



Report to: General Committee

Date Report Authored: August 17, 2012

SUBJECT: *Funeral, Burial & Cremation Services Act, 2002 - Markham Cemetery By-law Update*
PREPARED BY: S. Huycke, Acting Deputy Clerk (x 4290)

RECOMMENDATION:

- 1) THAT the report entitled “*Funeral, Burial & Cremation Services Act, 2002 - Markham Cemetery By-law Update*” be received; and,
- 2) THAT Attachment ‘A’ – Cemeteries By-Law be enacted to provide for the effective governance of Markham municipal cemeteries; and,
- 3) THAT upon enactment of the by-law by Council, staff be directed to provide notice to the public of the passing of the By-law in accordance with the provisions of Section 151 (3) of Ontario Regulation 30/11; and,
- 4) THAT upon enactment of the By-law by Council, staff be directed submit the by-law to the Registrar, Cemetery Regulations Unit, Ministry of Consumer Affairs, for approval in accordance with Section 151 of Ontario Regulation 30/11; and,
- 5) THAT the Price List for Markham Cemeteries, Attachment ‘B’, be adjusted to increase the Transfer fee from \$75.00 to \$100.00; and,
- 6) THAT staff be authorized to review the Price List for Markham Cemeteries in 2013, and every second year thereafter, and adjust the fees, including interment rights fees, based on market comparables, as required.; and further,
- 7) THAT staff be authorized and directed to do all things necessary to give effect to this resolution.

PURPOSE:

The purpose of this report is to provide Council with an overview of legislative changes affecting the Ontario bereavement industry, including Markham Cemeteries, with the enactment of the *Funeral, Burial & Cremation Services Act, 2002* (“FBCSA”) as of July 1, 2012. This report also seeks Council’s enactment of a revised Cemeteries By-law to comply with the FBCSA. Further, this report seeks Council approval of a revised Transfer Fee for Markham Cemeteries.

BACKGROUND:

In December 2002, the *Funeral, Burial and Cremations Services Act, 2002* (“FBCSA”) received Royal Assent. The FBCSA was part of a broad review of consumer protection legislation by the Ontario Government. Since the granting of Royal Assent the Ministry of Consumer Services has been developing Regulations to implement the new legislation. The FBCSA and associated Regulations came into effect on July 1, 2012, at the same time repealing the *Cemeteries Act, R.S.O., 1990*. Markham currently maintains 18

cemetery sites. Of these, 5 are still active/open for the purchase of plots and/or burials and the remaining are considered inactive (see Attachment “C”).

Markham Cemetery By-law 178-93, approved by Council on September 28, 1993, must be revised to comply with the FBCSA. All required changes are reflected in the proposed cemetery by-law in Attachment “A”. The draft by-law was reviewed by the Markham Cemetery Board on August 14, 2012.

OPTIONS/ DISCUSSION:

Development of FBCSA was part of a comprehensive review of consumer protection legislation by the Ontario Government. The FBCSA combines the *Cemeteries Act* and the *Funeral Directors & Establishments Act* into one regulatory framework for the bereavement industry. The legislation was 'Proclaimed' in force effective July 1, 2012. Highlights of the new legislative framework are as follows:

1. Enhanced Consumer Protection

Under the FBSCA, purchasers of cemetery supplies/services (e.g. interment rights) are entitled to a 30-day cooling off period. During the 30-days the purchaser is entitled to a full refund for supply or services. Under the *Cemeteries Act*, a purchaser of interment rights was only entitled to a refund of the purchase price less the amount contributed to the care and maintenance fund. This change requires that cemetery operators delay the purchase and installation of cemetery supplies (e.g. grave markers).

Additionally, consumers are entitled to more disclosure when purchasing bereavement industry supplies and services. This includes indentifying business relationships between industry partners to ensure that consumers have the opportunity to purchase services/supplies in a fair manner.

2. Licensing

The FBSCA requires that all bereavement industry professionals be educated and licensed. Markham cemeteries have historically been managed by the City Clerk's office in conjunction with volunteers on the Markham Cemetery Board. Staff were concerned that the City would have to pay for the education and licensing of both staff and board members. However, Section 7 of Ontario Regulation 30/11 exempts certain individuals from obtaining a license, including those who are not acting on behalf of a commercial cemetery and whose occupation is not primarily the sale of cemetery supplies and services. Staff are of the opinion that this exemption applies to Markham staff on Board volunteers.

3. Re-sale of Interment Rights

The FBSCA permits the resale of interment rights on the open market unless prohibited by a cemetery by-law. If a cemetery operator requires an Interment Rights Holder to resell the rights to the cemetery, the operator is required to pay the current price list value of the interment rights (e.g. the current market value for the

Lot). Previously, a cemetery operator was only required to refund the purchase price paid by the rights holder less any care & maintenance contribution.

4. Cemetery Price Lists

The FBSCA requires that cemetery operators provide more disclosure and detailed descriptions on their price lists. The Act also requires that certain required services and/or supplies be sold at the direct cost to the operator (i.e. the operator cannot make a profit from providing the services). These services include the instillation of a marker or foundations. The City of Markham does not sell markers or foundations, except optional corner stones (placed at the 4 corners of a lot). Markham does not require the purchase of corner stones, nor does it make a profit from the sale of these markers.

5. Co-Location of Cemeteries and Funeral Homes

Under the FBSCA, funeral homes and/or visitation centres may be established on Cemetery Lands, subject to municipal zoning approval. Previously, the joint ownership and/or location of funeral homes and cemeteries was not permitted. These changes have also resulted in amendments to the *Assessment Act* to provide for the taxation of a portion of cemetery land used as a funeral home.

Some of these FBSCA legislative changes require the City to update its practices and procedures. The updates, which are captured in the draft by-law, as required, are primarily administrative in nature.

Revised Cemetery By-Law

Legislative Services staff, in consultation with the Markham Cemetery Board, have prepared the draft cemetery by-law appended as Attachment 'A'. Staff are recommending that the draft by-law be enacted by Council to ensure that Markham Cemeteries comply with the FBSCA.

One of the key changes in the draft by-law pertains to the re-sale of interment rights. Staff recommend that the City implement a first-right of refusal rule for the re-sale of interment rights. This rule, noted at section 4.5 of the draft by-law, requires that an interment right holder first ask the city to repurchase the interment rights. If the City is unwilling to repurchase the rights then the owner has the option to sell the rights on the open market. The Markham Cemetery Board, at its meeting on May 15, 2012, passed a motion recommending that any resale of interment rights be exclusively to the City. Staff were concerned that this could have a negative impact on annual cemetery cash flow if multiple interment rights holders requested refunds in any given year. At the meeting of the Cemetery Board held on August 14, 2012, staff recommended to the Board the first right of refusal compromise position. The Board agreed to the recommendation.

Upon enactment of a cemetery by-law, the City is required to give public notice of its passing. This includes posting notices at entrances to all cemeteries; as well as placing advertisements in local newspapers that have wide circulations (e.g. Markham Economist & Sun, and Thornhill Liberal). Additionally, any cemetery by-law must be forwarded to

the Ministry of Consumer Affairs for approval. To ensure continuity in operations, it is recommended that Markham Cemetery By-law 178-93 be repealed only after approval of the new by-law by the Ministry.

Revised Cemetery Fees

To reflect the increased paperwork required as a result of the resale and/or transfer of interment rights, staff and the Markham Cemetery Board are proposing to increase the Transfer Fee from \$75.00 to \$100.00. No other fee changes are being proposed at this time. A copy of the proposed Cemetery Price List is included as Attachment 'B'.

On May 13, 2008, Council approved a process authorizing staff to review and adjust cemetery fees based on market comparables (i.e. the fees charged by other municipal cemeteries in Southern Ontario) every two years. The cemetery price list was last adjusted by staff in April 2011. Staff recommend that this process of reviewing the cemetery price list every two years, beginning in 2013, be continued.

FINANCIAL CONSIDERATIONS AND TEMPLATE: (external link)

None

HUMAN RESOURCES CONSIDERATIONS

None

ALIGNMENT WITH STRATEGIC PRIORITIES:**BUSINESS UNITS CONSULTED AND AFFECTED:**

none

RECOMMENDED BY:

8/29/2012

06/09/2012



Martha Pettit
Acting City Clerk



Trinela Cane
Commissioner of Corporate Services

ATTACHMENTS:

[Attachment A – Cemetery By-Law 2012](#)

[Attachment B – Cemetery Price List](#)

[Attachment C – Markham Cemetery List](#)