

## Chapter 7: Canarsie Cemetery Rules and Regulations

### § 7-01 Definitions.

**Annual Care.** The term "Annual Care" means care provided by the cemetery on a year-by-year basis upon payment of an annual fee by or on behalf of a Plot Holder.

**Burial Grounds.** The term "Burial Grounds" means any burial ground which formerly was the public property of any town, village or city consolidated into and now a part of the City of New York.

**Burial Right.** The term "Burial Right" means only the privilege of interment or entombment in the cemetery. It does not convey an ownership of land or other interest in the grave, or plot to which it refers.

**Care.** The term "Care" means the cutting of the grass on plots at reasonable intervals, the raking and cleaning of the plots and the maintaining of the grade and turf of the plots; meaning and intending the general preservation of the plots to the end that said plots shall remain and be reasonably cared for as cemetery plots. The term "Care" shall in no case be construed to mean the maintenance, repair or replacement of any gravestones or monumental structures or flowers or ornamental plants; nor the maintenance or doing of any special or unusual work in the cemetery; nor does it mean the reconstruction of any marble, granite, bronze or concrete work on any section or plot, or any portion or portions thereof in the cemetery or buildings, or structures, caused by the elements, an act of God, common enemy, thieves, vandals, strikers, malicious mischief makers, explosions, unavoidable accidents, invasions, insurrections, riots or by order of the military authorities, whether the damage be direct or collateral, other than as herein provided.

**Cemetery.** The term "Cemetery" means the Canarsie Cemetery (Block 8038, Lot 1; Block 8038, Lot 10; Block 8039, Lot 1; Block 8041, Lot 1; and Block 8041, Lot 2: Borough of Brooklyn), a former town Burial Ground within the meaning of § 100.01 of these Rules and Regulations.

**Certificate of Burial Right.** The term "Certificate of Burial Right" means a document granting only the privilege of interment and entombment as defined above and not to be construed as a deed to the land itself.

**Commissioner.** The term "Commissioner" means the Deputy Commissioner of the Department of Citywide Administrative Services, Division of Real Estate Services, or authorized representative designated in writing by the Commissioner or his/her successor in office.

**Domestic Partner.** The term "Domestic Partner" means a person who has registered a domestic partnership in accordance with applicable law with the City Clerk, or has registered such a partnership with the former City Department of Personnel pursuant to Executive Order 123 (dated August 7, 1989) during the period August 7, 1989 through January 7, 1993. (The records of domestic partnerships registered at the former City Department of Personnel are to be transferred to the City Clerk.)

**Grave.** The term "Grave" means a space of ground (approximately three feet by nine feet) in the Cemetery used or intended to be used for the burial of human remains.

**Interment.** The term "Interment" means the permanent disposition of the remains of a deceased person by entombment or burial.

**Memorial.** The term "Memorial" means a monument, marker, tombstone, tablet, headstone or private mausoleum or tomb for family or individual use.

**Park Area.** The term "Park Area" means a landscaped area and includes Sections 3, 4, 5, 11 and 12 of the cemetery.

**Perpetual Care.** The term "Perpetual Care" means care provided by the cemetery forever upon payment of a one-time fee by or on behalf of a plot holder.

**Plot.** The term "Plot" means a lot, plot, plat or part thereof or a grave in the Cemetery.

**Plot Holder.** The term "Plot Holder" means any person having a burial right in a plot in the cemetery.

**Traditional Area.** The term "Traditional Area" means Sections A, B, C, 1, 6, 7, 8, 9, 10 and 14 of the Cemetery.

**Urn Gardens.** The term "Urn Gardens" means that portion of the cemetery set aside for the burial of cremated remains.

**Visitor.** The term "Visitor" means any person who may enter the former town burial grounds or cemetery grounds and includes plot holders and workers of all kinds.

### § 7-02 Purchase of Burial Rights.

(a) All persons wishing to purchase burial rights in the cemetery must execute applications provided for that purpose.

(b) The Commissioner reserves the right to refuse to accept any application form which is either incomplete or improperly executed. The Commissioner further reserves the right not to honor an application when it is learned that the application has been fraudulently completed or if information found therein is found to be incorrect. The Commissioner reserves the right to limit the number of burial rights purchased by any individual, association or corporation.

(c) Acceptance of payment along with the application should not be deemed an automatic granting of Burial Rights. Burial rights do not vest until a fully executed certificate of burial right is issued to the applicant.

(d) The purchase after January 19, 1949 of burial rights includes perpetual care.

(e) It shall be the obligation of the plot holder to notify the cemetery of any change in his/her post office address. Notice sent to a plot holder by ordinary mail at the last address of record at the cemetery shall be considered sufficient and proper notification.

### § 7-03 Interments.

(a) Interment privileges can be received only from the plot holders, and no persons can be recognized as plot holders unless their names appear as such upon the records of the cemetery.

(b) The Commissioner reserves the right to refuse Interments in any Plot and to refuse to open any burial space for any purpose, except by court order or on written application by the plot holder or by the person designated to represent the plot holder.

(c) All Interments, disinterments or removals, including all openings and closings of Graves shall be made only by cemetery personnel.

(d) All funerals, upon entering the cemetery grounds shall be under the charge of the superintendent and/or his/her assistant.

(e) Once a casket containing a body is within the confines of the cemetery grounds, no funeral director or his/her embalmer, assistant, employee or agent shall be permitted to open the casket or touch the body without the consent of a legal representative of the deceased, or without an order of a court of competent jurisdiction.

(f) The right is reserved by the Commissioner to insist upon at least 48 hours notice prior to any interment, and to at least one week's notice prior to any disinterment or removal.

(g) When instructions regarding the location of an interment space in a plot cannot be obtained, or are indefinite, or when for any reason the interment space cannot be opened when specified, the superintendent of the cemetery may, in his/her discretion, open it in such a location in the plot as he/she deems best and proper, so as not to delay the funeral; and the cemetery shall not be liable in damages for such action or for any error so made; nor shall the cemetery be held responsible for any order given over the telephone, or for any mistake occurring from the lack of precise and proper instructions as to the particular plot space, size and location where interment is desired.

(h) The cemetery shall in no way be liable for any delay in the interment of a body where a protest to the interment has been made, or where the Rules and Regulations have not been complied with; and, further, the superintendent of the cemetery reserves the right, under such circumstances, to place the body in a City receiving vault until the full rights have been determined. The cemetery shall be under no duty to recognize any protests of interments unless they are in writing and duly filed with the cemetery.

(i) The cemetery shall not be liable for the interment permit nor for the identity of the person sought to be interred; nor shall the cemetery be liable in any way for the embalming of the body.

(j) Where a plot is owned by a church, lodge or other society, interments shall be limited to those actually authorized by such church, lodge, etc.

(k) No interment shall be permitted in any plot so long as there are any outstanding charges due the cemetery with respect to that plot or any other plot held by the plot holder.

(l) There shall be no interments on weekends and legal holidays.

(m) No interments shall be begun after 3:30 p.m.

(n) No more than two interments shall be permitted in each grave in the traditional area and no more than three interments shall be permitted in each grave in the park area.

(o) No disinterment or removal shall be allowed except for a good reason and with the written permission of the Commissioner, the written authorization of the plot holder and nearest of kin, and all permits required by law.

(p) The cemetery shall exercise the utmost care in making a removal, but it shall assume no liability for damage to any casket, burial case or urn incurred in making the removal.

(q) The cemetery reserves the right to correct any errors that may be made by it either in making disinterments or removals, or in the description, transfer or sale and substituting and selling in lieu thereof another burial right of equal value and similar location as far as possible, or as may be selected by the cemetery, or in the sole discretion of the cemetery, in allowing for a request to the Comptroller of the City of New York for a refund of the money paid on account of said Burial Right purchase. The cemetery shall also have the right to correct any error made by placing an improper inscription, including an incorrect name or date on any memorial. The cemetery shall not be liable in damages for any such errors.

(r) The cemetery shall not be deemed in default nor shall it be liable for any failure of performance event or any damages resulting from an "unavoidable delay." An "unavoidable delay" shall mean (1) strikes, lockouts, or labor disputes; (2) acts of God, governmental restrictions, regulations or controls, enemy or hostile governmental actions, civil commotion, insurrection, revolution, sabotage or fire or other casualty or other conditions similar to those enumerated in this section.

#### **§ 7-04 Plot Usage and Maintenance.**

(a) All plots shall be used as a place of burial for the dead or the remains of deceased persons and for no other purpose whatever.

(b) All grading, landscaping work and improvements of any kind shall be under the direction of and subject to the consent, satisfaction and approval of the Commissioner.

(c) Cemetery personnel may at any time enter upon a plot to keep it neat, to cut grass and to remove weeds, wilted flowers and debris, but nothing herein contained shall obligate the cemetery to render any such service without compensation therefor.

(d) Floral frames, when removed from a plot, unless specific instructions are given to the contrary by those lawfully entitled to them may be disposed of by the cemetery superintendent in any manner he/she sees fit.

(e) No plants, trees, shrubs or grave coverings, or other decorations may be introduced into any plot without the written consent of the Commissioner, and no plants, trees, shrubs or other covering growing within a plot or border shall be cut down or destroyed without the consent of the Commissioner.

(f) Mounds and shrubs are prohibited in the park area and in section 2 of the cemetery.

(g) Artificial flowers and plants are prohibited.

(h) In the event annual care charges have not been paid for five successive years, any empty graves or plots for which these charges remain unpaid shall be deemed abandoned, all rights therein shall be deemed terminated, and burial rights therein may be granted by the cemetery to others.

#### **§ 7-05 Memorials.**

(a) No memorial shall be placed on any plot except by the plot holder or his/her authorized representative.

(b) Designs, plans and specifications for proposed memorials, or other improvements must be submitted on written application, signed by the plot holder. Written approval of the Commissioner is required before work can be begun. The foundation work is to be done at the expense of the plot holder or his/her representatives, heirs or assignees. Foundations shall be of concrete.

(c) Memorial dealers shall abide by these Rules and Regulations. Violations of any such Rule or Regulation by any producer or retail dealer may be cause for disapproval by the Commissioner of such producer or retailer.

(d) All memorials are to be constructed of natural stone. No artificial stone of any description is permitted.

(e) Should any memorial become unsightly, dilapidated or a menace to visitors, the superintendent of the cemetery shall have the right, at the expense of the plot holder, either to correct the condition or to remove the memorial, if after due notice to the plot holder, sent by registered mail, the plot holder fails to take proper steps to remedy the conditions, within a reasonable time, not exceeding thirty days.

(f) Enclosures, fences, copings, benches and vases are not permitted unless approved by the Commissioner.

(g) While a funeral or interment is being conducted, all work of any description which is near enough to disturb, either by noise or otherwise, shall cease. No work will be permitted on Saturdays, Sundays or legal holidays. All deliveries shall be made at the cemetery prior to 4:00 p.m. on weekdays.

(h) No memorials are allowed in the park area and urn gardens, except for markers flush with the ground.

- (i) Memorials in section 2 of the cemetery are limited to two feet wide, by two feet high, by one foot thick.
- (j) No memorial or foundation shall be constructed on any plot so long as there are any outstanding charges due the cemetery with respect to that plot or any other plot held by the plot holder.

### **§ 7-06 Mausoleum.**

- (a) No mausoleum shall be constructed without prior written approval of the Commissioner. No such approval shall be granted until satisfactory design plans and construction contracts have been submitted to the Commissioner.
- (b) The plot holder shall make, at his/her own expense, a survey; provide and pay for his/her own contractor to excavate and construct the mausoleum foundation; and have his/her contractor provide the cemetery with a guarantee that only first grade materials will be used; that it will be executed in first grade workmanship; and should fault develop within five years due to setting, treatment or handling, the required repairs or replacements will be made by the contractor without cost to the cemetery. Unless such guarantee in writing is furnished the Commissioner, approval for construction of a mausoleum cannot be had. Foundations must be at least six feet below grade.
- (c) The plot holder must provide for perpetual care and maintenance of a mausoleum by payment to the cemetery of fifteen percent of the total cost of the structure within thirty days of completion of construction.
- (d) Only substantially non-corrosive metals of approved permanency shall be permitted for mausoleum or memorial fixtures, such as doors, window grilles, statutory, etc.
- (e) Care and maintenance of mausoleums shall include cleaning the interiors and stained glass; cleaning and oiling bronze work unless otherwise requested; repainting and cleaning the exterior stone where and when necessary; and repairing damage caused by wear and tear.
- (f) In the event the mausoleum, due to any reason, is badly damaged in the opinion of the Commissioner, he/she shall request the Estate of the deceased or the plot holder restore the mausoleum to a condition satisfactory to the Commissioner. If these repairs are not made within a reasonable time, not to exceed sixty days, the Commissioner reserves the right to remove the remaining mausoleum and inter the bodies in the plot over which the mausoleum had been constructed.

### **§ 7-07 Inheritance of Burial Right.**

- (a) In the event of the death of the owner of a burial right any and all privileges (rights) of the plot holder shall pass to the plot holder's family as set forth in the following sections.
- (b) The surviving spouse or surviving domestic partner of the owner of the certificate of burial right of record has the right to be buried with his/her spouse or domestic partner. This right may be waived at any time but terminates with burial elsewhere.
- (c) Where burial privileges in the grave or plot are held in the name of one person only:
  - (1) The rights of interment in the plot may be disposed of by specific bequest in a will, subject to the vested right of interment of the surviving spouse, but not by residuary clause. The specific bequest must mention the section, the lot and grave number of the plot.
  - (2) If the owner of the certificate of burial right shall have filed notarized instructions at the cemetery office as to which member or members of his/her family shall succeed to the privileges (rights) of the plot, said instructions shall be recognized by the Commissioner and will be followed if in the judgment of the Commissioner such instructions are definite, reasonable and practicable, subject, however, to a vested right of interment of the surviving spouse.
  - (3) If no valid or sufficient written instructions shall have been filed with the Commissioner, or if valid and sufficient instructions are in conflict with a later will, and the owner of the certificate of burial right has left instructions in said will, duly admitted to probate in a court having jurisdiction thereof, subject, however, to a vested right of interment of a surviving spouse, such instructions shall control, provided they are not in conflict with cemetery rules and regulations then in force and providing the Commissioner has been furnished with a certified copy of the same.
  - (4) In the absence of valid and sufficient instructions filed with the commissioner by the owner of the certificate of burial right or a duly probated will, the privileges (rights) of interment shall devolve upon those entitled to succeed thereto by the intestate laws of the State of New York keeping in mind the vested right of interment of the surviving spouse or surviving domestic partner.
- (d) Where the certificate of burial right is registered with the Commissioner in the name of more than one person the privileges (rights) of the interment follow as above for the deceased co-owners.
- (e) When no one included in the classification set forth above is living, burial rights will have terminated.
- (f) Any person acquiring the privileges (rights) of a plot holder by inheritance must also accept any and all liabilities associated with the plot, including, in the case of a plot covered by annual care, any arrearages and all future annual care charges.
- (g) Notwithstanding the above provisions of this section, it shall be the obligation of the supervising spouse or surviving domestic partner and/or heirs to claim ownership of a burial right upon the death of a plot holder. In the event that the commissioner is not notified in writing of a claim to a burial right within five years of the death of the plot holder, such burial right shall terminate with respect to any empty grave covered by the deceased plot holder's certificate of burial.
- (h) Any person(s) claiming inheritance of a burial right must furnish the Commissioner a copy of the will of the deceased plot holder duly certified by the court in which the will was admitted to probate. In the event that the deceased plot holder left no will, the claimant(s) must furnish to the Commissioner a notarized affidavit from the executor of the decedent's estate stating that the claimant(s) is (are) the beneficiary(ies) of the burial right or other proof of inheritance satisfactory to the Commissioner in his sole discretion. Additionally, all claims must be documented on the cemetery's official claim of inheritance of right of burial form.

### **§ 7-08 Transfer of Burial Right.**

- (a) No burial right may be sold, transferred, exchanged, or otherwise disposed of without the written consent of the Commissioner on the cemetery's official transfer of right of burial form.
- (b) No burial right with respect to a grave in which an interment has been made may be sold, transferred, exchanged, or otherwise disposed of, except to a family member.
- (c) If a plot holder wishes to sell, transfer, exchange or otherwise dispose of to a person other than a family member a burial right with respect to an empty grave, the cemetery may, at the option of the Commissioner, repurchase the burial right for the price originally paid by the plot holder, less any outstanding charges due the cemetery by the plot holder.
- (d) No burial right may be sold, transferred, exchanged or otherwise disposed of so long as there are any outstanding charges due the cemetery by the plot holder with respect to the burial right in question or any other burial right held by the plot holder.
- (e) No sale, transfer, exchange, or other disposition of a burial right in a plot covered by annual care will be permitted unless the transferee purchases

a perpetual care contract for the plot.

### **§ 7-09 Visitors and Others.**

- (a) All persons disturbing the quiet and good order of the cemetery by noise or other improper conduct will be compelled instantly to leave the grounds. cemetery personnel will exclude from cemetery grounds any persons it deems improper and will disperse any improper assemblages in the cemetery.
- (b) The cemetery gates will be open seven days a week from 8:30 a.m. to 4:00 p.m.
- (c) No children under the age of 18 will be admitted unless accompanied by an adult.
- (d) No truck, cart or business wagon will be allowed to enter the gates, unless on business.
- (e) Admittance will not be granted to persons on bicycles.
- (f) All persons are strictly forbidden to pluck or carry flowers, either wild or cultivated, out of the cemetery without written permit from the office.
- (g) All solicitations of any kind whatever are strictly prohibited on the cemetery grounds.
- (h) No money shall be paid to any person in the employ of the cemetery in reward for any personal service or attention.
- (i) Motor vehicles shall be admitted only on permit from the cemetery office. The speed limit for vehicles within the cemetery grounds is fifteen miles per hour. Vehicles shall not park or come to a full stop in front of any open grave unless they are in attendance at a funeral.
- (j) Dogs brought into the cemetery must be kept on leash.
- (k) No firearms or guns of any kind shall be brought into the cemetery except with the express permission of the superintendent.
- (l) The superintendent reserves the right to compel any person or persons lawfully upon a plot, to temporarily withdraw from same whenever, in the judgment of the superintendent, their presence would interfere with the orderly conduct of funeral services upon a plot in the near vicinity.
- (m) No person or persons, other than cemetery employees, shall be permitted to bring food or refreshments into the cemetery grounds.
- (n) All workers while on the cemetery grounds shall be subject to the orders of the superintendent of the cemetery. They shall immediately cease work when he/she so orders them to do so, if, in his/her opinion, the carrying on of the work would interfere with the orderly conduct of a funeral service or an interment.
- (o) Except when necessary to cross another plot to reach the plot being visited, all persons within the cemetery grounds shall use only the roads, avenues, walks and paths established and maintained by the cemetery.

### **§ 7-10 Prices and Fees.**

- (a) The prices for burial rights and fees for services are listed in 55 RCNY § 3-01.
- (b) All payments are to be made by check or money order payable to Canarsie Cemetery and sent to the Division of Real Estate Services, 1 Centre Street, Room 1900, New York, NY 10007.

### **§ 7-11 Miscellaneous.**

- (a) The statements or representations of any employee of the cemetery shall not be binding on the cemetery except as such statements or representations coincide with the instrument granting burial right and with this chapter.
- (b) This chapter shall apply to any grave, plot, memorial, or mausoleum now in existence or which may hereafter be erected in the cemetery.
- (c) In all matters not specifically covered by these Rules and Regulations the Commissioner reserves the right to do anything which in his/her judgment is deemed reasonable under the circumstances and such decision shall be binding upon the plot holder and all parties concerned.