

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original Signed by 

Jacques Dubé, Chief Administrative Officer

Original Signed by 

Jane Fraser, Acting Deputy Chief Administrative Officer

DATE: September 23, 2016

SUBJECT: Proposed Administrative Order 2016-007-OP, *Acquisition of Cemeteries Administrative Order*

ORIGIN

September 22, 2015 Motion of Regional Council:

MOVED by Councillor Hendsbee, seconded by Councillor Craig:

THAT Halifax Regional Council request a staff report for the Municipality to develop policy and implement a process for the acceptance and adoption of old, abandoned or orphan cemeteries, and/or from any congregation and/or community groups that want to convey and transfer their cemeteries over to the Municipality for the purposes of ongoing maintenance and perpetual care. The staff report should include a potential inventory and potential budget implications. **AMENDED MOTION PUT AND PASSED UNANIMOUSLY.**

August 2, 2016 Motion of Regional Council:

MOVED by Councillor Hendsbee, seconded by Deputy Mayor Whitman:

That Halifax Regional Council direct staff to draft an Administrative Order defining the process for considering old, abandoned or orphan cemeteries as outlined the staff report dated July 19, 2016 and that staff be directed to return to Council with the draft Administrative Order for Council's consideration. **MOTION PUT AND PASSED UNANIMOUSLY.**

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter ("HRM Charter"), subsections 61(1) and (5):

- (1) The Municipality may acquire and own property granted or conveyed to the Municipality either absolutely or in trust for a public or charitable purpose".
- (5) The Municipality may... (a) acquire property, including property outside the Municipality, that the Municipality requires for its purposes or for the use of the public.

Cemetery and Funeral Services Regulations, subsection 27 (2) states:

In the case of a cemetery which was operated by an organization other than a municipality, the organization which operated the cemetery may enter into a contract or agreement with the municipality in which the cemetery is located or with a municipality served by the cemetery, such that the municipality contracts or agrees to provide adequate maintenance for the cemetery. In such case, the responsibility of the municipality will be the same as though the cemetery were municipally operated.

Cemeteries By-law, subsection 3(1):

- 3 (1) This by-law shall apply to the following cemeteries:
 - (a) Camp Hill Cemetery, Halifax
 - (b) Fairview Lawn Cemetery, Halifax
 - (c) Saint Paul's Cemetery (Old Burying Grounds), Halifax
 - (d) Mount Hermon Cemetery, Dartmouth
 - (e) Saint Paul's Cemetery, Dartmouth
 - (f) Dartmouth Common (Park Avenue) Cemetery, Dartmouth
 - (g) Saint Peter's Cemetery, Dartmouth

RECOMMENDATION

It is recommended that Halifax Regional Council adopt Administrative Order 2016-007-OP, the *Acquisition of Cemeteries Administrative Order*, as set out in Attachment 1 of this report.

BACKGROUND

The Halifax Regional Municipality ("HRM") currently maintains seven cemeteries: Fairview Lawn, Camp Hill, Mount Hermon, Saint Paul's (Dartmouth), Saint Peter's, the Dartmouth Common, and the Saint Paul's Old Burying Grounds. The Burying Grounds are maintained by the Old Burying Ground Foundation through a partnership.

HRM is one of the first and only municipalities within the Maritimes engaged in the maintenance and operations of cemeteries. Staff research has indicated that the most similar municipal operating models are within the Province of Ontario. Designated by the province, the Ontario municipalities are responsible to assume ownership of any cemetery that becomes abandoned or which cannot be maintained by current owners.

Over the past few years, there have been several requests for HRM to assume responsibility of cemeteries that can no longer be maintained by the owner. Specifically, cemeteries owned and operated by churches have been struggling with ongoing maintenance. This is largely a result of fewer volunteers and parishioners who are willing to provide supportive services. Additionally, due to population declines in rural areas, many parishes have consolidated and are unable to maintain multiple properties.

The 2016/17 operating budget for HRM operated cemeteries is three hundred and forty-four thousand dollars (\$344,000.00). As per the Cemeteries Service Review approved by Council in April 2010, HRM cemetery operations are to strive to be cost neutral to the tax payer with fees periodically reviewed and

adjusted to meet these requirements. The most recent fee review of Administrative Order 20, Respecting Fees for Cemetery Services, was approved by Council on March 8, 2016.

On September 22, 2015, Council requested a staff report for the Municipality to develop policy and implement a process for the acceptance and adoption of old, abandoned or orphan cemeteries. In August 2016, staff submitted a report to Council regarding the *Policy for Acceptance and Adoption of Old, Abandoned, or Orphan Cemeteries*. This report highlighted the background of cemeteries within HRM, the role of the Province in acquisition and maintenance, the costs of current operations and provided key terms for development of an Administrative Order. Council subsequently directed staff to prepare an Administrative Order, as outlined in the staff report, for Council's consideration. This report provides staff's recommended Administrative Order to govern the consideration and potential acquisition of cemeteries.

DISCUSSION

The proposed Administrative Order sets out the process for the Municipality to consider acquiring a cemetery. It provides for requests to be submitted to the Clerk's Office and requires that the applicant:

- agree to convey its ownership interest to the Municipality for one (\$1.00) dollar, including conveying any easements that may be required to access the cemetery;
- be in compliance with applicable federal, provincial and municipal enactments;
- agree to transfer to the Municipality the perpetual care fund (if a fund exists in accordance with Provincial enactment), including
 - making necessary amendments to the trust agreement to enable the transfer, and,
 - receiving the approval of the provincial Registrar of Cemetery and Funeral Services for the transfer;
- agree to transfer any funds for pre-arranged funeral plans to the Municipality; and
- provide the Municipality with supporting documents respecting the cemetery, including
 - a list of the organization's rules, regulations and by-laws pertaining to the cemetery,
 - audited financial statements,
 - information respecting any pre-arranged funeral plans;
 - a survey of the land of the cemetery,
 - copies of any subdivision plan that organization may have for the cemetery,
 - a cemetery plan respecting the burials or cremations, and
 - copies of any agreements the cemetery may have with third parties, such as landscape companies.

The proposed Administrative Order further requires that the applicant allow staff to inspect the cemetery to determine its state of repair. Each site should ideally be able to be self-supportive, including not requiring increased financial resources for maintenance or repair. Proposed sites should be in a state of good repair before HRM assumes them and should not require capital investment to meet safety or service standards. Once the review and inspections are complete, staff would prepare a report for consideration by Council respecting whether to acquire the cemeteries. The report would take into consideration the risks of acquisition including the proposed site's feasibility, and identify impacts if the

site was abandoned.

Municipal support will likely be required once a cemetery is acquired; accordingly, the Administrative Order would make acceptance of a cemetery conditional on funds being available in the Council approved budget. Budgetary implications for acquiring cemeteries may include staff support such as on-site marking of plots the day before or the day of interment, administration of plot sales, burial coordination, record maintenance and coordination of opening and closing plots, in addition to regular maintenance provision.

As well, support would also be required for cemetery maintenance, including plowing, grass cutting and horticultural maintenance, fencing, depressions, and monument maintenance.

Cemeteries operated by the Municipality are listed in the *Cemeteries By-law*. If Council accepts a cemetery, the proposed Administrative Order requires that staff draft amendments to the By-law for Council's consideration which would add the accepted cemeteries to the By-law. The proposed Administrative Order also addresses the applicant organization's transparency and the subsequent assessment of financial data. Under private, church or group ownership, community members were often provided plots at rates that were very low cost or at no cost. Fees may or may not have been levied for perpetual care on existing plots that are owned. Once the By-law is amended, any newly accepted cemeteries will operate under the fees schedule provided for in Administrative Order 20, the *Fees for Cemetery Services Administrative Order* (Attachment 2).

FINANCIAL IMPLICATIONS

There are no financial implications directly arising from this report. Staff proposes to absorb the additional administrative effort regarding cemetery evaluations within the current operating budget for Parks & Recreation. This position could change if there is an excessive amount of acquisition requests.

Financial impacts of cemetery acquisition are varied depending on the location, the availability and value of the plots, the number of plots available, and the size of the cemetery. The Administrative Order proposes assessment of the applicant cemetery's financial health prior to acquisition. Costs for acquisition will be evaluated on a case-by-case basis. The impact of each acquisition will be considered in relation to budgetary constraints.

RISK CONSIDERATION

There are potential risks associated with the Administrative Order. Staff could receive a considerable amount of requests and may require additional resources. Further, where this is a new Administrative Order, staff may discover that the evaluation criteria are too broad or too restrictive. Staff will mitigate this risk on a case-by-case basis through its future reports to Council which may recommend amendments to the Administrative Order to improve effectiveness.

COMMUNITY ENGAGEMENT

Service Nova Scotia Business Licensing Section and the Nova Scotia Department of Culture and Heritage were consulted throughout the development of this policy. Staff conducted site visits of several rural cemeteries and received feedback from the property stewards/owners.

ENVIRONMENTAL IMPLICATIONS

None identified.

ALTERNATIVES

Council could choose not to adopt the Administrative Order. This is not recommended as staff would have no policy guidance for considering any requests for cemetery acquisition.

ATTACHMENTS

Attachment 1 - Administrative Order 2016-007-OP—*Respecting the Acquisition of Cemeteries*

Attachment 2 - Administrative Order 20 *Respecting Fees for Cemetery Services*

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.php> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

Report Prepared by: Bonnie Murphy, Cemetery Administrator, Parks, 902.490-6236

ATTACHMENT 1

ADMINISTRATIVE ORDER 2016-007-OP RESPECTING THE ACQUISITION OF CEMETERIES

BE IT ENACTED by the Council of the Halifax Regional Municipality, under the authority of the *Halifax Regional Municipality Charter*, 2008 S.N.S. c. 39, as amended, as follows:

Short Title

1. This Administrative Order may be cited as the *Acquisition of Cemeteries Administrative Order*.

Purpose

2. The purpose of this Administrative Order is to set out the process by which the Municipality will consider acquiring a cemetery.

Interpretation

3. In this Administrative Order,

(a) “applicant” means an organization applying for consideration under this Administrative Order;

(b) “cemetery” means a cemetery as defined in the *Cemeteries and Monuments Protection Act*, 1998 S.N.S., c.9, as amended;

(c) “care fund” means a care fund pursuant to the *Cemeteries and Funeral Services Act*, SNS 1989, c. 62, as amended;

(d) “Council” means the Council of the Municipality;

(e) “Municipality” means the Halifax Regional Municipality;

(f) “organization” means a person owning, controlling or managing a cemetery, and includes an individual, an association of individuals, a partnership or a corporation, or an employee or agent thereof;

(g) “owner” includes

(i) a part owner, joint owner, tenant in common or joint tenant of the whole or any part of land or a building,

(ii) in the case of the absence or incapacity of the person having title to the land or building, a trustee, an executor, a guardian, an agent, a mortgagee in possession or a person having the care or control of the land or building, and

(iii) in the absence of proof to the contrary, the person assessed for the property;

(h) “pre-arranged funeral plan” means a pre-arranged funeral plan pursuant to the *Cemeteries and Funeral Services Act*;

(i) “pre-need cemetery plan” means a pre-arranged cemetery plan pursuant to *the Cemeteries and Funeral Services Act*;

(j) “Registrar” means the Registrar of Cemetery and Funeral Services; and

(k) “street” means a public street, highway, road, lane, sidewalk, thoroughfare, bridge, square and the curbs, gutters, culverts and retaining walls in connection therewith.

Eligibility Requirements

4. To be eligible for consideration under this Administrative Order, an applicant must:

(a) be an organization that is the owner of the property that contains the cemetery;

(b) agree to convey its ownership interest to the Municipality for one (\$1.00) dollar, including, if the cemetery does not front on a street, conveying any easements or rights of way to the Municipality that may be required to access the cemetery;

(c) be in compliance with all applicable federal, provincial and municipal enactments at the time of request;

(d) agree to transfer to the Municipality the perpetual care fund, including:

(i) making any amendments to the trust agreement required to allow such transfer, and

(ii) receiving the approval of the Registrar for the Municipality to be the trustee;

(e) agree to transfer any funds for pre-arranged funeral plans and any pre-need cemetery plan for interments to the Municipality; and

(f) comply with sections 5 and 6 of this Administrative Order.

Application Requirements

5. (1) An application must contain:

(a) a written request setting out the organization is abandoning the cemetery;

(b) confirmation the organization is in compliance with any and all applicable federal, provincial and municipal enactments regulations at the time of request;

(c) a list of the organization’s rules, regulations and by-laws pertaining to the cemetery;

(d) audited financial statements for the past seven (7) years pertaining to the cemetery, including the perpetual care fund accounts;

(e) information respecting any pre-arranged funeral plans and any pre-need cemetery plans;

- (f) a survey of the cemetery prepared by a Nova Scotia Land Surveyor;
- (g) a copy of any subdivision plan that organization may have for the cemetery;
- (h) a cemetery plan which must include:
 - (i) the names, address, and type of plot purchased, such as a cremation plot or casket,
 - (ii) for each plot, the names of the deceased, the location in the plot where the deceased is interred, the date of burial and the type of burial, such as whether the deceased was cremated or buried in a casket;
 - (iii) the number and location of all plots available for burials; and
- (i) copies of any agreements the cemetery may have with third parties, such as landscape companies.

Submitting an Application

- 6. (1) Applications may be submitted to the Municipality from time to time.
- (2) Applications must be submitted to the Office of the Municipal Clerk.

Incomplete Applications

- 7. Applications are not complete if, in the opinion of the Chief Administrative Officer or delegate, an:
 - (a) applicant is not eligible pursuant to section 4 of this Administrative Order; or
 - (b) applicant has not complied with section 5 of this Administrative Order.

Duties of Applicant

- 8. An applicant who has submitted a complete application shall
 - (a) allow the cemetery to be inspected by the Municipality, at any time and without notice, prior to conveyance of it;
 - (b) ensure that all surveyor stakes are visible in the cemetery; and
 - (c) execute an agreement indemnifying and holding harmless the Municipality from liability for any actions, claims or proceedings, arising while the operator operated the cemetery.

Duties of Municipality

- 9. Upon receiving a complete application, the Municipality may:
 - (a) review the application;
 - (b) undertake an inspection to assess the current state of repair of the cemetery;

(c) notify the business unit of the Municipality responsible for the insurance of the Municipality; and

(d) prepare a report for Council's consideration respecting those cemeteries that filed completed applications in accordance with this Administrative Order.

10. Council may consider the report prepared pursuant to clause 9(d).

Conditions of Acceptance

11. If Council decides to accept a cemetery, such acceptance shall be conditional on:

(a) funds being available in the approved budget;

(b) the Municipality being satisfied that the cemetery is in good repair; and

(c) the applicant complying with sections 4, 5 and 6 of this Administrative Order.

By-law Amendments

12. If Council decides to accept a cemetery, staff shall draft amendments to add the accepted cemetery to the *Cemeteries By-law* and forward such draft amendments to Council for its consideration.

Done and passed in Council this day of 2016.

Mayor

Municipal Clerk

**Halifax Regional Municipality
Administrative Order Number 20
Respecting Fees for Cemetery Services**

BE IT RESOLVED as an Administrative Order of the Council of the Halifax Regional Municipality as follows:

1. SHORT TITLE

The Administrative Order may be cited as Administrative Order Number 20, Fees for Cemetery Services Administrative Order.

2. CEMETERY FEES ESTABLISHMENT

Whereas By-Law C-700 provides for the sale of burial rights and the provision of other services related to municipal cemeteries, the schedule of fees is as follows:

Schedule of Fees - HRM Cemeteries Price

1. Lot and Niche Fees Except for the Last Post Fund Columbarium

A. Single grave lot	\$2,300.00
B. Cremation lots (holds up to 4 cremations)	\$1,500.00
C. Infant lots (in special infant sections)	\$200.00
D. Repealed	
E. HRM Columbarium (up to 2 urns)	\$2,500.00

Except for interments in the Last Post Fund Columbarium, an additional fee for maintenance care in the amount of \$300.00 will be added to each of the lots mentioned above and provides for the first interment in the lot. Subsequent interments are outlined in section 2 below.

15% of the proceeds of the lot sales will be deposited in a trust or reserve to provide for maintenance care of the lots.

2. Interment Fees Except for the Last Post Columbarium

A. Standard interment	\$900.00
B. Double depth/vault/oversize (where site conditions permit)	\$1,100.00
C. Cremation interment	\$500.00
D. HRM Columbarium interment	\$400.00

3. Additional Fees Except for the Last Post Fund Columbarium

A.	Transfer fees (no tax payable)	\$100.00
B.	Research fee (per hour)	\$50.00
C.	Foundation/ mark administration fee	\$75.00
D.	Vault rental (handling fee per movement)	\$200.00
E.	Rental fee (per month)	\$50.00
F.	Maintenance care fee for a second and all subsequent interments	\$300.00
G.	Standard disinterment	\$900.00
H.	Cremation disinterment	\$500.00
I.	Weekend/Holiday rate (additional flat rate added to price)	
	a) Saturday rate	\$175.00
	b) Sunday/Holiday rate	\$225.00
J.	Burials after 4:00 pm Mon-Fri (additional \$100.00 flat rate added to price)	

If a maintenance care fee was not included at the time of purchase, a maintenance care fee shall be applied at the time of interment pursuant to clause 3F except for interments in the Last Post Fund Columbarium (no additional maintenance fee).

Tax is payable on all fees.

4. Niche Fees - Last Post Fund Columbarium – Purchased Prior to August 13, 2008

A.	Single Interment in Last Post Columbarium (including the cost of the maintenance fee, opening and closing, deed, engraving the niche panel and all applicable taxes)	\$1,840.00
B.	Double Interment Last Post Columbarium (including the cost of the first and second maintenance fee, first and second opening and closing, deed, engraving the niche panel and all applicable taxes)	\$2,140.00
C.	Second maintenance care fee (per movement) plus applicable taxes are included in the fee of B.	\$50.00

- D. Opening and closing fee per interment plus applicable taxes is included in A. and B. \$250.00

5. Niche Fees - Last Post Fund Columbarium - Purchased from Last Post Fund after August 12th 2008

- A. Single Interment in Last Post Columbarium \$2,106.00
(including the cost of the niche, one opening and closing fee, maintenance fee, engraving of niche panel, deed, and all applicable taxes but excluding C and D)
- B. Double Interment Last Post Columbarium \$2,727.50
(including the cost of the niche, two opening and closing fees, two maintenance fees, engraving of niche panel, deed, and all applicable taxes but excluding C and D)
- C. Weekend/Holiday rate (plus applicable tax)
 - a) Saturday rate \$175.00
 - b) Sunday/Holiday rate \$225.00
- D. Burials after 4:00 pm Mon/Fri (plus applicable tax) \$100.00

6. Niche Fees – Last Post Fund – Purchased from HRM at Any Time

- A. Single Interment in Last Post Columbarium \$2,106.00
(including the cost of the niche, one opening and closing fee, maintenance fee, engraving of niche panel, deed, and all applicable taxes but excluding C and D)
- B. Double Interment Last Post Columbarium \$2,727.50
(including the cost of the niche, two opening and closing fees, two maintenance fees, engraving of niche panel, deed, and all applicable taxes but excluding C and D)
- C. Weekend/Holiday rate (plus applicable tax)
 - a) Saturday rate \$175.00
 - b) Sunday/Holiday rate \$225.00
- D. Burials after 4:00 pm Mon-Fri (plus applicable tax) \$100.00

Done and passed in Council this 25th day of January, 2000.

Deputy Mayor

Municipal Clerk

I, Vi Carmichael, Municipal Clerk of the Halifax Regional Municipality, hereby certify that the above-noted Administrative Order was passed at a meeting of Halifax Regional Council held on January 25, 2000.

Vi Carmichael, Municipal Clerk

Amendment # 1

Notice of Motion:

December 11, 2007

Approved:

February 5, 2008

Amendment # 2

Notice of Motion:

June 22, 2010

Approved:

July 6, 2010

Amendment # 3

Notice of Motion:

June 25, 2013

Approved:

September 10, 2013

Amendment # 4

Notice of Motion:

February 23, 2016

Approved:

March 8, 2016
