

THE CORPORATION OF THE MUNICIPALITY OF POWASSAN

BY-LAW NO. 2015-32

Being a By-law to provide for the maintenance, management and control of the Powassan Union Cemetery, St. Joseph's Cemetery and the Trout Creek Union Cemetery in accordance with the Cemeteries Act 2002, Regulation 30/11, Sections 150, 151 and 152 Re: Cemetery Bylaws

The Council of the Corporation of the Municipality of Powassan enacts as follows:

1. The provisions of any and all By-Laws of the Municipality of Powassan and all amendments thereto pertaining to the Powassan Union Cemetery, St. Joseph's Cemetery and the Trout Creek Union Cemetery are hereby repealed.
2. This By-Law shall be composed of ten (10) Sections, namely:

Section A:	Definitions
Section B:	Administration
Section C:	Financial
Section D:	Rules and Regulations
Section E:	Operations
Section F:	Interments
Section G:	Disinterment
Section H:	Markers and Monuments
Section I:	Tariffs
Section J:	Forms

SECTION A: DEFINITIONS

"ACT"	Shall mean the Cemeteries Act, R.S.O. 1990, Regulation 20/11
"BURIAL"	The opening and closing of an in-ground plot for the disposition of human remains or cremated human remains.
"BY-LAW"	Shall mean the rules under which the cemetery is operated. Said by-law shall be approved by both the Council of the Municipality of Powassan and the Cemeteries Branch Registrar.
"CARE AND MAINTENANCE FUND (S)"	Shall mean the trust fund in which all monies received by the Municipality of Powassan for the perpetual care and maintenance of Plots and for the perpetual care and maintenance of Markers and Monuments is invested.
"CEMETERY"	Shall mean the land set aside, as follows: Powassan Union Cemetery – Lot 20, Concession 13, Parcel 17380 NS, District of Parry Sound, Province of Ontario

St. Joseph's Cemetery – Part Lot 21, Concession 12, District of Parry Sound, Province of Ontario

Trout Creek Union Cemetery - Lot 28, Concession III, District of Parry Sound, Province of Ontario

to be used for the interment of Human Remains and may include a Columbarium or other structure for the interment of Human Remains.

"CEMETERY SERVICES"

Shall mean the following services in respect of a Plot:

- i. Opening and closing of a Plot;
- ii. Interring or disinterring Human Remains;
- iii. Providing temporary storage in a receiving vault;
- iv. Construction of a foundation for a Marker or Monument.

"CONTRACT"

Shall mean an agreement made between the Municipality of Powassan and the Interment Rights Holder.

"COUNCIL"

Shall mean the Municipal Council of the Corporation of the Municipality of Powassan.

"GRAVE"

(Also known as plot) means any in-ground burial space intended for the interment of a child, adult or cremated remains.

"HUMAN REMAINS"

Shall mean the body or remains of a human being or cremated remains of a human being.

**"INTERMENT
PERMISSION FORM"**

Shall mean the form to be completed by the Interment Right Holder to designate, in writing, if another person is to be interred in their Plot.

"INTERMENT RIGHTS"

Shall include the right to require or direct the interment of Human remains in a Plot.

**"INTERMENT RIGHTS
CERTIFICATE"**

Shall mean the certificate issued to the Interment Rights Holder by the Municipality of Powassan and shall include the name of the Interment Rights Holder, the location and the type of the Plot, the date on which the Interment Rights are purchased and a statement regarding transfer restrictions of said Interment Rights.

**"INTERMENT RIGHTS
HOLDER"**

Shall mean a person with Interment Rights with respect to a Plot and said Interment Rights Holder shall be listed in the records of the cemetery.

"MARKER/MONUMENT"	Shall mean any monument, tombstone, plaque, headstone, cornerstone or ornament affixed to or intended to be affixed to a burial plot, mausoleum, crypt, columbarium, niche or other structure or place intended for the deposit of human remains. For the purposes of this by-law, an upright marker shall be understood to mean any permanent memorial projecting more than 10 cm (8 in.) about the ground.
"MINISTRY"	Shall mean the Ministry of Consumer and Commercial Relations of the Province of Ontario.
"MUNICIPALITY"	Shall mean the Municipality of Powassan, who is the manager of the Powassan Union Cemetery, St. Joseph's Cemetery and the Trout Creek Union Cemetery and who provides management and maintenance services to these cemeteries.
"PLOT"	Shall mean any burial space of sufficient area for an adult, and having a minimum size of ten (10) feet (3.05 meters) by four (4) feet (1.19 meters) and shall include an area of land in a cemetery containing, or set aside to contain, Human Remains and includes a niche or compartment in a columbarium.
"REGISTRAR"	Shall mean the Registrar appointed under the Cemeteries Act, R.S.O. 1990, C.C.4.
"TARIFF"	Shall mean the tariff or fees and charges set forth in Section I of this By-Law, as approved by Council and the Registrar.

SECTION B: ADMINISTRATION

1. The business and affairs of the Powassan Union Cemetery, St. Joseph's Cemetery and the Trout Creek Union Cemetery shall be managed and supervised by the Municipality. The Municipality shall be responsible for the administration, management, care, maintenance and improvement of the cemeteries.
2. The Municipality shall keep such registers, records, books, maps and electronic files as are necessary for properly recording all transactions, Interment Rights Certificates, and matters pertaining to the cemeteries as come within its jurisdiction, and as may be prescribed. A public register will be available to the public during regular office hours, as prescribed in Section 110 of Ontario Regulation 30/11.
3. The cemeteries shall be governed by this bylaw and all procedures will comply with the Funeral, Burial & Cremation Services Act, 2002 and Ontario Regulation 30/11, which may be amended periodically. All by-laws 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(ies); and
 - c. Delivered to each supplier of markers who has delivered a marker to the cemetery during the previous year, if the by-law or by-law amendment pertains to markers or their installation.

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

4. The Cemetery has the right at any time to re-survey, enlarge, diminish, re-plot, change or remove plantings, grade, close pathways or roads, alter in shape or size, or otherwise change all or any part of the cemetery, subject to the approval of the appropriate authorities.
5. The cemetery operator will not be held liable for any loss or damage, without limitation (including damage by the elements, Acts of God, or vandals) to any plot, monument, marker or other article that has been placed in relation to an interment right save and except for direct loss or damage caused by gross negligence of the cemetery.

SECTION C: FINANCIAL

1. All fees and charges shall be payable in accordance with the Tariff which shall be set by the Council, upon recommendation of the Municipality, subject to the approval of the Registrar.
2. Payments for all fees and charges shall be made at the office of the Municipality.
3. The Municipality shall maintain, invest and administer the care and maintenance fund (s) in accordance with the provisions and regulations of the Act.
4. As required by Sections 166 and 168 of Regulation 30/11, a percentage of the purchase price of all interment rights, and a prescribed amount for monuments and markers is contributed into the Care and Maintenance fund(s). Income from this fund is used to provide only general care and maintenance of the cemetery. Contributions to the Care and Maintenance fund (s) are not refundable except when interment rights are cancelled within the 30 day cooling off period.
5. The Municipality shall have the authority to establish special funds for donations. The application and use of said funds shall be at the discretion of the Municipality. The Municipality shall not be bound to extend the whole or any part of the interest or money earned, including the compounding thereof, but may accumulate and hold or subsequently expend the same or any part thereof, or invest the same or any part thereof.
6. No pre-payment for interment services will be accepted by the Municipality. Interment service payment will only be provided to the Municipality at the time that the service is needed.

SECTION D: RULES AND REGULATIONS

1. All persons entering the Cemeteries shall behave with due order and decorum and with respect to the dead.
2. Vehicles within the Cemeteries shall be driven at a speed not exceeding 15 Kilometres per hour and shall not allow wheels of any vehicles to run on sod. All drivers of any vehicle shall respect all Plots as if they were their own. Vehicle owners and drivers shall be held responsible for any damage done by them.
3. Recreational vehicles are not permitted within the Cemeteries.
4. No person under the age of fourteen (14) years of age shall be admitted within the Cemeteries unless attended by an adult who shall be responsible for their conduct.

5. A portion of the price of interment rights is trusted into the Care & Maintenance Fund (s). The income generated from this fund is used to maintain, secure and preserve the cemetery grounds. Services that can be provided through this fund include:
 - Re-levelling and installation of sod or seeding of plots,
 - Maintenance of cemetery roads, sewers and water systems,
 - Maintenance of perimeter walls and fences,
 - Maintenance of cemetery landscaping,
 - Repairs and general upkeep of cemetery maintenance buildings and equipment.
6. No person other than cemetery staff shall remove any sod or in any way change the surface of the burial plot in the cemetery.
7. No person shall plant trees or shrubs, or install flower beds in the cemetery except with the approval of the cemetery. Further, the cemetery operator reserves the right to instruct cemetery staff to enter onto a plot and remove trees, shrubs and flowers which have been planted without approval.
8. No person shall place any fence, railings or other enclosures around a plot, Flowers placed on a grave for a funeral shall be removed by the cemetery staff after a reasonable amount of time to protect the sod and maintain the tidy appearance of the cemetery.
9. Any flower, plant container or decoration must be placed in a holder which is attached to the top of a monument, so that it does not interfere with the normal maintenance operations of the cemeteries.
10. Fresh flowers and smaller pots, or other suitable containers, may be placed on a monument base to commemorate special occasions, however, the Municipality assumes no responsibility and will remove these and the containers when they become unsightly.
11. In order to prepare the cemetery grounds for spring maintenance, all items which have been left over the winter season which will interfere with general grass care will be removed. (NEW)
12. No person shall:
 - a. Place any fences, railings or other enclosures around any Plot;
 - b. Plant any flowers, plants, shrubs or trees. The Municipality reserves the right to enter onto the Plot and remove said flowers, plants, shrubs or trees planted thereof.
 - c. Have in their possession any firearm within the Cemeteries except in the case of military or police funeral;
 - d. Allow entry into the Cemeteries of any animal under the Cemetery Act without the approval and supervision of the Municipality.
13. Conveyance heavily loaded shall not be permitted to enter the Cemetery without the approval and supervision of the Municipality.

14. All decorations, either real or artificial, upon Plots, shall be removed not later than the fifteenth (15th) day of November of each year. Interment Rights Holders desiring to take any decorations away should do so before removal becomes necessary. It is necessary to obtain permission from the Municipality before removal.
15. Vases and urns not properly cared for shall be removed from the Plot and any articles placed on plots that pose a threat to the safety of interment rights holders, visitors to the cemetery and cemetery employees, or prevents cemetery staff from performing general cemetery maintenance and operations, or are not in keeping with the respect and dignity of the cemetery will be removed and disposed of without notification. (NEW)
16. Any person who damages or changes any Plot, Marker or other structure, or otherwise does any injury in the Cemeteries shall be personally responsible for such damage or injury.
17. Any person violating any provision of this By-Law shall be deemed to be a trespasser and subject to immediate summary eviction from the Cemeteries, in addition to any and all other penalties provided by law.
18. Complaints or suggestions by Interment Right Holders and Visitors shall be made, in writing, to the Municipality and controversies in the Cemetery are to be avoided.
19. No interment rights, transfers or cemetery services or supplies shall be provided unless all arrears connected with the Plot have been paid in full.

SECTION E: OPERATIONS

SALES

1. Plots may be purchased by individuals upon payment of the appropriate Tariff rate. Prior to a sale, a prospective purchaser must receive:
 - a) A copy of the Consumer Information Guide
 - b) A copy of the Operator's Price List
 - c) An explanation of cancellation rights and refund entitlements that the operator proposes to include in the contract and an explanation of the cancellation rights and refund entitlements under the Act
 - d) An offer to provide to the prospective purchaser an explanation of the funding, financing or payment options available to the purchase, including :
 - a. and an explanation of the purchaser's choice of funding, financing or payment option, and
 - b. an explanation of how the purchaser's choice of funding, financing or payment option may affect rights and refunds available upon cancellation;
 - e) An offer to provide to the prospective purchaser a copy of the cemetery by-laws;
 - f) A statement that the cemetery is governed by by-laws and that a copy of the by-laws is available from the operator for review;
 - g) Information on any restrictions contained in the cemetery by-laws with respect to markers, plot decorations and private structures;
 - h) Information as to the resale or transfer of interment rights by a rights holder, including:
 - a. Any restrictions on the resale or transfer of interment rights, including any prohibition under the cemetery by-laws and any applicable fee,
 - b. Obligations imposed under the Act or the cemetery by-laws on the parties to a resale or transfer of interment rights, and

- c. If the resale of interment rights is prohibited under the cemetery by-laws, an explanation of a rights holder's cancellation rights and refund entitlement under Section 47 of the Act.
 - i) Information on any restrictions or requirements in the cemetery by-laws as to the purchase of supplies or services from the operator or a person specified by the operator;
 - j) If consideration and benefits are due to the operator or another person if the purchaser chooses a particular funding, financing or payment option, a statement to that effect, and
 - k) If consideration and benefits are due to the operator or another person by reason of recommendations made to the purchaser with respect to particular supplies or services that the purchaser will contract for with a third party other than the operator, a statement to that effect.
- 2. At the time of sale the Municipality shall provide the following:
 - a. A copy of the Contract,
 - b. A copy of the Conditions of Contract
 - c. A copy of the Cemetery By-Law
 - d. A copy of the Interment Rights Certificate
- 3. Purchasers of Plots acquire only the rights and privilege of interment of the dead and of erecting markers, subject to the provisions of the By-Law.
- 4. The Interment Rights Certificate shall specify the purchaser of the Interment Rights, the name of the person for whom the plot is purchased, the type of the Plot, the location of the Plot, the date purchased and a statement regarding transfer restrictions of said Interment.
- 5. The Interment Rights Holder must designate in writing, upon the Interment Permission Form, if another person is to be buried in his/her Plot.

II CONTRACT

- 1. The purchaser of the Interment Rights shall be provided with a Contract, at the time the contract is made which shall indicate:
 - a. The date Interment Rights were purchased,
 - b. The Name and address of the purchaser,
 - c. The Purchase price including an itemized breakdown of charges and all applicable taxes,
 - d. The portion of the purchase price being set aside for Care and Maintenance,
 - e. The existence of a by-law that governs the operation of the Cemetery and includes restrictions on Interment Rights in the Cemetery (**copy to be provided to the Purchaser**).

III CANCELLATION OR RE-SALE OF INTERMENT RIGHTS:

Purchasers of interment rights holders acquire only the right to direct the burial of human remains and the installation of monuments and markers, subject to the conditions set out in the cemetery by-laws. In accordance with cemetery by-laws, no burial or installation of any monument or marker is permitted under the interment rights have been paid in full. An interment rights certificate will be issued to the interment rights holder when payment has been made in full. The purchase of interment rights is not a purchase of real estate or real property.

Cancellation of Interment Rights within 30 days Cooling-Off Period:

A purchaser has the right to cancel an interment rights contract within thirty (30) days of signing the interment rights contract, by providing written notice of the cancellation to the cemetery operator. The cemetery operator will refund all monies paid by the purchaser within thirty (30) days from the date of the request for cancellation.

Cancellation of Interment Rights after the 30 day Cooling-Off Period:

Upon receiving written notice from the purchaser of the interment rights, the cemetery operator will cancel the contract and issue a refund to the purchaser for the amount paid for the interment rights less the appropriate amount that is required to be deposited into the Care and Maintenance Fund (s). This refund will be made within thirty (30) days of receiving said notice. If the interment rights certificate has been issued to the interment rights holder, the certificate must be returned to the cemetery operator, along with the written notice of cancellation.

Re-Sale of Interment Rights after 30 Day Cooling-Off Period:

Unless the interment rights have been exercised, the purchaser retains the right to cancel the contract or re-sell the interment or scattering rights. Once payment for the interment rights has been made in full, and an interment rights certificate has been issued, the interment rights holder, as recorded on the cemetery records, has the right to re-sell the interment rights.

If an individual wishes to sell his/her Plot, the Interment Rights MUST be sold back to the Municipality. The Municipality will reimburse the individual the price paid for the Plot including the amount placed into Care and Maintenance Fund (s). Change to: If a rights holder wishes to re-sell the interment rights, the rights holder must make the request to the cemetery operator in writing. The cemetery operating will repurchase the interment right at the price listed on the cemetery owner's current price list less the Care & Maintenance contribution made at the time of purchase. The re-purchase and payment to the rights holder requesting the sale must be completed within 30 days of the request.

The interment rights holder requesting the resale of the rights must return the interment rights certificate to the cemetery operator and the rights holder must endorse the interment rights certificate, transferring all rights, title and interest back to the cemetery operator. The appropriate paperwork must be completed before the cemetery operator reimburses the rights holder.

IV TRANSFERS

1. For the purpose of this subsection, "Transfer" means a gift, a bequest or any other transfer made with consideration. If an Interment Rights Holder wishes to transfer their Interment Rights, notice must be given to Municipality and the original Certificate of Interment Rights must be returned. The Municipality shall issue a new Certificate of Interment Rights to the transferee. The transfer of ownership of Interment Rights is not binding on the Municipality until a duly executed transfer document has been deposited with the Municipality.
2. Upon receipt of a request in writing from the Interment Rights Holder specifying the name and address of the transferor and the transferee, and the location of the Plot, the Municipality, upon payment of the administration and transfer fees in accordance with the Tariff, will perform the transfer.

3. In case of succession the following will be required in addition to clause 2 above unless otherwise ordered by the Municipality:
 - a. With a Last Will and Testament:
 - i. In case of specific bequest of the Plot, a Notarial Copy or Court Certificated Copy of the Will or Probate;
 - ii. If no Specific bequest, a request in writing from the Executor (s) with consent of all or a majority of the beneficiaries;
 - b. Intestate
A request in writing from the administrator with the consent of all or a majority of the heirs-at-law.

SECTION F: INTERMENTS

1. No interment shall take place until such time as both the Plot and the interment fee have been paid in full.
2. The opening and closing of graves may only be conducted by cemetery staff.
3. For every Interment the Municipality must obtain a Burial Permit or Cremation Certificate, applicable fees and the completed Interment Permission Form if required.
4. Interment rights holders must provide written authorization prior to the burial taking place. Should the interment rights holder be deceased, authorization must be provided in writing by the person authorized to act on behalf of the interment rights holder, i.e. personal representative, estate trustee, executor or next of kin.
5. A burial permit issued by the Registrar General or equivalent document showing that the death has been registered with the Province must be provided to the municipal office prior to the burial taking place. A certificate of cremation must be submitted prior to the burial of cremated remains taking place.
6. No interment shall be made on Sunday except in accordance with the regulation of the Medical Officer of Health and/or specific arrangements made with the Municipality.
7. Interments shall take place between the 1st day of May and the 1st day of November unless otherwise authorized by the Municipality and based upon weather and corresponding cemetery site conditions.
8. There may be a maximum of 1 regular and 2 cremation interments or 4 cremations interments on one regular Plot.
9. No more than one cremation interment shall be made in a cremation Plot.
10. Workers shall cease work, if in the immediate vicinity of a funeral, or if visible to the funeral party, until the conclusion of the burial services.
11. Notice of each interment shall be given to the Municipality. A minimum of one working day (minimum 24 hours), (not including Saturday, Sunday or a Statutory Holiday) is required unless otherwise ordered by Medical officer of Health.

SECTION G: DISINTERMENTS

1. Human remains may be disinterred from a plot 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 officer before the removal of casketed human remains may take place. A certificate from the local medical officer of health is not required for the removal of cremated remains.
2. In special circumstances the removal of human remains may also be ordered by certain public officials within the consent of the interment rights holder and/or next of kin.
3. No disinterment shall be allowed in any Plot nor any body removed there from unless in accordance with Section 51 of the Act. (CHECK)

SECTION H: MARKERS AND MONUMENTS

1. Any contract work to be performed within the cemetery requires the written pre-approval of the interment rights holder and the cemetery operator before the work may begin. Pre-approval includes but is not limited to: landscaping, delivery of monuments and markers, inscriptions, designs, drawings, plans and detailed specifications relating to the work, proof of all applicable government approvals and permits, and the location of the work to be performed. It is the responsibility of all contractors to report to the municipal officer and provide the necessary approvals before commencing work at any location on the cemetery property.

Prior to the start of any said work, contractors must provide proof of:

- WSIB coverage
 - Occupational Health and Safety compliance standards
 - Environmental Protection
 - WHMIS
 - Evidence of liability insurance of not less than \$_____
2. The Municipality requires order forms from Monument Dealers showing Monument size, base size, Plot owner's information and the total fee, including the Marker Care and Maintenance portion, before foundations for monuments are constructed.
 3. All cemetery by-laws apply to all contractors and all work carried out by contractors within the cemetery grounds.
 4. Contractors, monument dealers and suppliers shall not enter the cemetery in the evening, weekends or on statutory holidays, unless approval has been granted by the cemetery operator.
 5. All Monuments must conform to the following height and thickness restrictions:
 - a. Monuments up to twenty-four (24) inches (61 centimetres) in height must be at least six (6) (15 centimetres) thick at the top of the monument; and

- b. Monuments up to forty-two (42) inches (107 centimetres) in height must be at seven (7) inches (18 centimetres) thick at the top monument; and
 - c. Monuments up to forty (48) inches (120 centimetres) in height must be at least eight (8) inches (20 centimetres) thick at the top of the monument.
6. The Municipality reserves the right to determine the maximum size of Markers and Monuments, their composition, their number and their location on each Plot:
- a. No more than one upright Monument/Marker shall be erected on any one Plot. One flat marker may also be installed adjacent to the upright marker.
 - b. The minimum width of a Monument/Marker shall be 6 inches (20 centimetres) at its narrowest point;
 - c. Monuments located on a regular Plot shall not exceed 36 inches (90 centimetres) in width, 16 inches (40 centimetres) in depth and 48 inches (120 centimetres) in height, including the base.
 - d. Pillow/flat markers on a Cremation Plot shall not exceed 24 inches (50 centimetres) in width and 12 inches (45 centimetres) in depth.
 - e. Pillow/flat markers on a double Cremation Plot shall not exceed 48 inches (90 centimetres) in width and 12 inches (45 centimetres) in depth.
 - f. Monuments/markers on cremation Plots must be pillow markers – installed either ‘flat’ or slightly angled. There will be no upright monuments/markers on any cremation plot.
 - g. All Markers and Monuments shall be made of granite, marble or bronze, or other permanent material approved by the Municipality;
 - h. All markers, including pillow markers, must be placed on a foundation which the Municipality will provide at the Plot owner or monument companies request.
7. No Monument shall be erected without the supervision of the Municipality and all foundations shall be provided by the Municipality.
8. The Municipality reserves the right to enter onto the Plot and remove any monument, marker or other structure, or any inscription placed in or any Plot which is not in keeping with the dignity and decorum of the Cemeteries.
9. The Municipality shall have the right to maintain, repair, remove or lay down monuments or parts of monuments and to use the Care and Maintenance Fund (s) for Markers for such purposes where the monument/marker represents a risk to public safety.

SECTION I: TARIFFS

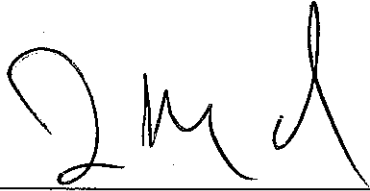
1. Tariffs are listed in the Municipal User Fee Bylaw which is in force and may be amended from time to time.

SECTION J: FORMS

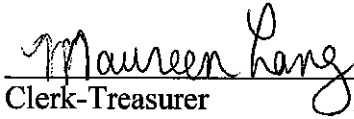
1. Contract – for Purchase of Interment Rights
2. Certificate of Interment Rights
3. Service Request Form

Read a **FIRST** and **SECOND** time on November 3, 2015.

Read a **THIRD** and **FINAL** time and considered passed as such in open Council on the 17th day of November, 2015.

A handwritten signature in black ink, appearing to be 'J M L', written over a horizontal line.

Mayor

A handwritten signature in black ink, reading 'Maureen Lang', written over a horizontal line.

Clerk-Treasurer