

# TOWN OF BANFF

## BYLAW 39-2

### Cemeteries Bylaw

#### A Bylaw for the Town of Banff Old Banff Cemetery and Mountain View Cemetery (the “Banff Cemeteries”)

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WHEREAS the Town of Banff is the lessee of Old Banff Cemetery and Mountain View Cemetery (the “Banff Cemeteries”); and

WHEREAS the Town of Banff may, pursuant to the MUNICIPAL GOVERNMENT ACT (Alberta) and Section 4.12(d) of the Town of Banff Incorporation Agreement, pass bylaws for the regulation and use of cemeteries under its control;

NOW THEREFORE the Council of the Town of Banff, in the Province of Alberta, duly assembled, ENACTS AS FOLLOWS:

#### 1.0 CITATION

1.1 This bylaw may be cited as the Cemeteries Bylaw.

#### 2.0 DEFINITION

2.1 In this bylaw,

- i. “Burial” means the action or practice of interring a dead body.
- ii. “Cemeteries” or “Cemetery” means all cemeteries or any one of them leased to the Town of Banff or operated by or under the control of the Town of Banff.
- iii. “Certificate” means a legal document indicating Interment rights.
- iv. “Child” means a person between the age of 1 year and 10 years.
- v. “Columbarium” means a structure designed to store the ashes of human remains that have been cremated.

- vi. “Fees and Charges Bylaw” means the Town’s Fees and Charges Bylaw, as amended or replaced from time to time.
- vii. “Funeral Party or Procession” means the gathering or assembly of people at the graveside at the time of Interment.
- viii. “Grave” means a space in the ground in a cemetery plot for the Burial of human remains.
- ix. “Immediate Next of Kin” means the grand-parents, parents, spouse, children, grand-children or siblings of the deceased.
- x. “Indigent” means those persons who are residents of the Town of Banff at the time of Burial and whose financial means are not sufficient to cover the fees for Burial.
- xi. “Infant” means an infant under 12 months of age.
- xii. “Interment” means Burial in the ground or inurnment.
- xiii. “Inurnment” means placing of cremated remains in an urn or vessel and placing the vessel in a Niche or Grave.
- xiv. “Mausoleum” shall mean a structure wholly or partly above the level of the ground and designed for the Burial or storage of dead human bodies.
- xv. “Memorial Tablet” means a structure of bronze, marble, or granite or other material for memorial purposes placed on a Grave, level with the surrounding ground.
- xvi. “Monument” means a structure of bronze, marble, or granite or other material which projects above the level of the surrounding ground.
- xvii. “Niche” means a space or compartment in a columbarium to hold an approved vessel containing cremated human remains.
- xviii. “Owner” shall mean the person who purchases a Certificate from the Town or the legal representative of such person.
- xix. “Pre-planning” means the advance planning for, selection of and payment of a Grave or Niche.
- xx. “Resident” means a person who:
  - a) Resides within the corporate limits of the Town of Banff at the time of death; or,
  - b) Has been a permanent resident of Banff National Park for a cumulative period of at least 15 years.

- xxi. “Scattering” means the dispersing of cremated human remains upon the surface of the Scattering Garden in designated area, with the remaining cremated remains being interred in accordance with this Bylaw.
- xxii. “Scattering Garden” is a garden area designated to receive cremated human remains that become part of the landscape and are non-recoverable.
- xxiii. “Town Manager” means a person appointed as a Chief Administrative Officer by Council.
- xxiv. “Unidentified” means those persons who are residents of the Town of Banff at the time of Burial but whose identity is not known or readily discoverable.

### **3.0 DUTIES, RIGHTS AND POWERS OF THE TOWN MANAGER**

- 3.1 All powers granted to the Town Manager by this Bylaw shall be subject to the supervision and control of the Council.
- 3.2 The Town Manager shall have charge of the Cemeteries, shall determine the appropriate care and maintenance of cemeteries, and shall exercise control over all those employed therein.
- 3.3 The Town Manager shall make available Graves in the Cemeteries, without charge, for the Burial of indigent persons.
- 3.4 The Town Manager may divide each Cemetery into areas and may reserve any such areas in the Cemetery for:
  - i. The Burial of the remains of persons belonging to a specified religious denomination;
  - ii. The Burial of the remains of person who at any time served with or were attached to the naval army or air forces of Her Majesty or a power allied or associated with Her Majesty;
  - iii. The Burial of the remains of homeless or unidentified persons; or
  - iv. The Burial of the remains of still-born children.
- 3.5 The Town Manager shall keep Interment records and plans.
- 3.6 Interment records shall include:
  - i. Name of deceased;
  - ii. Cause of death;
  - iii. Latest residence; and
  - iv. Location of Grave by diagram.

and such other information as may be deemed necessary to provide an accurate registry of same.

- 3.7 Records kept shall be available for inspection pursuant to section 3.4 by:
- i. The Manager of Municipal Parks; or,
  - ii. A person designated in writing by the Town Manager; or,
  - iii. Any police officer carrying out law enforcement duties.
- 3.8 The Town Manager shall have the sole right and authority to erect tents, adjust lowering devices and to trim Graves at all Burials in a Cemetery and the person ordering such work done shall supply all the necessary safe and proper material to perform such work.
- 3.9 The Town Manager may remove from or prohibit any person placing in any Cemetery any stand, holder, vase or other receptacle for flowers or plants, or any flower pots, jars, bottles, iron or wire work or any ornaments or construction of any kind which he deems to be unsightly or otherwise unsuitable for such Cemetery. Such articles shall, upon notice to the Owner, be held for thirty (30) days, during which time the Owner may apply to regain possession of the article(s). After the 30-day period, the Town's responsibility for such articles shall cease.
- 3.10 If, in the opinion of the Town Manager, any trees, shrubs, or plants on any Grave become detrimental to adjacent Graves, walks, or driveways, or prejudicial to the general appearance of the grounds, the Town Manager shall have the right to remove any such trees, shrubs, plants, or any parts thereof.
- 3.11 The Town Manager shall have the right to remove infrastructure such as fences, borders, walls, hedges and other enclosures now in existence as he may deem advisable after notice of his intention to do so has been given to the Owners.
- 3.12 The Town Manager may remove from any Graves any weeds or grass and he may also remove any floral pieces which, in his opinion, have become wilted or otherwise unsightly.
- 3.13 All persons employed in the construction of Burial vaults, erection of Monuments or doing other work in the Cemeteries, whether employed by the Town or not, shall be subject to the direction and control of the Town Manager.
- 3.14 The Town Manager shall have the right to remove from any Cemetery any person who disturbs the quiet or good order of such Cemetery whether by noisy or improper conduct or otherwise.

Any society or group desiring to hold a memorial service shall give the Town Manager at least ten (10) days' notice of their intention so to do.

## 4.0 GRAVES

- 4.1 The plans of land used for Cemetery purposes shall be open for inspection free of charge at the office of the Town at any time during which the municipal offices are open to the public.
- 4.2 The Town shall record all Interments in accordance with the plans of the lands used for cemetery purposes.
- 4.3 The Town is entitled to sell Graves in the Cemeteries and to receive all monies from such sales and for all Interments made in the Cemeteries.
- 4.4 The Town shall keep proper books of account showing all monies received from the sale of Graves and for all services rendered in the Cemeteries, and showing all expenditures made in connection with the Cemeteries.
- 4.5 Graves Certificates for Burial purposes may be sold only to:
- i. Those persons eligible for Interment in Banff;
  - ii. Immediate Next of Kin of persons eligible;
  - iii. Personal representatives of persons eligible; or,
  - iv. The personal representative of Immediate Next of Kin of persons eligible.
- 4.6 Old Banff Cemetery Grave Certificates are available only at time of need. Mountain View Cemetery Grave Certificates are available for Pre-planning.
- 4.7 A grave reservation Certificate is available for purchase at Mountain View Cemetery and gives the Owner right of interment without reserving a specific site.
- 4.8 A grave reservation Certificate is valid for a period of forty-nine (49) years and is nontransferable and non-refundable.
- 4.9 Grave Certificates purchased for preplanning are valid for a period of forty-nine (49) years from the date of purchase.
- 4.10 Notwithstanding section 4.7, Grave Certificates purchased for preplanning and issued between 1990 and 2018:
- i. Expire forty-nine years after the date of purchase;
  - ii. Cannot be resold;
  - iii. Are refundable only to original Owner at purchased price; and
  - iv. Can only be transferred back to the Town of Banff.
- 4.11 Grave Certificates are refundable to the original Owner only at the purchased price less prorated perpetual care fees and less an administrative fee.
- 4.12 Grave Certificates are only transferable back to the Town of Banff.

- 4.13 Graves for Interment purposes may be used only for the Burial of those persons eligible for Interment in Banff Cemeteries.
- 4.14 A person is eligible to be interred in Banff Cemeteries, if the person is:
- i. Born within the Town of Banff corporate limits;
  - ii. A permanent resident of Banff National Park for a cumulative period of at least 15 years;
  - iii. A permanent resident of the Banff National Park at the time of death; or,
  - iv. The Immediate Next of Kin of a person whose remains are interred in the cemetery.
- 4.15 Grave Certificates and services in the Cemeteries shall be charged in accordance with the Fees and Charges Bylaw.
- 4.16 The Town Manager may issue a Grave Certificate and provide a receipt:
- i. Upon written application together with the required Statutory Declaration (Schedule “A”) regarding eligibility to be buried in Banff Cemeteries; and
  - ii. Upon payment.
- 4.17 The Town Manager shall determine the location of any and all Graves that are to be sold.
- 4.18 Whenever a Grave Certificate is held by two or more persons, the permission for Interment in such a Grave will be accepted by the Town Manager from any one of the said persons or their personal representatives.
- 4.19 Graves shall be used only for the Burial of human remains or ashes.
- 4.20 No more than three (3) Interments shall be permitted in any Grave.
- 4.21 Graves shall be dug and Interments made only by persons employed or contracted by the Town and no person or persons not in the employment of or contracted by the Town Manager shall open any Grave or vault for the purpose of interring or removing a body.
- 4.22 Graves shall be six (6) feet (1.8 m) in depth from the surface of the ground.
- 4.23 Town Manager shall have all applications for Interments in the Cemeteries signed by the Certificate Owner of the Grave in which such Interment is to be made or by legal representatives of such Owner.
- 4.24 No person shall erect any infrastructure or vegetation in or around any Grave without the written permission of the Town Manager.
- 4.25 No person shall place or deposit any glass encased wreath on any Grave.
- 4.26 No person shall remove any sod or earth from any portion of a Cemetery without first obtaining the consent of the Town Manager.

- 4.27 Unless permission has been obtained from the Town Manager, no person shall remove, destroy, prune or otherwise interfere with any trees, shrubs, plants or flowers in any Cemetery. All trees or shrubs shall be planted only by employees of the Town under the direction of the Town Manager.
- 4.28 The top of Graves shall be kept level with the surrounding ground.

## 5.0 BURIALS

- 5.1 No Burial shall be permitted in a Cemetery unless a proper Burial permit is produced to the Town Manager by the party applying for the Burial.
- 5.2 All applications for a Burial permit shall be made at least three (3) business days before the time of Interment, except as otherwise allowed by the Town Manager.
- 5.3 Notices required to be given to any person under this Bylaw may be given either verbally or in writing. If required to be in writing, a notice mailed postpaid to the last known address of such person shall be deemed sufficient notice to that person.
- 5.4 Funeral Parties or Processions must reach the Cemetery not later than 2:00 p.m.
- 5.5 Overtime will be charged in accordance with the Fees and Charges Bylaw, if it is necessary for Town employees to remain to complete the service after their usual working hours.
- 5.6 There shall be no Burials on Sundays or Statutory Holidays unless such Burial is permitted in writing by the Town Manager, and in such case fees will be charged in accordance with the Fees and Charges Bylaw.
- 5.7 All Funeral Parties or Processions shall be under the supervision of the Town Manager while they are within any Cemetery.
- 5.8 The Town or any employee thereof shall not be responsible for any mistake resulting from lack of precise or proper instructions regarding the Grave space within a Grave where an Interment is to be or has been made or for any damage resulting to any person thereby.
- 5.9 No second Interment shall be permitted in any Grave in the Cemeteries on which there are unpaid charges due and payable to the Town.
- 5.10 No person shall exhume remains or ashes from any Grave first presenting a permit for disinterment from Vital Statistics to the Town Manager.

- 5.11 The body of any person which was infected at the time of death with any specified communicable disease, as defined in the regulations of the *Public Health Act* (Alberta), shall not be taken into any church, chapel or public vault within the Town or the Cemeteries but shall be transferred directly from the place of death to the place of Burial and no person except the officiating Clergyman, Town Manager and those whose attendance is absolutely necessary, shall attend the funeral or Burial of any such body unless the said body has been placed in an airtight sealed metal coffin liner in accordance with the regulations to the *Public Health Act* (Alberta).

## 6.0 MONUMENTS, VAULTS AND LINERS

- 6.1 A Grave liner or vault shall be mandatory for Burial.
- 6.2 No Monument shall be erected in a Cemetery until the design and description has been approved by the Town Manager and a monument permit has been issued.
- 6.3 No Monument or other memorial of artificial stone shall be erected in a Cemetery unless approved in writing by the Town Manager.
- 6.4 The fee for a Monument permit shall be as set forth in the Fees and Charges Bylaw.
- 6.5 No person shall do any construction work in a Cemetery without written authorization from the Town Manager.
- 6.6 All Monument and Memorial Tablet sizes shall be determined by the surface area of the Grave as follows:
- i. The face area of a Monument shall not exceed 15% of the area of the Grave on which it is to be erected;
  - ii. The length of the base shall not exceed 75% of the width of the Grave; and
  - iii. The base area of the Monument shall not exceed 9% of the area of the Grave.
- 6.7. Monuments with a face area smaller than six (6) ft<sup>2</sup> (0.56 m<sup>2</sup>) shall be no less than four (4) inches (10 cm) in thickness.
- 6.7 Monuments with a face area between six (6) ft<sup>2</sup> (0.56 m<sup>2</sup>) and twelve (12) ft<sup>2</sup> (1.1 m<sup>2</sup>) shall be no less than six (6) inches (15 cm) in thickness.
- 6.8 Monuments with a face area exceeding twelve (12) ft<sup>2</sup> (1.1 m<sup>2</sup>) shall be no less than eight (8) inches (20 cm) in thickness.
- 6.10. The base area of a Monument shall not exceed 25% of the total height of the Monument.
- 6.11 Monuments shall not exceed a height of thirty-nine (39) inches (1 m).

- 6.12 All concrete foundations, whether precast or poured on site for the erection of Monuments, shall be the sole responsibility of the Owner. Measurements for width, length and depth may be modified or altered for special Monuments subject to the approval of the Town Manager.
- 6.13 Foundations of all Monuments shall extend four (4) inches (10 cm) in all directions beyond the base.
- 6.14 Not more than one Monument or Memorial Tablet shall be erected on one Grave, except for multiple Grave plots where one Memorial Tablet for each Grave will be permitted.
- 6.15 Memorial Tablets of individual Graves shall not exceed 26 x 14 inches (66 x 36 cm) in surface area and shall be no less than four (4) inches (10 cm) in thickness and be properly set in concrete according to the specifications established by the Town Manager.
- 6.16 All foundations for Monuments and Memorial Tablets shall be confined within the boundaries of the respective Graves, and shall be placed in such a manner as to maintain, wherever possible, a proper alignment.
- 6.17. All Memorial Tablets placed upon a Grave:
  - i. shall be of granite, marble, stone or bronze;
  - ii. shall not protrude above the surface of the ground; and
  - iii. shall be set according to the directions of the Town Manager.
- 6.18. The use of bronze is approved for inscription plates when attached to Monuments or Memorial Tablets of natural stone, which must be cast from an alloy containing not less than 85% copper and not less than 5% lead. No other metals are approved for such use unless they are substantially non-corrosive and are of proven permanency.
- 6.19 No Grave shall be covered by any slab of cement or other similar matter.
- 6.20 No new private mausoleums shall be permitted in the Cemeteries.
- 6.21 The Town Manager will issue a notice to the Owner any Monument that is out of repair and it shall be the duty and obligation of the Owner to repair such Monument within thirty (30) days of issuance of notice.
- 6.22 If an Owner of a Monument fails to make the required repairs or alterations to the Monument within 30 days of issuance of the notice or report from the Town Manager, the Town Manager shall have the power to remove such Monument from a Cemetery or to repair or replace such Monument and charge the cost thereof to the Owner, which may be recovered as a debt due to the Town by the Owner.
- 6.23 If a Monument, in the Town Manager's opinion, is of historical significance to the Town, the Town Manager shall have the power to repair such Monument at the expense of the Town.

- 6.24 Materials left by excavation shall be:
- i. Removed and disposed of by the Owner; or,
  - ii. Removal and disposal services will be charged back to the owner.
- 6.25. No work shall be done upon any Monument nor shall any Monument be removed from any Grave without first obtaining the written permission of the Town Manager.

## 7.0 COLUMBARIUM

- 7.1 Niches for Interment purposes may be used only for the Burial of those persons eligible for Interment in Banff Cemeteries.
- 7.2 Niches for Interment purposes may only be sold to:
- i. Those persons eligible for Interment in Banff;
  - ii. Immediate Next of Kin of persons eligible;
  - iii. Personal representatives of persons eligible; or,
  - iv. The Personal representative of Immediate Next of Kin of persons eligible.
- 7.3 Niche Certificate of ownership may be purchased at time of need and for preplanning purposes.
- 7.4 Niche Certificates and services in the Cemeteries shall be charged in accordance with the Fees and Charges Bylaw.
- 7.5 Niche Certificates purchased prior to time of need are valid for a period of ten (10) years from the date of purchase, unless occupied.
- 7.6 Niche Certificates available for Pre-planning are limited to 50% of the inventory.
- 7.7 The Town shall have the right to refuse to sell more than three (3) Niche Certificates to any individual or estate.
- 7.8 Niche Certificates are non-refundable and are only transferable back to the Town of Banff without compensation.
- 7.9 The Town shall record all Niches in accordance with the plans of the lands used for cemetery purposes.
- 7.10 The Town Manager may issue a Niche Certificate and provide a receipt:
- i. Upon written application together with the required Statutory Declaration (Schedule “A”) regarding eligibility to be buried in Banff Cemeteries; and
  - ii. Upon payment.

## 8.0 SCATTERING GARDEN

- 8.1 Notwithstanding section 4.14, any person may be interred in the Scattering Garden.
- 8.2 Scattering Garden Certificates may be sold to anyone at time of need.
- 8.3 Scattering Garden Certificates and services in the Cemeteries shall be charged in accordance with the Fees and Charges Bylaw.
- 8.4 The Town Manager may issue a Scattering Garden Certificate and provide a receipt:
  - i. Upon written application; and
  - ii. Upon payment.

## 9.0 MEMORIAL WALL

- 9.1 Dedication Certificates on the memorial wall are available for purchase with or without Interment.
- 9.2 Dedication Certificates may be granted or refused by the Town Manager in his sole discretion.
- 9.3 Dedication Certificates and services in the Cemeteries shall be charged in accordance with the Fees and Charges Bylaw.
- 9.4 The Town Manager may issue a Dedication Certificate and provide a receipt:
  - i. Upon written application; and
  - ii. Upon payment.

## 10.0 VEHICLES IN THE CEMETERIES

- 10.1 No person shall travel through any Cemetery at a greater rate of speed than 10 km/h.
- 10.2 No person shall ride or drive a bicycle or other vehicle over any area of a Cemetery other than a pathway or roadway.
- 10.3 The Owner of any vehicle shall be responsible for any damage done by such vehicle in any Cemetery.
- 10.4 The Town Manager may prohibit the driving of vehicles in any part of a Cemetery.

## **11.0 GENERAL PROVISIONS**

- 11.1 No Interment shall take place until an Interment permit has been issued.
- 11.2 No person shall take an animal in any Cemetery.
- 11.3 No person shall destroy, damage, deface or write upon any Monument, Memorial Tablet, or other structure or object in any Cemetery.
- 11.4 No person shall enter or use any portion of a Cemetery for purposes of recreation or entertainment, including camping, picnicking and social gathering, without the prior authorization of the Town Manager.
- 11.5 Before any Monument is erected, the Town Manager shall designate the place where the material used in the erection of such Monument is to be placed during the course of erection or excavation, and all persons moving any heavy material over Graves and paths shall move such material on planks or in some other method which prevent damage to Graves and paths.
- 11.6 No fires are permitted within any portion of a Cemetery.
- 11.7 All Cemeteries of the Town shall be closed to the public daily from 8:00 p.m. until 8:00 a.m. the following morning, or as determined from time to time by the Town Manager.
- 11.8 The Town shall not be held responsible for any damage, destruction or defacement to any Monument, Memorial Tablet, Grave or other structure or object in any Cemetery except for damages resulting during the performance of its normal duties.

## **12.0 PENALTY**

- 12.1 Any person who violates any of the provisions of this Bylaw is guilty of an offence and is liable for a penalty of not more than Twenty-Five Hundred Dollars (\$2,500.00), and in default of payment is liable to imprisonment for a term not exceeding six (6) months, or both.

## **13.0 AMMENDMENT TO SCHEDULES**

- 13.1 Schedule “A” forms part of this Bylaw.

**14.0 ENACTMENT**

- 14.1 Bylaw #039-1 is repealed upon this bylaw coming into effect.
- 14.2 Bylaw #288 is repealed upon this bylaw coming into effect.
- 14.3 This bylaw comes into force after the date of final passing, upon approval and execution by the Superintendent, Banff National Park, for the Minister of the Environment.
- 14.4 The Town Manager is authorized to consolidate Bylaw 039-2.

READ A FIRST TIME this 11<sup>th</sup> day of February, 2019.

READ A SECOND TIME this 13<sup>th</sup> day of May, 2019.

READ A THIRD TIME this 10<sup>th</sup> day of June, 2019.

SIGNED AND PASSED this 17<sup>th</sup> day of June, 2019.

On  
Original  
Karen Sorensen  
Mayor

On Original  
Randall McKay  
Interim Town Manager

APPROVED by the Minister of the Environment, by his delegate this 24<sup>th</sup> day of December, 2019:

On Original  
Minister of the Environment/Delegate



**SCHEDULE A – STATUTORY DECLARATION**

I, \_\_\_\_\_,  
(name in full)

of \_\_\_\_\_,  
(number and street)

of the \_\_\_\_\_,  
(town, city etc.)

in the Province of \_\_\_\_\_,

hereby declare that:

**a) Permanent Residency Declaration**

I am applying for a Interment Certificate in respect of the Burial of the remains or ashes of:

\_\_\_\_\_  
(name in full)

who, at the time of his/her death, was:  
(Please check the box that applies)

- Born within the Town of Banff corporate limits
- A permanent resident of Banff National Park for a cumulative period of at least 15 years
- A permanent resident of the Banff National Park at the time of death
- The Immediate Next of Kin of a person whose remains are interred in the cemetery

**b) NEXT OF KIN**  
(As described in Bylaw 39-2)

I am applying for an Interment Certificate on behalf of \_\_\_\_\_,  
being an immediate next of kin of \_\_\_\_\_, a person  
whose remains are interred in Banff Cemeteries.

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true and  
knowing that it is of the same force and effect as if made under oath.

SWORN before me at \_\_\_\_\_

in the Province of \_\_\_\_\_

this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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A COMMISSION FOR OATHS IN AND FOR  
THE PROVINCE OF ALBERTA