

Proposed Amendments to The Cemetery Bylaw, 1984

1. Amend the Bylaw to ensure consistency with the provincial *Cemeteries Act, 1999* (Act)

A repeal and replace will enable a general review of The Cemetery Bylaw, 1984 (Bylaw) to ensure it is consistent with the Act and its regulations. For example:

- The Bylaw currently speaks of purchasing “graves” and “niches” in multiple places; however, this language is inaccurate to the extent that it implies a person actually purchases a grave or a niche and acquires ownership of the land. More accurately, a person purchases the right to use a grave or niche for a specific purpose. For clarity and accuracy, the new bylaw will contemplate the buying and selling of interment rights, consistent with the language used in the Act; and
- The name of the “perpetual care fund” will be updated to the “care and maintenance fund”, consistent with the language used in the Act (the Bylaw’s fee schedules already correctly use the “care and maintenance fund” language). Similarly, the definition of this term will be updated in a manner that is more consistent with how this term is defined in the Act.

2. Amend the Bylaw to ensure consistency with other provincial legislation

The Bylaw will be reviewed generally to ensure it is consistent with other relevant provincial legislation. For example, the Bylaw currently requires a “written order” of the Minister of Health prior to any disinterment, whereas *The Disease Control Regulations* require a “disinterment permit” to be obtained, and for only certain disinterments, rather than all disinterments.

3. Repeal the Cemetery Bylaw Regulations

Currently, the Bylaw has Cemetery Bylaw Regulations (Regulations) attached to it. It is not usual practice for bylaws to have Regulations attached to them in this manner. The Zoning Bylaw is a notable exception, as it includes “Sign Regulations”; however, in that case the Sign Regulations are an appendix to, and form part of, the Zoning Bylaw No. 8770, whereas the Regulations are attached to the Bylaw, but do not form a part of the Bylaw, which is a confusing structure.

Additionally, various inconsistencies currently exist between the Bylaw and its Regulations. For example, the Bylaw states that no person may purchase more than 16 graves, whereas the Regulations state that no person may purchase more than 8 graves or niches (8 is the correct number). As another example, many terms that are used in the Bylaw are defined only in the Regulations, while

some terms are defined in both the Bylaw and the Regulations but are defined inconsistently.

During the drafting process, inconsistencies between the Bylaw and the Regulations will be resolved and the provisions of the Regulations will either be incorporated into the Bylaw or moved to a separate policy document.

4. Amend the Bylaw to ensure consistency with City policies and other City bylaws
The Bylaw will be reviewed generally to ensure it is consistent with City policies and other City bylaws. As an example, section 16 of the Bylaw, which deals with the bringing of animals into City cemeteries, is currently inconsistent with subsection 11(2.1) of The Animal Control Bylaw, 1999. The Bylaw will be amended to align with The Animal Control Bylaw, 1999, though The Animal Control Bylaw, 1999 may also require a consequential amendment due to the changes to the Bylaw.
5. Review the Bylaw against the new Cemetery Master Plan (Plan) and make any amendments that may be necessary or desirable
The Plan makes various recommendations that could necessitate amendments to the Bylaw and its Regulations. For example, the Plan recommends expanding memorialization without interment opportunities and expanding cremation options. During the drafting process, the Plan will be reviewed, and the Bylaw will be amended as necessary to ensure it is consistent with and reflective of the Plan.
6. Update fine amounts
Currently, the Bylaw sets a minimum fine of \$25.00 and a maximum fine of \$500.00 for any contravention of the Bylaw. It appears these fines have not been updated since 1984. Fines will be updated in line with amounts in other City bylaws, with consideration given to the fine amounts in similar bylaws in other municipalities.
7. Amend the Bylaw to add provisions respecting “green burials”
An increasing number of cemeteries are beginning to offer “green burial” options, or burials with no embalming or casket and potentially no grave marker. The City of Lethbridge offers green burial lots and currently one private green cemetery in Saskatchewan (Prairie Sky Cemetery) offers green burial lots (it is currently at full capacity). See Appendix 2 for a scan of practices in other municipalities, as well as a discussion of the Green Burial Society of Canada.

The current Bylaw does not require remains to be embalmed and remains may be wrapped in a shroud rather than encased in a casket. However, fiberglass

domes must be placed over remains to keep soil from settling, and no specific areas of the cemetery are currently set aside for green burials.

The Plan generally recommends broadening the range of interment and memorialization options, and specifically recommends offering green burials. The Plan highlights that green burials are an ecologically sustainable option and describes the offering of green burials as an opportunity to enhance the cemetery's sustainable maintenance practices. Two of the specific recommendations included in the Plan are to amend the Bylaw to allow burials to take place without the use of an outer container and to create a green burial section in the cemetery.

It is recommended that provisions respecting green burials be added to the Bylaw, including the following:

- Enable the General Manager to set aside areas of the cemetery for green burials, including the ability to determine the size and location of such areas, similar to the existing power to set aside areas for children, the military and other specific groups (the Plan identifies areas that would be suitable for green burials);
- Subject to availability, allow internments in the green burial area of the cemetery where the following conditions are met:
 - No embalming;
 - Usage of a primarily biodegradable shroud, casket or other container that is approved by the City;
 - No use of burial plot liners or concrete vaults;
 - The remains must be enclosed in such a way that they are able to be transported and handled in a safe and dignified manner (with a corresponding obligation on the representative of the deceased person to arrange for the dignified transfer of the remains to the gravesite); and
 - Payment of a fee for "habitat restoration" to restore the gravesite, such as through the planting of native species.
- Fiberglass domes would not be required (or permitted) in green burial areas;
- Prohibit the use of individual markers in green burial areas;
- Require remains in green burial areas to be buried at a depth deemed by the Cemetery Supervisor to be sufficient to achieve effective natural decomposition of the remains while also ensuring the human remains will not be disturbed by wildlife;
- Establish fees for green burials, with fees to be based on costs to provide the service (the exact fee amounts will be included in a subsequent report to City Council that sets out fees for all cemetery services for the years 2024 and 2025);

- Prohibit disinterments, except where the City is required by law to disinter; and
- Enable the General Manager to further regulate green burials through the Regulations (or through another document, such as a policy, that may replace the Regulations). For example, the Regulations could detail:
 - Visitation rights in green burials;
 - Planting/habitat requirements; and
 - The type of containers/artefacts that are permitted to be placed in the green burial area.

The above proposed amendments will enable the cemetery to move forward with its plans to offer green burials in the future; however, the cemetery may not be in a position to begin offering green burials until after the new bylaw comes into force. Depending on timing, certain provisions respecting green burials may have a delayed coming into force date.

8. Amend the Bylaw to avoid issues with non-payment

Under the current Bylaw, persons are invoiced after services are rendered, which opens up the possibility of persons defaulting on their payment obligations. Bad debts in 2021 were \$3,000 and in 2022 were \$8,200. Similar to Moose Jaw, SK, to avoid bad debts entirely, it is recommended that the Bylaw be amended to require payment prior to services being rendered.

9. Amend the Bylaw to effect various housekeeping amendments

A total re-write of the Bylaw will allow various housekeeping amendments to be made, including the following:

- Updating references to City departments and divisions (for example, references to the “Community Services Department” will be updated to “Community Services Division”);
- Adding section headers, in line with modern drafting standards;
- Correcting minor errors (for example, “Woodlawn” cemetery is incorrectly referred to as “Woodland” cemetery in one instance);
- Repealing unnecessary definitions (such as “City”, “Council” and “person” - these terms are defined elsewhere);
- Revising the long title and short titles (the long title currently refers to all cemeteries within the City, but should specifically refer to City-owned cemeteries, and “cemetery” should be pluralized in the short title since the City owns multiple cemeteries);
- Ensure all references to “Cemetery Supervisor” versus “Superintendent” are correct, and amend these defined terms as necessary (currently both terms are defined as meaning the person “in charge of the cemetery”);

- References to the morgue can be repealed, as the morgue is no longer operational;
- Ensuring consistent usage of language throughout (for example, the terms “ashes” and “cremated remains” are both used and “legal representative” is the defined term yet the Bylaw also uses the term “authorized decision-maker”); and
- Modernizing language, including repealing gender-specific language.

10. Move certain provisions from the Regulations to the Bylaw for enforceability purposes

As the Regulations do not form part of the Bylaw, persons cannot currently be prosecuted for contravening the Regulations. To ensure enforceability, certain provisions will be moved from the Regulations to the Bylaw. For example, the Regulations currently prohibit scattering cremated human remains in areas not permitted by the cemetery superintendent and prohibit persons from performing maintenance to the cemetery grounds. Moving these and other prohibitions to the Bylaw would ensure the City can prosecute as necessary for violations of these provisions.

11. Include provisions restricting photography in the cemeteries

Currently, the Bylaw and the regulations do not set out rules respecting photography; however, in practice persons are required to obtain a permit prior to photographing or filming in the cemeteries.

Certain bylaws, such as Mount Pleasant’s Group of Cemeteries By-laws (Mount Pleasant Group operates ten cemeteries in the Greater Toronto Area), prohibit photography and filming without the prior approval of the cemetery. However, other jurisdictions that have attempted to enact similar prohibitions, such as Waterloo, ON, received pushback from groups such as genealogists. The Plan encouraged promoting recreational photography within the cemeteries.

To balance the desire of the public to document the cemetery with the desire to maintain sanctity, privacy and decorum, it is recommended that the Bylaw be amended to require any persons who are photographing or filming in the cemeteries to do so in a respectful and discrete manner. The Bylaw would further allow cemetery staff to require persons to stop photographing or filming where the photography or filming is considered disrespectful or is disturbing other users of the cemeteries.