

## **TITLE 530 – HISTORIC PRESERVATION & HERITAGE COMMISSION**

### **CHAPTER 10 – GENERAL PROCEDURES**

#### **SUBCHAPTER 00 – N/A**

##### **PART 2 – Registration and Protection of Historic Cemeteries**

### **2.1 Authority**

- A. R.I. Gen. Laws Chapter 23-18 authorizes City and Town Councils to prescribe standards regulating historic cemeteries in order to prevent any construction or excavation that might cause deterioration of or damage to any cemetery or burial ground, or to any structures or gravesites located in any cemetery or burial ground or any historic cemetery. In addition, the statute specifies that the city or town recorder of deeds shall maintain a register of all historical cemeteries located within the city or town and shall note the location of each historical cemetery so registered on the appropriate tax assessor's map. R.I. Gen. Laws §§ 23-18-10.1 and 11.
- B. R.I. Gen. Laws § 23-18-11.2 authorizes that in the absence of a local ordinance establishing standards regulating historic cemeteries, regulations adopted by the Historical Preservation & Heritage Commission shall govern.
- C. R.I. Gen. Laws Chapter 42-45 established the Historical Preservation & Heritage Commission as an independent state agency within the executive department with responsibility to identify and protect historic properties and to advise municipal governments regarding their activities which may affect historic properties.

### **2.2 Purpose**

The Rhode Island Historical Preservation & Heritage Commission finds that historic cemeteries have archaeological and scientific value, contain significant examples of architecture and landscape design, often are of great artistic, cultural and religious significance, and represent for all cultures a respect for the sanctity of human life. It is, therefore, the policy of the Historical Preservation & Heritage Commission (RIHPHC) that marked or unmarked historic cemeteries are to be preserved and are not to be altered or removed except as provided for in this regulation.

## 2.3 Definitions

- A. "Applicant" means the person who seeks approval from the city or town council to alter or remove a historic burial or grave or structure located within a historic cemetery or to undertake excavation within twenty-five (25) feet of a historic cemetery.
- B. "Archaeological burial site" means an area of land that has been used for interment of human remains for more than one hundred (100) years, including burial of Native American or other ethnic groups. An archaeological burial site may be unmarked and unrecorded prior to discovery.
- C. "Archaeological investigation" means the examination of a physical land area, including subsurface deposits, for the purpose of obtaining information on the archaeological resources located on, in, or under the land, using the methods and techniques of archaeology, as specified in the RIHPHC Performance Standards and Guidelines For Archaeological Projects (Standards for Archaeological Survey). Archaeological investigations carried out to comply with R.I. Gen. Laws Chapter 23-18 should be conducted under a permit from the RIHPHC.
- D. "Family cemetery" means an historic cemetery that is not associated with a specific religious organization but that is the site of burial for persons related by blood, marriage or household.
- E. "Historic cemetery" or "historical cemetery" means any tract of land which has been for more than one hundred (100) years used as a burial place for human remains, whether or not marked with an historic marker or gravestone, including, but not limited to, ancient burial places known or suspected to contain the remains of one or more Native Americans. A historic cemetery may contain one or more graves or burial sites. In order to meet the requirement of R.I. Gen. Laws § 23-18-11(b) the term "historic cemetery" also refers to an area twenty-five (25) feet in width around the perimeter of the cemetery. R.I. Gen. Laws §§ 23-18-1(5) and 23-18-11(b).
- F. "Human remains" means any parts or remains of deceased persons, including skeletal remains or cremated ashes.
- G. "Grave" means any site where human remains have been interred. The term grave includes grave markers, funerary objects, and cultural remains and artifacts associated with the interment. A grave shall include mausoleums, crypts or other structures designed to house human remains.

- H. "Least disruptive" means a method of construction, excavation, removal or any other activity that has the least destructive impact on the historic cemetery, grave, or human remains.
- I. "Owner" means the owner of a parcel of land.
- J. "Religious cemetery" means any cemetery owned or maintained by a religious organization.
- K. "Religious organization" means an organization representing the adherents of any religious society.
- L. "Site alteration plan" means a document showing in written text and graphic plan the proposed alteration of an historic cemetery, archaeological burial site or family cemetery, including detailed specifications for alteration, removal and reinterment of human remains.

## **2.4 Registering Historic Cemeteries**

- A. The recorder of deeds in every city and town shall maintain a register of all historic cemeteries located within the city or town. The register of historic cemeteries shall include information that documents the historic cemetery. A historic cemetery may be registered on the basis of currently available information.
- B. The recorder of deeds shall provide information about the location of each registered historic cemetery to the tax assessor, and the tax assessor shall record each registered historic cemetery on the appropriate tax assessor's map with a symbol consisting of the letters "CEM" inside a rectangle.
- C. It shall be the responsibility of the owner to provide information about the historic cemetery to the recorder of deeds. Every deed presented for recording a transfer in ownership of property that has an historic cemetery located on it shall have endorsed upon the deed, in capital letters, a notation that a historic cemetery is located on the property. Failure to comply with this section shall not affect the validity of any deed.
- D. When registering a historic cemetery, the recorder of deeds should give consideration to the following information and may consult with the RIHPHC.
  - 1. Religious, Institutional, and Public Historic Cemeteries.
    - a. Historic cemeteries owned or maintained by religious, private, or public institutions typically have good documentation of their boundaries and their interments. They are highly visible; their

boundaries generally are well-defined; they are recorded in local records; and there may be records and plans of interments. Many have perpetual care and maintenance programs. For registration purposes, documentation should include mapping and visual evidence of individual grave markers and of a fence or wall enclosing the cemetery (if present); a written description of the cemetery, its age and condition and historical importance; a listing of names and vital dates of those interred; and a cemetery plan indicating position of graves. Adequate documentation may consist of summary information and reference to the location of additional records.

2. Family Cemetery.

- a. Family historic cemeteries may be documented in town land records. Physically they often have a readily apparent form with burials arranged in rows or organized by family groupings, and sometimes enclosed by a stone wall or iron fence. Graves generally are marked by headstones; some have headstones and footstones. Typically, gravestones are shaped and inscribed. Plain fieldstone markers with minimal shaping and no inscriptions are also common, especially from the colonial period, and some historic cemeteries consist entirely of uninscribed markers.
- b. For registration purposes, documentation should include a summary of any relevant land evidence records, a location map, a cemetery plan indicating position of graves and a visual record of individual grave markers and of any fence or wall, whole or remnant, enclosing the cemetery; a written description of the cemetery, its age and condition and historical importance; and a listing of names and vital dates of those interred. Whether enclosed or not by a fence or wall, Family Cemeteries are usually spatially discrete. However, boundary definition generally requires a study of the twenty-five (25) foot buffer area outside and adjacent to the enclosure because unrecorded and unmarked graves sometimes occur outside the enclosure.
- c. Some Family Cemeteries are unmarked and difficult to see. Cemeteries without enclosures, marked only by rough fieldstones, or those whose grave markers have been removed may be discovered inadvertently when graves are disturbed during a construction project.

- d. Archaeological documentation generally is of two kinds: non-intrusive and intrusive. In an area of a suspected grave or graves, non-intrusive archaeological testing can be used to expose just the top of a grave shaft or burial feature without exposing a burial container or human remains. This limited testing may provide sufficient documentation when other graves are known to exist nearby. Alternatively, in some situations it may be necessary to excavate a suspected grave or burial feature to determine if human remains or associated cultural remains or artifacts are present. Archaeological investigation should be performed by a qualified archaeologist working under a permit issued by the Historical Preservation & Heritage Commission. Examination of human remains should be performed by a qualified physical anthropologist, paleopathologist, or a forensic specialist. Intrusive investigation should occur only when absolutely necessary, as exposing or removing human remains damages the integrity of the burial and is considered an act of desecration by many people. The Historical Preservation & Heritage Commission's Performance Standards for Archaeological Survey provide guidance on archaeological verification.

### 3. Archaeological Burial Site

- a. Native American historic cemeteries and burials frequently are unmarked and unrecorded. An archaeological burial site may be hundreds or even thousands of years old. Since the beginning of European settlement in the 1600s, many Native American burial places have been lost as the land was developed. However, many Indian cemeteries and burials still exist, and some have been re-discovered during construction projects and archaeological investigations.
- b. Native American historic cemeteries vary greatly in form and complexity, but generally they can be described by three sub-types: single isolated burials; tightly-organized, spatially compact cemeteries that contain multiple graves; one or more groups of burials of various sizes that can be spread across a large area. As an example of the latter, the West Ferry Narragansett Indian Cemetery in Jamestown contains grave clusters as much as seventy-five (75) feet apart from each other. Within each of these subtypes, the specific kind of burial may include individual graves, cremation burials, ossuaries, or a combination of the three. Native American graves frequently contain associated cultural remains or artifacts that were buried with the deceased person.

- c. Documentation of an archaeological burial site may require written historical evidence, tribal oral history, or archaeological evidence. For registration purposes, documentation should include mapping of known graves; and a written description of the cemetery, its age, condition and historical importance. Deed records may include information about grave sites. Newspaper articles, published papers and unpublished manuscripts sometimes provide accounts of graves that were unearthed in the past during construction or other ground-disturbing activities. Tribal oral history and traditional knowledge may indicate the location of a historic cemetery, and may provide information about previous disturbance of graves by vandals or construction activities. Accounts of previous collecting of Indian artifacts may suggest the possible location of Indian graves.
- d. The definition of "historic cemetery" includes "ancient burial places known or suspected to contain the remains of one or more American Indians." Places may be suspected to contain graves when historical or archaeological contextual information strongly suggests that graves might be present. For example, when unmarked Indian graves are found, additional graves may be dispersed in small or large groupings over a larger area. Contextual evidence may justify a strong suspicion that additional graves are present in areas that have not been examined.
- e. Archaeological documentation generally is of two kinds: non-intrusive and intrusive. In an area of a suspected grave or graves, non-intrusive archaeological testing can be used to expose just the top of a grave shaft or burial feature without exposing a burial container or human remains. This limited testing may be sufficient documentation when other graves are known to exist nearby. Alternatively, in some situations it may be necessary to excavate a suspected grave or burial feature to determine if human remains or associated cultural remains or artifacts are present. Archaeological investigation should be performed by a qualified archaeologist working under a permit issued by the historical preservation & heritage commission. Examination of human remains should be performed by a qualified physical anthropologist, paleopathologist, or a forensic specialist. Intrusive investigation should occur only when absolutely necessary, as exposing or removing human remains damages the integrity of the burial and is considered an act of desecration by many people. The Historical Preservation & Heritage Commission's Performance Standards for Archaeological Survey provide guidance on archaeological verification.

- f. Stone piles are suspected by some people to mark Native American burials. In Rhode Island there is no documentary or archaeological evidence linking stone piles to human burials. However, Narragansett Tribal history holds that some stone piles indicate the location of graves or have ceremonial importance. In Connecticut, there is archaeological evidence that links stone piles with human burials at the Long Pond Pequot Indian cemetery. In the Canadian Maritimes, there are many examples of stone pile burial markers that have been studied and documented by professional archaeologists.
- g. While stone piles can vary greatly in shape and size, those most often suspected to be Indian burial or ceremonial features generally have an oval, round or conical appearance. Some of these stone piles rise just above the surface of the ground, consisting of one or more courses of cobblestones; others, constructed of cobbles and fieldstones of various shapes and sizes, rise several feet above the surface of the ground. Before conducting any archaeological verification that would require disturbing a stone pile, consideration should be given to its possible ceremonial nature and spiritual significance and the feasibility of leaving the feature intact.

## **2.5 Regulation of Excavation or Construction at Historic Cemeteries**

- A. It shall be unlawful for any person to disturb, excavate, deposit fill, remove or destroy buried human remains, grave markers, funerary objects or associated cultural remains and artifacts, or conduct any other activities that would damage or diminish the integrity of any historic cemetery or any historic structure or gravesite located in a historic cemetery without first obtaining a permit from the city or town council to alter or remove said historic cemetery.
- B. This requirement shall not apply to the ordinary installation of gravesites or monuments, markers, or mausoleums. Nothing in this regulation shall be deemed to prohibit the routine maintenance and repair of historical gravesites, nor shall it contravene the authority of municipal bodies under R.I. Gen. Laws § 45-5-12 to hold, manage, repair, or maintain any neglected burial ground.
- C. No construction, excavation or other ground disturbing activity is allowed within twenty-five (25) feet of a recorded historic cemetery without first obtaining a permit from the city or town in accordance with § 2.5(D) of this Part or in accordance with §§ 2.5(E), (F), and (G) of this Part.
- D. The city or town building official may issue a permit to allow excavation or construction within twenty-five (25) feet of a historic cemetery when the

boundaries of the cemetery are adequately documented and there is no reason to believe additional graves exist outside the recorded cemetery and the proposed construction or excavation activity will not damage or destructively alter the historic cemetery through erosion, flooding, filling, or encroachment. In order to assure adequate documentation for the purposes of this section, the building official may require the property owner at his or her expense to undertake an archaeological investigation which is conducted under a permit issued by the Historical Preservation & Heritage Commission to determine the boundaries of the unmarked cemetery and to establish that additional graves do not exist in an area twenty-five (25) feet in width along the perimeter of any cemetery, grave or archaeological burial site. A written report shall be produced incorporating the findings of the archaeological investigation in text and graphic form. A copy of the report shall be provided to the building official and to the Historical Preservation & Heritage Commission. In the event the building official denies a request for a permit, the owner may apply for approval by the city or town council in accordance with §§ 2.4(E), (F), and (G) of this Part.

- E. The city or town council may issue a permit to allow the alteration or removal of a historic cemetery or excavation or construction within twenty-five (25) feet of a historic cemetery only after concluding, based on evidence submitted to the council at a public hearing, that all alternatives to the proposed activity have been examined and that no prudent and feasible alternative to the proposed activity is possible.
- F. In order for the city or town council to clearly assess the proposed project, the following information should be submitted unless otherwise required by the city or town council. When evaluating the information submitted, the city or town council shall consult the register of historic cemeteries maintained by the recorder of deeds and should give consideration to the types of information described in § 2.4(D) of this Part. The city or town council may request and consider comments of the Historical Preservation & Heritage Commission regarding documentation of the historic cemetery or gravesite.
  - 1. Detailed site plans drawn to scale and stamped by a registered land surveyor at a minimum scale of one (1) inch equals forty (40) feet, showing the boundaries of the property in question, topographical contour intervals of no more than one foot, a surveyed boundary of the cemetery and a setback area of no less than twenty-five (25) feet, and a plan of all improvements proposed on the site that necessitate disturbance of the cemetery;
  - 2. A written description of the cemetery; its age and condition; historical importance; whether the cemetery is religious, family, publicly owned or other kind of cemetery; a listing of names and vital dates of those interred



as may be determined from grave markers on site; and a cemetery plan indicating position of graves, and to the extent possible, the identities of those interred;

- a. When an application has been made for alteration, construction, or excavation at a historic cemetery and the boundary is unknown or in doubt, the applicant, at his or her own expense, shall conduct an archaeological investigation to determine the actual boundaries of the cemetery prior to final consideration by the city or town council of the application to alter or remove it. Archaeological investigation shall be performed by a qualified archaeologist working under a permit issued by the Historical Preservation & Heritage Commission and a report shall be submitted to the city or town council.
  - b. Alternatively, when the applicant proposes to preserve the historic cemetery, grave, or archaeological burial site, the city or town council may accept the results of an archaeological investigation of the proposed site alteration area that demonstrates that no graves or archaeological burial sites are affected. The archaeological investigation shall be performed by a qualified archaeologist working under a permit issued by the Historical Preservation & Heritage Commission and a report shall be submitted to the city or town council.
  - c. When an application has been made for alteration, construction, or excavation at a historic cemetery that is suspected to contain graves or archaeological burial sites based on historical or archaeological contextual information and the boundary is unknown or in doubt, the applicant, at his or her own expense, shall conduct an archaeological investigation of the proposed site alteration area that demonstrates that no graves or archaeological burial sites are affected. The archaeological investigation shall be performed by a qualified archaeologist working under a permit issued by the Historical Preservation & Heritage Commission and a report shall be submitted to the city or town council.
3. A detailed site alteration plan indicating the extent of proposed disruption of the cemetery, methods of construction or removal of human remains, reburial plan, including in text and plan the relocation of graves;
4. In the event of a religious, institutional, or public historic cemetery, identification of the owner and reference to additional records;

5. In the event of a family cemetery, a genealogical study to identify whether descendants of the families of the interred can be identified and if any descendants still reside in Rhode Island;
6. In the event of an archaeological burial site or Native American historic cemetery, the results of archival research and professional archaeological investigation performed by a qualified archaeologist working under a permit issued by the Historical Preservation & Heritage Commission, and a listing of the Indian Tribe or Tribes whose ancestral lands included the property.
7. Whether the cemetery or burial place has significant archaeological, artistic, or historical value and if further studies will be completed as part of its alteration or removal; and
8. Any further information and study the city or town council deems reasonably necessary to complete its consideration of the request to alter a historic cemetery or gravesite in compliance with R.I. Gen. Laws Chapter 23-18, including whether the alteration or removal serves the interests, health, welfare and safety of the public and is not for commercial or personal expediency.

G. Hearing by the city or town council.

1. Public Notice.
  - a. Upon receipt of the required documentation, the city or town council shall set the date of hearing and cause the matter to be publicly advertised at the applicant's expense in a local newspaper not less than two weeks prior to the hearing. The Historical Preservation & Heritage Commission shall simultaneously be notified and an advisory opinion shall be requested of the city or town planner.
2. Notice to Interested Parties.
  - a. Interested Parties shall be provided with reasonable notice of the hearing and shall be permitted to provide written and oral testimony.
  - b. In the event of archaeological burials and historic Native American graves, the city or town shall provide notice by regular mail of the subject, date and time of the public hearing to the Narragansett Tribal Historic Preservation Officer, the Tribal Council of the Aquinnah Wampanoag Indian Tribe, the Tribal Council of the

Mashpee Wampanoag Indian Tribe, and the Tribal Council of the Mashantucket Pequot Indian Tribe.

- c. In the event an application involves the cemetery of an extant religious society, an extant institution, or a public body, notice of the hearing shall be provided by regular mail.
- d. In the event the application involves a family cemetery, the interred of which have living lineal descendants, the applicant, at his or her expense, shall make all reasonable efforts to notify lineal descendants, including sending notice to descendants via certified mail, or publication of the notice in a daily newspaper of statewide circulation at least once per week for three successive weeks prior to the hearing.
- e. In the event the city or town has established a historic district commission in accordance with R.I. Gen. Laws Chapter 45-24.1 a copy of the application shall be submitted to the historic district commission for deliberation whether to issue a certificate of appropriateness.

3. Burden of Proof.

- a. At the hearing, the applicant shall prove to the satisfaction of the city or town council that:
  - (1) The applicant has examined all alternatives and conclusively demonstrated that no prudent or feasible alternative to the proposed alteration is possible, including redesign of the proposed site alteration, construction, or excavation in order to preserve the historic cemetery, grave, or archaeological burial site; or R.I. Gen. Laws § 23-18-11.1(1)
  - (2) That the proposed alteration serves the interests of health, welfare and safety of the public.

4. Final Action.

- a. The city or town council shall conduct a public hearing on the proposed project and shall render a decision approving, denying or approving with reasonable conditions, the proposed site alteration plan, and may set other requirements of the applicant deemed sufficient to carry out the purposes of R.I. Gen. Laws Chapter 23-18 including but not limited to:

- (1) The city or town council may require that the alteration or removal of a historic cemetery or gravesite be carried out under the supervision of a professional archaeologist acting under a permit issued by the Historical Preservation & Heritage Commission. R.I. Gen. Laws § 23-18-11.1(c)
- (2) The city or town council may require that the applicant file an accurate record with the recorder of deeds of any relocation of a historic grave or archaeological burial site to insure that any remains removed are properly re-interred and the location of the new interment is recorded. A report of any grave removal and relocation from one cemetery or burial ground to another shall be filed in the clerk's office for each municipality and shall, to the extent permitted by law, be available for public inspection. In instances where there is a headstone or other burial marker identifying the original grave, the headstone or burial marker shall be erected on the site to which any remains are transferred. R.I. Gen. Laws § 23-18-11.2.

## **2.6 Previously Unknown Historic Cemeteries or Archaeological Burial Sites**

- A. Whenever a previously unknown cemetery, unmarked cemetery, archaeological burial site, or human skeletal material is inadvertently located during any construction, excavation, or other ground disturbing activity, including archaeological excavation, the building official of the city or town where the discovery is located shall be immediately notified. The building official shall, in turn, notify the state medical examiner and the Historical Preservation & Heritage Commission if the grave, cemetery, or skeletal material appears to be historic.
- B. The city or town building official shall require the cessation of construction or excavation activity.
- C. Archaeological Investigation
  1. Prior to the continuation of any further construction, excavation, or other ground disturbing activity, and unless the provisions of R.I. Gen. Laws § 23-18-7 shall apply, the property owner at his or her expense shall undertake an archaeological investigation which should be conducted under a permit issued by the Historical Preservation & Heritage Commission to determine the boundaries of the unmarked cemetery. In addition, the archaeological boundary investigation shall establish an area twenty-five (25) feet in width along the perimeter of any grave or

archaeological burial site. A written report shall be produced incorporating the findings of the archaeological investigation in text and graphic form. A copy of the report shall be provided to the building official and to the Historical Preservation & Heritage Commission. R.I. Gen. Laws § 23-18-11(c).

2. Alternatively, in order to avoid historic graves or archaeological burial sites, the property owner may redesign the proposed site alteration plan and conduct an archaeological investigation under a permit issued by the Historical Preservation & Heritage Commission to demonstrate that no graves or archaeological burial sites will be affected and that at least twenty-five (25) feet separates the proposed project from any grave or archaeological burial site. A written report shall be produced incorporating the findings of the archaeological investigation in text and graphic form. A copy of the report shall be provided to the building official and to the Historical Preservation & Heritage Commission.
- D. In the event that the cemetery meets the criteria for a historic cemetery, the building official shall so advise the recorder of deeds of the city or town who shall record and register the cemetery in accordance with the provisions of this regulation.
  - E. The building official may allow the construction or excavation activity to continue provided that the requirements of this regulation are met with regard to a historic cemetery or archaeological burial site, and in conformance with any other city or town regulations.

## **2.7 Penalties**

- A. Any person convicted of violating these provisions shall be subject to a fine as defined in R.I. Gen. Laws § 23-18-11.2(c).
- B. The provisions of this section shall be considered to be in addition to any other penalties provided for desecration or vandalism to cemeteries.

## **2.8 Abatement from Taxation**

In accordance with R.I. Gen. Laws § 44-3-63, city and town councils are authorized to provide by ordinance an abatement from taxation for any real property on which is located a historical cemetery registered in accordance with this regulation and to provide by ordinance for full or partial reimbursement of expenses incurred in repairing and maintaining such historical cemeteries, including walls or fences surrounding such cemeteries.

## **2.9 Neglected Historic Cemeteries**

- A. In accordance with R.I. Gen. Laws § 45-5-12, city and town councils are authorized to take possession of and hold neglected, or abandoned historic cemeteries, whenever they can take possession without opposition from the persons interested in those grounds. The councils may take, hold, and manage in trust all funds given to the councils to keep these grounds in repair or for ornamenting or improving these grounds, and may in their discretion appropriate from the treasury of their town money for the purpose of keeping in repair, preserving the monuments, and maintaining any neglected historic cemetery.
- B. Any person interested in caring for a historic cemetery which has not been maintained and the owner of which is unknown or whose present address is unknown, may petition the city or town council for permission to clean up and maintain that burial ground at the person's own expense. Upon approval of this petition on any conditions the council may deem appropriate, the council shall cause an advertisement to be placed in a local newspaper providing notice that the burial ground is to be entered and cleaned up and thereafter maintained, and notifying persons with a property interest in this burial ground who have objections to come forward by a date certain.

## **2.10 Appeal**

Any person or persons aggrieved by a decision of the city or town council shall have the right of appeal concerning the decision to the superior court and from the superior court to the supreme court by writ of certiorari. R.I. Gen. Laws § 23-18-11.1.

## **2.11 Severability**

If any section, clause, provision or portion of this regulation shall be held invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity or constitutionality of any other section, clause, provision or portion of this regulation.

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**TITLE 530 - HISTORICAL PRESERVATION & HERITAGE  
COMMISSION**

**CHAPTER 10 - GENERAL PROCEDURES**

**SUBCHAPTER 00 - N/A**

**PART 2 - REGISTRATION AND PROTECTION OF HISTORIC CEMETERIES**

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