment in full is received. Once payment in full is made, the Certificate of Interment Rights will be issued.
69. An interment is not permitted without the approval of the Town and only after the Caretaker conducts an on-site meeting and completes in full and submits the appropriate forms.
70. In the event the rights holder(s) no longer possess the Certificate of Interment Rights, a new may be issued for a nominal fee as shown on Schedule A: Tariff of Rates.
71. No interment will be made without the written permission of the rights holder or his/her authorized representative. The Town reserves the right to request documentation to verify identity.
72. The Caretaker of the cemetery or designate, shall be in attendance at each interment.
73. A burial permit issued by the Division Registrar or cremation certificate, showing that a death has been registered, shall be deposited with the Town or Caretaker before an interment shall be permitted.
74. No interment will be permitted in a lot on which care and maintenance has not been paid. There is a one-time care and maintenance charge for lots purchased prior to January 1, 1955.
75. No interment will be permitted in a lot without the written order of the lot owner or if more than one joint owner, one of them, or the legal representative of the lot owner, showing the exact location of the grave on the lot.
76. At least 3 days (seventy-two hours) (excluding weekends and holidays) notice shall be given to the Caretaker during business hours, of the date and time desired for a burial and unless such notice is in writing using the prescribed form, the Town shall not be responsible for errors.
77. No interment shall be made on Sunday or holiday except on a Medical Certificate that burial must be made within twenty-four (24) hours of death, in accordance with the regulations of the Ontario Ministry of Health for the control of communicable diseases.
78. No funeral shall be permitted in a cemetery except between the hours of 10:00 in the forenoon and 5:00 in the afternoon. No interment/inurnment shall commence after 2:00 in the afternoon.
79. Funeral corteges in the cemetery shall follow the route indicated by the Caretaker.
80. The Caretaker shall have the authority to restrict the number and kind of vehicles and the roadways, which may be used within the cemetery.

81. Only one (1) non-cremated interment shall be permitted in a grave (except in the case of a mother/father and infant or two children in one casket) and the ashes of two (2) persons or the ashes of three (3) persons (subject to availability of space in the lot). The Interment Rights Holder can pre-authorize who will be buried in each lot using the Grave Allocation Form.
82. Human remains may be disinterred from a lot provided that the written consent (authorization) of the interment rights holder has been received by the cemetery operator and the prior notification of the medical officer of health. A certificate from the local medical officer of health must be received at the cemetery office before the removal of casketed human remains from the cemetery may take place. A certificate from the local medical officer of health is not required for the disinterment of cremated remains from a lot or the removal of cremated remains from the cemetery.
83. No interment shall be permitted in any lot against which charges are due and unpaid.
84. Charges for interments and disinterments shall be in accordance with the tariff as filed with the Ministry.
85. The Town, in its sole discretion, may remove from the Cemetery, Lot or Plot:
- a. Anything that is not authorized under this By-Law;
 - b. Any article that may not be left on a Lot or Plot after a certain date if that date has passed;
 - c. Any article that is not cared for or maintained, including, but not limited to dead plants or flowers and pots or urns not filled with plants or flowers;
 - d. Any trees or shrubs situated in any Lot or Plot that have become, by means of their roots or branches or in any other way detrimental to the adjacent Lot, drains, roads or walks, or prejudicial to the general appearance of the grounds or inconvenient to the public; and
 - e. Any article, such as nails, wires, glass, or pottery, which is detrimental to efficient maintenance or constitutes a hazard to machinery, employees or visitors, or does not conform with the natural beauty or design of the Cemetery.

Replacement of Interment Rights Certificate or Deed

86. In the event that the Interment Rights Certificate and/or Deed have been misplaced, the rights holder(s) can apply for a replacement.
87. The Town shall require proof of identity and other document as deemed necessary to satisfy the Town that the application is entitled to the Interment Rights and/or Deed.
88. In the event that the rights holder(s) has died, the future interest in the interment rights then automatically go to the remaining surviving owners.
89. When the last surviving Rights Holder dies, his or her estate must be cleared with the Town as follows:
- a. If the death occurred within the last 3 years and there is a Will, the Executor (or co-Executors) will have signing authority for the interment rights until the estate has been probated and distributed, or the third anniversary of the date of death, whichever comes first.
 - b. After 3 years or if there is no Will, succession laws apply and any new rights holders (minimum of 18 years of age) will be established at no charge in the following order:
 - i. Children – if no children, then
 - ii. Grandchildren – if no grandchildren, then
 - iii. Great-Grandchildren – if no great-grandchildren, then
 - iv. Parent – if no parents, then
 - v. Brothers and Sisters – if no brothers and sisters, then
 - vi. Grandparents – if no grandparents, then

vii. Aunts, Uncles, Nieces, Nephews.

90. The Town reserves the right to require rights holder(s) to sign an affidavit declaring their interest.

Columbariums

91. Each niche may hold one single, two single or one double container of remains.
92. Interior dimensions of a niche are 12"x12"x12".
93. Urns or containers placed in a niche must be made of a solid substance such as plastic, marble, pewter or ceramic. Wooden or cardboard containers are not permitted.
94. No person shall place any mementos of monetary value in the niche.
95. Only authorized staff may open and seal niches for inurnments.
96. Payment in full must be made before an inurnment may take place.
97. Any person or company contracted to place an inscription on the face of the columbarium niche must:
- c. Have approval by the Town prior to installation
 - d. All lettering shall be chiselled
 - e. Painted lettering will not be permitted
 - f. The removal of the face plate for lettering must not be for a period of longer than three (3) days, Monday to Friday, inclusive.
 - g. No person other than cemetery staff shall remove or alter niche fronts.
98. No disinurnment shall be allowed without the prior approval of the Town.

Care of Lots

99. No fence, coping, ditching, hedge, iron trellis, post, chain, railing, step, boxing, border, stone or stone chips, shells, toys, wire arches, watering pots, crockery, glassware or other objects, advertisements in any form, a vehicle of any character, glass case, covering, box containing artificial wreath or enclosure of any kind shall be put or placed upon any lot. Grave mounds will not be allowed and shall not be raised above the established grade.
100. The Municipality and/or the Caretaker will not be held liable for any damage to unauthorized articles near the markers.
101. Upon special days such as Easter Sunday, Mother's Day, Victoria Day, Christmas Day, baskets of cut flowers and potted plants will be permitted but must be removed before they become withered, soiled or unsightly. In case of the failure of the owner of any lot to remove such flowers or other unsightly objects, the Caretaker shall have the right to remove it.
102. Artificial wreaths standing not more than eighteen (18) inches around the ground and grave blankets are allowed during the winter season only and must be removed by April 1st. In case of the failure of the owner to remove wreaths or blankets by such date, the Caretaker shall have the right to remove it.
103. No flowers shall be planted on any lot at any time. Only portable containers, which may be moved for maintenance purposes will be permitted with one container per lot. If the owner fails to remove it before they become withered or unsightly, the Caretaker shall have the authority to remove them.
104. Hereafter no trees, shrubbery or plants shall be planted on any lot. Only the Caretaker, acting in the best interest of the cemetery, shall have the authority to prune, remove or transplant any tree, shrub, plant or anything upon any lot when it may be deemed necessary or advisable.
105. No person shall change the grading of a lot, cut any sod or remove any corner post or markers in the cemetery.

Use of Lots

106. The Certificate of Interment Rights on a lot or single grave shall convey only the right of burial of human remains therein and of erecting a monument or marker and such rights shall be subject to the provisions of the *Funeral, Burial and Cremation Services Act, 2002*, the regulations thereunder and of the regulations all as amended from time to time.
107. No interment will be made without the written permission of the rights holder or his/her authorized representative.
108. The Council or Caretaker shall not be responsible for loss or damage to any portable articles left upon any lot or grave.

Sale of Unused Portion of Lots

109. Where no interment has been made in a plot for more than twenty (20) years, the cemetery operator may apply pursuant to the provisions of Section 49 and 50 of the *Funeral, Burial and Cremation Services Act, 2002* for a declaration of abandonment and upon receipt of same, may sell the abandoned interment rights and apply the proceeds as therein authorized.

Monuments and Markers

110. No monument shall be permitted to be erected in the Colchester Memorial Cemetery and every memorial shall be the type defined as "marker".
111. No marker shall be erected or permitted on a lot until accrued charges have been paid in full.
112. Marker to be erected by or for lot owners shall be set upon adequate concrete bases. The upper surface of the foundation shall extend four (4) inches beyond monument base on all sides and be flush with the ground.
113. Not more than one marker shall be installed on any one lot and this must be placed in the space reserve for it. Typically this is at the head of the grave.
114. All markers shall be constructed of bronze or granite. The bottom bed of all bases and markers shall be cut level and true.
115. No inscription shall be placed on any marker, which in the opinion of the Town, is not in keeping with the dignity and decorum of the cemetery.
116. Marker or footstone of bronze or granite are permitted but must not exceed twelve (12) by eighteen (18) inches with a depth of three (3) to five (5) inches. The upper surface must be flat with no projections and shall be set level with the ground surface. All markers must be approved by the Caretaker.
117. The owner may on the receipt of his/her deed, at his/her own expense, place bronze, stone or concrete land marks between six (6) and seven (7) inches square and not less than six (6) inches deep, dressed on all sides and bearing the lot and section number legibly and permanently marked thereon at the corner of the lot or lots conveyed to him, such posts to be planted flush with the ground. The Caretaker must approve these.
118. The following specifications for foundations must be observed. The pillow slant markers, the foundation must be a concrete base four (4) inches thick, with a five (5) inch border around the marker and have a six (6) inch diameter concrete pylon from the foundation to the top of the vault or casket. Two (2) re-enforced steel bars approximately 24" deep and 6" in width on the outer ends of the foundation must be installed.
119. For upright markers, the foundation must be three (3) feet deep of concrete and no longer than thirty-eight (38) inches for a single lot and seventy-six (76) inches for a double lot.

120. If any marker, or any inscription placed in or upon any lot and is to be determined by the Town to be offensive or improper, the Town may enter the lot and remove the said offensive or improper object(s).
121. When any marker, gravestone or memorial of any kind is to be removed or any inscription made or cleaning done, permission shall be obtained from the Caretaker. A request from the owner of a lot shall make permission in writing, with a description of the work proposed.
122. The Corporation of the Town of Essex shall not be liable if, due to incorrect or improperly authorized instructions, a marker is installed on or removed from a plot; or lettering or carving on any marker or other structure is improperly carried out.
123. The Corporation of the Town of Essex, in its sole discretion, may remove from a Cemetery, Lot or Plot any Marker or Monument that does not comply with the regulations in this By-Law.

Rules for Monument Dealers, Contractors and Work Personnel

124. Every Contractor employed to do any work in the cemetery shall first present an application to the Caretaker signed by the lot owner or his representative, requesting permission to employ such Contractor to do the work specified. This application shall designate the section and lot.
125. Every contractor entering the Cemetery for business purposes shall provide proof of coverage under the *Workers' Compensation Act* and a current Clearance Certificate issued by the Workplace Safety and Insurance Board, a minimum of one (1) million dollar liability insurance and provide a current certificate, comply with the service contract with the Cemetery, where applicable, and have the permission of any holder of Interment Rights as required.
126. The demeanor and behaviour of all work personnel employed by others in the cemetery shall be subject to the control of the Caretaker.
127. Contractors, masons and stone-cutters shall lay planks on the lots and paths over which heavy materials are to be moved in order to protect the surface from injury.
128. Work personnel shall cease work, if in the immediate vicinity of a funeral, until the conclusion of the service.
129. All work must be done during regular cemetery hours, unless by special permission of the Caretaker.
130. No work shall be commenced on Saturday that cannot be finished and the litter and debris removed by the hours of noon of that day.
131. Heavy loads shall not be permitted in the cemetery when the roads are in an unfit condition.
132. No monumental work shall be delivered at the cemetery until the foundation is completed and the Contractor is ready to proceed with the work of installation.
133. All implements and materials used in the performance of any work shall be placed where the Caretaker may direct and all rubbish and surplus earth shall be removed in such manner and at such time and place as the Caretaker may order. Otherwise the obstructions will be removed and the expense charged to the owner of the lot.
134. Any work personnel who damages any lot, monument, structure or otherwise does any injury in the cemetery shall be personally responsible for such damages or injury and in addition thereto this employer shall be liable therefore.

Administration

135. The Treasurer, on behalf of the Town, shall be the recipient and custodian of all monies and securities belonging to the cemetery. Funds received shall be deposited in a chartered bank in an account to known as the general account pending transfer of Care and Maintenance Funds to the proper trust account.

136. The Treasurer shall be bonded under a policy issued by a Registered Liability Insurance Company.
137. The Clerk or designate shall be the contact medium between the Council and its employees, the lot owners, and general public. The Clerk or designate shall keep a register of lots, records, requisite for interments and for other cemetery services.
138. The tariff of rates as adopted by the Council and any amendments thereof shall be deemed an integral part of the regulations of the Council.

Conflict and Transition

139. In the event the provisions of this by-law are inconsistent with the provisions of the *Funeral Burial Cremation Services Act, 2002*, its Regulations or any other Act, the provisions of the Act or Regulation shall prevail.
140. 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, in operative or invalid, the remainder of the by-law shall continue to be in full force and effect.

Part V. Enforcement

141. An Enforcement officer or Cemetery Staff may order any person believe to be contravening or have contravened any provision of this By-Law:
- a. to immediately desist from the activity constituting or contributing to such contravention; or
 - b. to leave the municipal cemetery immediately.
142. An enforcement officer or Cemetery Staff may order any person engaging in an activity that requires a contract to provide the original copy of the agreement for inspection.
143. No person shall fail to comply with the order given by enforcement officer or a Cemetery Staff in section 141 or 142.
144. Every person who contravenes any provision of this By-Law is guilty of an offence and is liable to a fine and any other penalties imposed pursuant to the *Provincial Offences Act*, R.S.O. 1990, c. P-33, as amended.

