

CEMETERY (MUNICIPAL) ACT

CHAPTER 47

Interpretation

1. In this Act

“board” means a corporation established and known as the Board of Cemetery Trustees of [*here insert remainder of the title by which the board is to be known*];

“minister” includes a person designated in writing by the minister;

“owner” in sections 25 to 31 means a board and where a municipal council under the *Municipal Act* or the *Vancouver Charter* has acquired land for maintaining, managing, and regulating a cemetery, or is the registered owner of land used as a cemetery means “municipality” and includes the City of Vancouver;

“trustee” means a person who each municipal council may elect as a member of the board.

RS1960-256-3,4,27; 1973-29-180.

Two or more municipalities may establish board

2. (1) The councils of any 2 or more municipalities may agree to establish a corporation known as the board. The agreement shall set out the proportionate amount that each municipality guarantees of any debentures issued by the board, and the number of trustees that each council may elect as members of the board, and the term that these members shall serve, and the number of members that shall form a quorum of the board.

(2) The agreement may, with the consent of all parties, be amended and the councils of other municipalities may become parties.

(3) The board, when formed, is bound by the provisions of the agreement or any amendments.

RS1960-256-3.

One municipality may establish board

3. The council of any municipality may establish a board on terms and conditions as resolved by the council. The resolution shall set out that the municipality shall guarantee any debentures issued by the board as provided in section 11, the number of trustees elected by the council and the term that these members shall serve, and the number of members that shall form a quorum of the board. In the event of establishment of a board, then all rights, powers or liabilities conferred or imposed by this Act on the councils or municipalities establishing a board under section 2 shall be conferred or imposed on the council or municipality. The board, when formed under this section, is bound by the provisions of the resolution of the council referred to in this section.

RS1960-256-4.

Board appointments

4. The board shall be constituted by the appointment by resolution of the councils of all the trustees as required by section 2 or 3.

RS1960-256-5.

Board vacancies

5. The councils party to the agreement shall make appointments to fill all vacancies on the board, but despite vacancies the remaining members of the board have power to act.

RS1960-256-6

Registration of agreements and resolutions

6. The agreements or resolutions referred to in sections 2, 3 and 4 shall be registered with the Registrar of Companies.

RS1960-256-7

Continuity of office

7. Each trustee shall hold office until his successor is appointed.

RS1960-256-8

Appointment of chairman, secretary, employees

8. The board shall appoint a chairman, and may appoint, define the duties of and pay a secretary, caretaker and all other necessary employees for the proper management, operation and upkeep of the business and property of the board.

RS1960-256-9

Powers of board

9. The board has power to

- (a) acquire land as the board may decide necessary for the purpose of establishing a cemetery, subject to the consent of the municipality in which the land is located, or, in the event the land is not in a municipality, to the consent of the Minister of Transportation and Highways of the Province, and in any case subject to the consent of the Minister of Health;
- (b) have the land surveyed and lots which shall be of a size and shape as to the board seems advisable laid out as a cemetery with provision for buildings, roads, sewers, drains, trees, flowers and shrubs;
- (c) erect a crematorium and mausoleum, or either, and other necessary buildings;
- (d) build roads, sewers and drains, plant trees, flowers and shrubs, and generally improve the cemetery;
- (e) operate the property of the board as a cemetery, crematorium or mausoleum;
- (f) make regulations for the cemetery, crematorium or mausoleum;
- (g) fix the charge which shall be paid for each lot, for cremations, gravedigging, burials and other services;
- (h) pay interest on money borrowed;
- (i) provide a sinking fund for the repayment of any sum borrowed when due.

RS1960-256-10,19, 1977-75-5,63, B C Reg 91/79

Land Title Act not applicable

10. (1) The *Land Title Act* does not apply to the subdivision of land for a cemetery and it is not permissible to register under that legislation the title to any lot in the cemetery.

(2) No judgment, mortgage or encumbrance shall subsist on any lot in the cemetery.

RS1960-256-11, 1978-25-332

Borrowing, debentures and guarantees

11. (1) The board has power to borrow sufficient money for any of the purposes set out in section 9 on terms and conditions as may seem advisable, and in addition the board may furnish money to provide for the interest and sinking fund on money borrowed during the time the cemetery, crematoriums or mausoleums are being established and built, and until they are self supporting.

(2) Debentures shall be issued for the money borrowed, but the debentures are not valid until they are endorsed with the guarantee of all the municipalities that are parties to the agreement referred to in section 2 as to their respective proportions.

(3) Each municipality is empowered to give a guarantee, as follows:

By virtue of the power conferred by the *Cemetery (Municipal) Act* and by order of the municipal council, the Corporation of the _____ hereby guarantees to the holder of this debenture payment of (proportion) of the principal and interest according to its tenor

Dated at _____, [month, day], 19 _____

The corporate seal of the
was affixed in the presence
of _____

Mayor

Clerk of the Municipal Council

(4) Each guarantee shall be expressed by a resolution, signed by the mayor and sealed with the seal of each municipality on the instructions of the council.

RS1960-256-12

Limitation of guarantee and debenture issue

12. Debentures shall not be issued under section 11 which in the aggregate will create an obligation on any municipality requiring for payment of annual charges of interest and sinking fund a rate exceeding one mill in the dollar of the assessed taxable value of land and improvements within the municipality, and the debentures shall be payable on or before 30 years from the date on which they are issued.

RS1960-256-13

Cemetery fences

13. The board shall fence the cemetery held by it, and where the cemetery is in a municipality the fences shall be of a height as the municipality may direct by bylaw.

RS1960-256-14

Cemetery drainage

14. The board

- (a) shall build and maintain sewers and drains to keep the cemetery dry;
- (b) may connect a sewer or drain to an existing sewer with the written consent of the person
 - (i) having management of the street or road; and
 - (ii) owning or occupying the land through which the sewer or drain is to go; and

- (c) in doing so, shall do as little damage as possible and restore the street, road or land to the same condition as it was in before being disturbed.

RS1960-256-15.

Burials

15. The board shall make regulations to ensure all burials in the cemetery are conducted in a decent and solemn manner.

RS1960-256-16.

Graves for indigents

16. The board shall furnish graves for indigent deceased persons, free of charge, on the certificate of a minister or clergyman or the mayor of any municipality, or of a justice, that the relatives of the deceased cannot afford to purchase a lot.

RS1960-256-17.

Lots exempt

17. The lots when conveyed by the board to individual proprietors for burial sites shall be exempt from taxation of any kind and shall not be liable to be seized or sold on execution.

RS1960-256-18.

Perpetual maintenance fund

18. (1) The board shall establish a fund called the maintenance fund to ensure the perpetual upkeep and maintenance of the cemetery and the lots.

(2) A proportion of the amount paid for each lot the board deems expedient shall be paid into the maintenance fund, but the proportion shall in no case be less than \$3 a lot.

(3) The maintenance fund shall be invested, at the discretion of the board, in securities authorized by law for trustees, or deposited at interest in a chartered bank in Canada and allowed to accumulate, and no portion of the principal and interest shall be withdrawn until in the opinion of the board the interest will be sufficient to perpetually maintain the cemetery, the lots, and other properties of the board in a thoroughly efficient and satisfactory manner.

RS1960-256-20

Operating account

19. (1) All money received from the sale of lots, after providing the amount required for the maintenance fund, together with all money received for gravedigging, cremations, burials, mausoleum use and all other services, shall be paid into an operating account in a chartered bank, and all expenses shall be paid out of the operating account.

(2) If it should appear to the board that there will not be to the credit of the operating account an amount sufficient to meet all the expenses when due, one month's notice in writing shall be forwarded by registered mail to the councils of the municipalities party to the agreement referred to in section 2, stating the amount of the anticipated deficiency and the date on which the amount is required. The council of each municipality shall cause to be paid to the board, prior to the aforementioned date, the proportion of the deficiency in accordance with the agreement.

(3) The amount paid by each municipality shall be repaid out of the operating account, together with 6% interest, as soon as, at the discretion of the board, the amount to the credit of the operating account will allow.

RS1960-256-21.

Reserve fund

20. (1) The board shall establish a fund called the reserve fund for guaranteeing the payment of all instalments of interest and sinking fund when due and the fund shall be deposited at interest, when not required, in a chartered bank in Canada.

(2) The board may pay a portion of the sum borrowed, not, however, exceeding 20%, into the reserve fund, and shall transfer all money in the operating account not required for the maintenance fund to the reserve fund.

(3) All instalments of interest and sinking fund shall be promptly paid out of the reserve fund.

(4) If the amount to the credit of the reserve fund exceeds at any time the amount required to pay the instalments of interest and sinking fund for 2 years, the board shall forthwith reduce the amount to be charged for the sale of lots for the ensuing year to such a price as seems expedient to the board.

(5) If the amount to the credit of the reserve fund is at any time less than the amount required to pay the instalments of interest and sinking fund for one year, the board may increase the amount to be charged for the sale of lots for the ensuing year to such a price as seems expedient to the board.

(6) If it appears to the board that there will not be to the credit of the reserve fund an amount sufficient to meet any instalment, either of principal or interest, when due, one month's notice in writing shall be forwarded by registered mail to the councils of the municipalities party to the agreement referred to in section 2, stating the amount of the anticipated deficiency and the date on which the instalment will become due. The council of each municipality shall cause to be paid to the board, prior to the due date of the instalment, the proportion of the deficiency in accordance with the agreement.

(7) The amount paid by each municipality shall be repaid out of the reserve fund, together with 6% interest, as soon as, at the discretion of the board, the amount to the credit of the reserve fund will allow.

RS1960-256-23.

Sinking fund

21. The board shall establish a sinking fund for the purpose of paying off the debentures at maturity, and all instalments due to the sinking fund shall be promptly paid from the reserve fund.

RS1960-256-22.

Transfer of funds

22. After all money borrowed and all interest has been paid, the sum to the credit of the reserve fund shall be transferred to the maintenance fund.

RS1960-256-24.

Surplus funds and sale proceeds

23. (1) The board, with the consent and approval of the minister, may by resolution use money to the credit of any account other than the maintenance fund for the purpose of acquiring land to establish a new cemetery or to enlarge the existing one, and in such case all the provisions of this Act shall apply to the new one.

(2) Where the minister has granted his consent and approval under subsection (1) without a certificate under section 2 of the *Cemetery Act*, he may at any time require that an application be made for a certificate in respect of all or part of the land acquired

and, if the certificate is refused, may direct that the land for which the certificate is refused be sold and that the proceeds be paid into the maintenance fund.

RS1960-256-25, 1973-29-181

Maintenance fund not applicable

24. (1) The board, with the consent and approval of the councils having the election of members of the board, may by resolution set aside any part of the land held by the board under this Act, not exceeding in the aggregate 10% of the area, and provide that those requirements contained in this Act as to perpetual upkeep and maintenance of the lots shall not apply.

(2) The resolution of the board under this section shall not take effect until it has received the written approval of the minister.

RS1960-256-26, 1973-29-181A

Petition to close cemetery

25. Where an owner wants a cemetery closed it may present a petition to the minister setting forth the facts, and requesting that the owner be authorized to

- (a) convert the land embraced in the cemetery into a public park, without removing the bodies in the cemetery; or
- (b) remove the bodies in the cemetery to a cemetery owned by the same owner and to utilize the land for other purposes, or to sell it.

RS1960-256-28, 1973-29-181

Publication of notice of petition

26. The petition shall be accompanied by evidence that

- (a) notice of the petition has been published in the Gazette and in 2 issues of a newspaper circulating in the area of the cemetery;
- (b) notice has been sent by registered letter to every proprietor of a lot in the cemetery whose address is known to or can be ascertained by the owner; and
- (c) the notice, in the case of a petition within the scope of section 25 (b), contained a description of the place to which it is proposed to remove the bodies.

RS1960-256-29

Power of minister to refuse or vary petition

27. The minister may refuse to grant the petition presented under this Act or may, with the approval of the Lieutenant Governor in Council, grant the petition with modifications and subject to conditions considered proper by the minister.

RS1960-256-30, 1973-29-181

Conversion into public park

28. If an order is made under a petition within the scope of section 25 (a), the minister may

- (a) make provisions directing that headstones, monuments and other memorials used for marking graves be moved to a place within the land embraced in the cemetery;
- (b) prescribe the manner in which the headstones, monuments or memorials are to be re-erected and maintained;

- (c) prescribe measures to be taken by the owner for the care and maintenance of the area embraced in the cemetery as a public park;
- (d) restrict the use that may be made of the public park;
- (e) provide for the preservation of the records of burials in the cemetery; and
- (f) require the owner to enter into a covenant that it will observe the provisions of the order.

RS1960-256-31; 1973-29-181.

Disinterment of bodies

29. If an order is made under a petition within the scope of section 25 (b), the following provisions apply:

- (a) After the making of the order the owner shall give notice by publication in the Gazette and in 2 issues of a newspaper published in the area of the cemetery that it will, after 30 days from the publication of the last notice, disinter the bodies in the discontinued cemetery and reinter them in the place described in the notice referred to in section 26.
- (b) Before disinterment and removal the owner, at the request of a relative or other person who establishes friendship to a deceased to the satisfaction of the owner, may in its discretion disinter a body and inter it in a cemetery selected by the relative or friend, and in that case the owner may in its discretion permit a headstone, monument or memorial to be removed to the selected cemetery. Any additional cost to the owner by anything done under this paragraph shall first be paid by the relative or person at whose request the removal is made.
- (c) After the expiration of the time fixed by the notice of disinterment referred to in paragraph (a) all bodies not removed under paragraph (b) shall be removed by the owner at its own expense, and when removed shall be reinterred by it in the cemetery mentioned in the notice of petition referred to in section 26.
- (d) The owner shall remove all headstones, monuments or memorials marking the graves in which bodies were buried, and shall re-erect or replace them to mark the graves to which they relate in the cemetery to which the bodies are removed.
- (e) The owner shall preserve records of all burials in the discontinued cemetery, and so far as possible shall make and preserve records of all removals.
- (f) If and when the owner satisfies a judge of the County Court within the territorial limits of which the discontinued cemetery lies that it has removed from the cemetery and reinterred as provided all the bodies that with the exercise of reasonable diligence it has been able to find buried in the cemetery, the judge may certify that the provisions of this section have been complied with. The certificate shall contain the legal description of the discontinued cemetery and shall be filed in the land title office of the land title district which the land is in, and the registrar shall make a notation of the filing against the title of the land to which the certificate relates.
- (g) The certificate when filed is conclusive evidence that the owner has removed from the land described all the bodies, and the land shall not be a cemetery within the meaning of this Act. The rights of every proprietor

of a lot in the cemetery are extinguished; and the title to the land of the cemetery is freed and discharged from any right of the proprietors of lots, but remains subject to any registered encumbrance, affecting the title to the land.

RS1960-256-32; 1978-25-333,334

Supervision of disinterment

30. (1) No owner shall commence disinterment, removal, transportation or reinterment pursuant to the provisions of sections 25 and 26 without first giving notice in writing to and receiving permission from the medical health officer for the district in which the discontinued cemetery is situated.

(2) The medical health officer for that district shall, for the purpose of safeguarding public health, exercise a general supervision over the operations and may give directions to the owner and the owner shall comply.

RS1960-256-33.

Application to part of cemetery

31. Sections 25 to 30 apply to a defined part of a cemetery in the same manner as they apply to a cemetery.

RS1960-256-34