St. James
Scatter Garden

Ontario License #4720078-1

Owned and operated by

St. James Anglican Church

The Synod of the Diocese of Niagara

Cemetery By-Laws

Under the authority of

The Funeral, Burial Cremation Services Act SO 2002 Chapter 33

And enacted July 1, 2012 by

Ontario Regulation 30/11

St. James Scatter Garden

Dundas, Ontario

137 Melville St.
Dundas
City of Hamilton
Province of Ontario

Mission Statement

To maintain St. James Scatter Garden in a peaceful setting, serving the interment needs of the community.
To work with the local government, and funeral homes, to ensure that all by-laws and Provincial regulations are obeyed.

St. James Scatter Garden SHALL make available to all persons regardless of race or religion the right to scatter remains in accordance with The Funeral, Burial and Cremation Services Act SO 2002 Chapter 33. (FBCSA) and Ontario Regulation 30/11.

Preface

St. James Scatter Garden was founded by St. James Anglican Church in 1983 and as of 2014, 53 were interred.

The By-Laws are adopted for the improvement and upkeep of the Scatter Garden to promote a respectful and peaceful place for the care of those departed.

Definitions

In accordance with the FBCSA 2002 SO Chapter 33 Ontario Regulation 30/11

-**By-Laws:** The rules and regulations under which St. James Scatter Garden operates.

-**Care and Maintenance Fund:** It is a requirement under the FBCSA that a percentage of the purchase price of all Interment Rights, be placed into the Care and Maintenance Fund. Interest earned from this fund is used to provide care and maintenance of the Scatter Garden.

-**Contract:** For the purposes of this By-Law all purchasers of interment rights must sign a contract with the St. James Scatter Garden, detailing obligations of both parties and acceptance of the Scatter Garden By-Laws.

-**Scattering:** Shall mean the act of spreading cremated human remains over a designated area with the permission of the St. James Scatter Garden operator and in keeping with the St. James Scatter Garden By-Laws.

-**Scattering Grounds or Gardens:** A designated area within a licensed Cemetery that is approved by the Cemeteries Regulation Unit.

-**Scattering Rights Holder:** Any person designated to hold the right to scatter cremated human remains in a designated area in the St. James Scatter Garden.

(Definitions cont'd)

-Superintendent: A person responsible for the care of the Scatter Garden.

-Cemetery Board: The governing body that controls and sets out the present and future plans for St. James Scatter Garden. The Board shall consist of the Incumbent of St. James Anglican Church, and three members of the Parish elected by St. James Anglican Church Vestry.

-Care and Maintenance Fund Trustee: The person, persons or financial institution that manages the Care and Maintenance Fund.

-Cemetery: This means St. James Scatter Garden, Dundas, Ontario which is owned by St. James Anglican Church within The Synod of the Diocese of Niagara.

-FBCSA: This refers to the Funeral, Burial and Cremation Services Act 2002 SO Chapter 33.

-Transferee: The person or persons accepting a resale of Scattering Rights

This Cemetery By-Law repeals St. James Scatter Garden By-Law approved by the Registrar of Cemeteries, Gary Demers, on February 4, 1997.

Section One
General Conduct

The Cemetery reserves the right to full control over the Cemetery operations and management of land within the Cemetery grounds.

No person is allowed to damage, destroy, remove or deface any item or property within the Cemetery.

All visitors shall conduct themselves in a quiet manner that shall not disturb any service or committal taking place at St. James Scatter Garden.

Section Two
By Law Amendments

The Cemetery shall be governed by these by-laws and all procedures will comply with the Funeral Burial and Cremation Services Act SO 2002 Chapter 33 (FBCSA) and Ontario Regulation 30/11, which may be amended periodically.

All By-Law amendments shall follow the FBCSA and have the approval of the Registrar of Cemeteries.

Section Three
Liability

St. James Scatter Garden will not be held liable for any loss or damage, without limitation (including damage by the elements, Acts of God, or vandals) to any plaque, or other article that has been placed in relation to a scattering right, save and except for the direct loss or damage caused by gross negligence of the Scatter Garden.

St. James Scatter Garden is not responsible for loss or damage from any causes beyond its reasonable control to any article of remembrance.

Section Four
Public Registrar

St. James Scatter Garden shall follow Provincial legislation of the FBCSA Section 110 of Ontario Regulation 30/11 which requires all cemeteries and crematoriums to maintain a public registrar that is available to the public by appointment.

Section Five
Pets or Other Animals

St. James Scatter Garden will not allow cremated animal remains, to be scattered in the Scatter Garden.

Section Six
Right to Re-Survey

St. James Scatter Garden reserves the right at any time to enlarge, diminish, re-plot, change or remove plantings, grade close pathways, alter in shape or size, or otherwise change all or any part of this Cemetery, subject to approval of appropriate authorities.

Section Seven
Notice of Sale and Transfer of Scattering Rights

Purchasers of scattering rights acquire only the right to direct the scattering of cremated remains, and inscriptions, subject to the conditions set out in St. James Scatter Garden By-Laws as follows:

1. In accordance with this by-law, no scattering or inscription is permitted until the scattering rights have been paid in full.

2. A Scattering Rights Certificate shall be issued to the scattering right holder when payment is made in full.

3. The purchase of scattering rights is not a purchase of real estate or real property.

4. A scattering rights holder wishing to resell their scattering rights shall advise St. James Scatter Garden, in writing, of their intention prior to seeking a third party buyer for these scattering rights.

The FBCSA 2002 SO Chapter 33 Regulation 137 allows for a 30 day cooling off period for the consumer of any cemetery products. This enacted as follows:

1. The purchaser has the right to cancel the scattering rights contract within 30 days of signing the scattering rights contract by providing written notice of the cancellation to St. James Scatter Garden. The Cemetery shall refund all monies paid by the purchaser within 30 days from the date of the request for cancellation.

(Notice of Sale and Transfer of Scattering Rights cont'd)

2. With the cancellation of Scattering Rights after the 30 day cooling off period the following shall take place:

   a. Upon receiving written notice from the purchaser of the scattering rights, St. James Scatter Garden will cancel the contract and issue a refund to the purchaser for the amount paid for the scattering rights less the appropriate amount that is required to be deposited into the Care and maintenance Fund. This refund shall be made within 30 days of receiving said notice.

   b. If the Scattering Rights Certificate has been issued to the scattering rights holder(s), the certificate shall be returned to St. James Scatter Garden along with the written notice of cancellation.

   c. If any portion of the scattering rights has been exercised, the purchaser, or the scattering rights holder(s) are not entitled to cancel the contract or re-sell the scattering rights.

Section Eight
Care and Maintenance Fund Contribution

1. All Cemetery sales shall follow the following contribution levels in accordance with the FBCSA SO 2002 Chapter 33 Regulations 166 and 168:

   a. Scattering Ground with no rights holder - $25 minimum contribution

2. All Care and Maintenance contributions shall be refunded by St. James Scatter Garden within the 30 day cooling off period if the scattering rights purchaser requests the contract be cancelled. There are no refunds after 30 days.

3. Refunds from the 30 day cooling off period shall be paid within 35 days of the written request.

4. All Care and Maintenance Funds shall be transferred to the Care and Maintenance Fund Trustee within 60 days in accordance with the FBCSA 2002 SO Chapter 33 Regulation 87.

5. The Care and Maintenance Fund for St. James Scatter Garden is held by St. James Anglican Church hereby known as the Trustee.

Section Nine
Allowance for Resale of Scattering Rights

St. James Scatter Garden will allow the resale of scattering rights to third parties with the following conditions:

1. The FBCSA 2002 SO Chapter 33 and Ontario Regulation 30/11 Section 115 (1) requires the following:

   a. The new scattering rights holder provides a scattering rights certificate endorsed by the current rights holder.
   b. If the resale involves scattering rights, a written statement will be provided by the rights holder listing the number of scatterings available.
   c. The scattering rights holder shall provide any other documentation in his or her possession relating to the rights.

2. The third party purchaser shall be provided with the following documents by St. James Scatter Garden in accordance with the FBCSA SO 2002 Chapter 33 Regulation 115 (2):

   a. A Scattering Rights Certificate endorsed by the current rights holder.
   b. A copy of the Cemetery's By-Laws that have been approved by the Cemeteries Regulation Branch.
   c. A copy of the Cemetery's current Price List.
   d. The Cemetery shall provide a written statement of the number of scattering rights available.
   e. The Cemetery shall provide any other documentation in the scattering rights holder's possession relating to the rights.

3. St. James Scatter Garden shall require the following:

   a. The Cemetery shall require a statement signed by the original rights holder selling the scattering rights, acknowledging the sale of the scattering rights to a third party purchaser.
   b. The Cemetery shall require confirmation that the person selling the scattering rights is the person registered on the Cemetery records and that they have the right to re-sell the scattering rights.
   c. The original scattering rights holder shall provide a written record of the date of the transfer of the scattering rights to a third party.
   d. The original scattering rights holder shall provide the name, address and phone number of the third party purchaser.
   e. The original scattering rights holder shall provide a statement of any money owing the Cemetery in respect to the Scattering Rights.

Allowance for Resale of Scattering Rights continued

4. Once the endorsed certificate and all required information has been received by the Cemetery from the rights holder, the Cemetery will issue a new Scattering Rights Certificate to the third party purchaser.

5. St. James Scatter Garden shall charge an administration fee for the issuance of a duplicate certificate of scattering in accordance with the fee listed on the Cemetery's current price list.

6. The FBCSA 2002 SO Chapter 33 Section 47 (3) (3.1) prohibits a Scattering Rights holder from speculating on any scattering right. A scattering right may be resold for an amount no greater than the current price list.

Section Ten
The Scattering of Human Cremated Remains

St. James Scatter Garden accepts human cremated remains for scattering. These duties shall be carried out in accordance with the FBCSA 2002 SO Chapter 33 Regulation 121 (2) & (3) and the points listed below:

1. The Scattering Rights Holders shall provide written authorization prior to a scattering taking place. Should the Scattering Rights Holder be deceased, authorization must be provided in writing by the Scattering Rights Holder's Estate Trustee or designate.

2. In the case of scattering, the Scattering Rights Holder, Estate Trustee, or a designate, shall sign a standard document which declares and acknowledges the following:

    a. That with the scattering of these remains the Estate Trustee recognizes that the remains are scattered and therefore no longer retrievable.
    b. That the Estate Trustee acknowledges that the scattering took place on the date listed.
    c. That St. James Scatter Garden does not allow any other memorialization within the Scattering Garden footprint other than an inscription on the master monument provided by the Cemetery.
    d. Scattering shall only take place within the footprint of St. James' Scattering Grounds which has been approved by the Registrar of Cemeteries.

3. A Burial Permit issued by the Registrar General or equivalent documentation showing that the death has been legitimately registered within the jurisdiction in which the death occurred shall be provided to church office prior to a scattering taking place. A Certificate of Cremation must be submitted to the church office prior to the scattering of cremated remains taking place.

(The Scattering of Cremated Human Remains cont'd.)

4. In accordance with the FBCSA 2002 SO Chapter 33 the purchaser of scattering rights must enter into a cemetery contract, providing such information as may be required by St. James Scatter Garden for the completion of the contract and the public registrar prior to each scattering of human remains.

5. Payment shall be made to St. James Anglican Church before a scattering can take place.

6. The Cemetery shall be given 24 hours' notice for each scattering of cremated human remains.

7. The scattering of cremated remains shall only be conducted by clergy in good standing with the Anglican Church of Canada.

8. Cremated human remains shall only be scattered within a designated area of the Garden that has been approved by the Cemeteries Regulation Unit.

9. A Scattering Rights contract shall be completed signed and the payment of the scattering right shall be received by the Scatter Garden before the scattering of human cremated remains can take place.

10. Once cremated human remains are scattered these remains cannot be retrieved.

11. All cremated human remains shall be identified with a medal tag provided by the crematorium.

Section Eleven
Care and Planting

Under the FBCSA 2002 SO Chapter 33 Regulation 166 & 168 requires that a portion of interment, inurnment or scattering rights is trusted into the Care and Maintenance Fund. The income generated from this fund is used to maintain, secure and preserve the Scatter Garden. Services that may be provided through this fund income include the following:

1. Re-levelling and landscaping scattering grounds.

2. Maintenance of perimeter walls and paving.

3. Maintenance and repairs of St. James' property including the Scatter Garden.

(Care and Planting cont'd)

In providing for the care and beauty of the Scatter Garden the following shall apply:

1. No person other than staff shall in any way change the surface of the Scatter Garden.

2. No person shall plant trees, flower beds or shrubs in the Scatter Garden except with the approval of the Cemetery Board.

3. Flowers placed in the Scatter Garden shall be removed after a reasonable time to protect the sod and maintain the tidy appearance of the Garden.

Section Twelve
Memorialization

The FBCSA 2002 SO Chapter 33 allows for memorialization in cemeteries. This memorialization shall be carried out as follows:

1. No memorial or structure shall be erected or permitted in the Scatter Garden.

2. The Scatter Garden reserves the right to remove, at its sole discretion, any marker, monument or inscription which is not in keeping with the dignity and decorum of the Cemetery as determined by the Board of St. James Scatter Garden.

3. St. James Scatter Garden shall not allow any personal memorialization within the footprint of the Scattering Grounds. All memorialization at the Scattering Grounds shall be on the Master Plaque provided by St. James Scatter Garden using the font size and font style in keeping with those that are already in use, at a fee.

Section Thirteen
Price List

The FBCSA 2002 SO Chapter 33 Ontario Regulation 54 to 75 allows for a price list subject to the following:

1. St. James' Price List shall be reviewed each year or at the pleasure of the Board.

2. The Price List shall be retained by the Board for six years after its last day of use.

3. The Price List shall be offered to any member of the public free of charge.

Section Fourteen
By-Laws

In accordance with the Funeral, Burial and Cremation Services Act 2002 SO Chapter 33
St. James Scatter Garden shall make available a copy of the Cemetery's By-Law.
If additional copies are requested there will be a fee according to the current price list.

This **Cemetery By-Law** has been **APPROVED** by the Ministry of Consumer Services for the Province of Ontario by the Cemeteries Regulation Unit on March 8, 2013 at Toronto, Ontario.
Reviewed By: Mr. Don Fleming
Registrar of Cemeteries: Mr. Michael D'Mello