

LAWS & ORDINANCES PERTAINING TO HISTORIC CEMETERIES

R.I. General Laws, Ch. 23, Sec. 18 / Health and Safety - Cemeteries

§ 23-18-1. Definitions.

The following terms used in this chapter, unless the context indicates otherwise, have the following meanings:

- (1) "Agencies" mean town cemeteries, religious or ecclesiastical society cemeteries, cemetery associations, or any person, firm, corporation, or unincorporated association previously or hereafter engaged in the business of conducting a cemetery or operating a community mausoleum or columbarium.
- (2) "Columbarium" means a structure or room, or other space in a building or structure of durable or lasting fireproof construction, containing niches, used, or intended to be used, to contain cremated human remains.
- (3) "Community mausoleum" means a structure or building of durable or lasting construction, used or intended to be used, for the permanent disposition in crypts or spaces therein of the remains of deceased persons, provided the crypts or spaces and their use are available to or may be obtained by individuals for a price in money or other form of security.
- (4) "Crypt" means the chamber in a mausoleum of sufficient size to contain the remains of a deceased person.
- (5) "Historic cemetery" means any tract of land which has been for more than one hundred (100) years used as a burial place, whether or not marked with an historic marker, including but not limited to, ancient burial places known or suspected to contain the remains of one or more American Indians.
- (6) "Niche" means a recess in a columbarium or other structure, used, or intended to be used, for the permanent disposition of the cremated remains of one or more deceased persons.

§ 23-18-10. City and town regulation of burial grounds.

(a) The city or town council of any city or town may prohibit burials in the compact or thickly-populated parts of the city or town, and may make any bylaws and ordinances relating to burials and the use of grounds for burials in the city or town that it may think necessary for preserving the health of the city or town, and as necessary to carry out the provisions of this chapter, and may enforce the ordinances in the manner provided in chapter 18 of this title.

(b) The town councils of the towns of East Greenwich and Smithfield and the city councils of the cities of East Providence, Warwick, Cranston, and Woonsocket, after having prevented further burials in those parts of their towns or cities as provided in subsection (a), may order, in accordance with this chapter, the owner of the burial ground so prohibited, and in the interest of public welfare, to cause to be removed the cadavers or remains of any persons buried in the burial ground, and transferred to and interred in some other cemetery within the state, the removal and interment to be under the direction of a qualified funeral director and with the approval of the nearest of kin of the deceased and at the expense of the owner of the land.

(c) No cadaver or remains shall be removed unless the owner of the land shall give notice by certified mail to the nearest of kin known to him or her, and by advertising in one or more daily newspapers having circulation within the town or city at least once a week for three (3) successive weeks. In the event there shall be no nearest of kin known to the owner or that the nearest of kin shall neglect or refuse to approve the removal and interment, the city or town shall cause the cadavers or remains to be removed, transferred, and interred in any other cemetery in accordance with the laws, rules, and regulations of the religious denomination, if any shall be known or ascertained, to which the deceased subscribed.

§ 23-18-10.1. Registering historical cemeteries.

In addition to the records and indexes now required to be maintained by every recorder of deeds in all cities and towns, the recorder of deeds in every city and town shall maintain a register of all historical cemeteries located within the city or town. The tax assessor of each city or town shall note the location of each historical cemetery so registered on the appropriate tax assessor's map with a symbol consisting of the letters "CEM" inside a rectangle.

§ 23-18-10.2. Exemption from liability.

(a) A city, town, or public body shall not be held civilly liable for any breach of duty resulting in injury to the person or damage to the property or any person who voluntarily and without compensation, undertakes to maintain or to repair any designated historical cemetery pursuant to § 23-18-10.1, provided that nothing in this section shall eliminate or limit the liability of a city, town, or public body:

(1) For acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or

(2) For any malicious, willful, or wanton act.

(b) A private landowner permitting access over his or her property to a historical cemetery for the purpose of voluntary maintenance or repair of the cemetery shall not be held civilly liable for any breach of duty resulting in injury to the person or damage to the property of those seeking to repair or maintain the cemetery.

§ 23-18-11. Regulation of excavation around cemeteries.

(a) The city or town council of any municipality may by ordinance prescribe standards regulating any construction or excavation in the city or town, when those standards are reasonably necessary to prevent deterioration of or damage to any cemetery or burial ground, or to any structures or gravesites located in any cemetery or burial ground. The rules and regulations shall not apply to the ordinary installation of gravesites or of monuments, markers, or mausoleums.

(b) No city or town shall permit construction, excavation or other ground disturbing activity within twenty-five feet (25') of a recorded historic cemetery except in compliance with the following provisions:

(1) 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; or

(2) The proposed construction or excavation activity has been reviewed and approved by the city or town in accordance with § 23-18-11.1.

(c) Whenever an unmarked cemetery 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 unmarked cemetery or human skeletal material is located shall be immediately notified. The building official shall, in turn, notify the state medical examiner and the Rhode Island historical preservation and heritage commission if the grave, cemetery, or skeletal

material appears to be historic. Prior to the continuation of any further construction, excavation, or other ground disturbing activity, and unless the provisions of § 23-18-7 shall apply, the property owner shall undertake an archaeological investigation to determine the boundaries of the unmarked cemetery and shall so inform the building official. 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 § 23-18-10.1.

§ 23-18-11.1. Permit required to alter or remove historic cemetery — Powers of city or town council — Appeal.

(a) Before an agency or a property owner may authorize or commence alteration or removal of any historic cemetery, the agency or owner must apply to the **city or town council** where the historic cemetery is located for a permit to alter or remove. The **city or town council** shall prescribe by ordinance standards to regulate the alteration or removal of any historic cemetery within its municipal limits, but shall at a minimum provide that:

- (1) The applicant examine all alternatives, and demonstrate that no prudent or feasible alternative to the proposed alteration is possible;
- (2) The city or town provide for **notification and participation in the permitting process of parties which may be interested in the proposed alteration or removal by virtue of their status as a governmental health or historic preservation authority**, or as a private or nonprofit historical, genealogical or civic organization, or, in the case of American Indian cemeteries and burial grounds, the appropriate tribal organization; and
- (3) The city or town provide for due consideration of the rights of descendants in any application to substantially alter or remove a historic cemetery.

(b) When an application for alteration or removal of a **historic cemetery** has been made and the boundary is unknown or in doubt, the city or town may require that the applicant, at its own expense, conduct an archaeological investigation to determine the actual size of the cemetery prior to final consideration by the city or town of the application to alter or remove.

(c) After due consideration, the **city or town council** may grant the application to alter or remove the historic cemetery in whole or in part, under the supervision of an archaeologist and with any restrictions and stipulations that it deems necessary to effectuate the purposes of this section, or deny the application in its entirety. 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.

(d) Nothing in this section shall be deemed to contravene the authority of municipal bodies under § 45-5-12 to hold, manage, repair, or maintain any neglected burial ground.

§ 23-18-11.2. Regulation of excavation — Removal and transfer of graves and cemeteries — Penalties.

(a) The **city or town council** of any municipality may by ordinance prescribe standards, in addition to those required by § 23-18-10, regulating the excavation, removal, and transfer of any graves, grave sites, and cemeteries in the municipality so as to provide an accurate record of any activity and to insure that any remains removed are properly re-interred and the location of the new interment is recorded. In the absence of a local ordinance establishing standards, regulations adopted by the historical preservation and heritage commission shall govern. 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.

(b) To the extent not promulgated pursuant to § 23-3-5.1, the state registrar of vital records shall promulgate regulations to establish a system of record-keeping to allow descendants to locate their ancestors' graves in Rhode Island.

(c) Any person convicted of violating this section shall be subject to a fine of not more than one thousand dollars (\$1,000) and such fine shall be deemed civil in nature and not a criminal penalty.

(d) The provisions of this section shall be considered to be in addition to any other penalties provided for desecration or vandalism to cemeteries.

§ 23-18-12. Vandalism in cemetery — Civil penalties. – N/A

§ 23-18-13. Notification of historical preservation and heritage commission.

The historical preservation and heritage commission shall be notified whenever an ancient burial place contains or is suspected to contain the remains of one or more persons.

R.I. General Laws, Ch. 45, Sec. 24.1 / Towns & Cities –

Historical Area Zoning

§ 45-24.1-1. Declaration of purpose

The preservation of structures of historic and architectural value and **historic cemeteries**, wherever located within a city or town, are declared to be a public purpose, and **any city or town council has the power by ordinance to regulate** the construction, alteration, repair, moving, and demolition of these structures within the limits of the city or town. It is recognized that the purpose of the ordinance is to:

- (1) Safeguard the heritage of the city or town by preserving a district in a city or town which reflects elements of its cultural, social, economic, political, and architectural history;
- (2) Stabilize and improve property values in that district;
- (3) Foster civic beauty;
- (4) Strengthen the local economy;
- (5) Promote the use of the historic districts for the education, pleasure, and welfare of the citizens of the city or town; and
- (6) Provide, where feasible, that in these historic districts housing, including, but not limited to, limited equity cooperative housing, be made available to low and/or moderate income residents.

§ 45-24.1-4. Permit required to construct, alter, or demolish structure - Application - Written decisions of commission - Powers of commission

- (a) The commission shall, within twelve (12) months of the date the local historic district zoning ordinance takes effect:
 - (1) Adopt and publish all rules and regulations necessary to carry out its functions under the provisions of this chapter; and
 - (2) Publish standards as necessary to inform historic district residents, property owners, and the general public of those criteria by which the commission determines whether to issue a certificate of appropriateness. The commission may amend these standards as reasonably necessary, and it shall publish all amendments.
- (b) **Before a property owner or public utility as defined in subdivision 39-1-2(20) that is installing a gas regulator or gas meter may authorize or commence construction, alteration, repair, removal, or demolition affecting the exterior appearance of a structure or its appurtenances within a historic district or affecting a historic cemetery wherever located within a city or town, the owner or public utility must apply for and receive a certificate of appropriateness from the commission.** In applying, the owner or public utility must comply with application procedures established by the commission pursuant to this chapter and the applicable local ordinance. The commission shall require the owner or public utility to submit information which is reasonably necessary to evaluate the proposed construction, alteration, repair, removal, or demolition, including, but not limited to, plans, drawings, photographs, or other information. The owner of the property or the public utility must obtain a certificate of appropriateness for the project whether or not state law requires that he, she or it also obtain a permit from the local building official. The building official shall not issue a permit until the commission has granted a certificate of appropriateness.
- (c) **In the case of a historic cemetery, the owner must comply with all provisions of law and make suitable and appropriate provisions for the reinterment of any human remains in an established cemetery. Original or existing headstones and markers shall be preserved and installed at the site of the reinterment.**
- (d) In reviewing plans, the commission shall give consideration to:
 - (1) The historic and architectural significance of the structure and its appurtenances;

- (2) The way in which the structure and its appurtenances contribute to the historical and architectural significance of the district; and
 - (3) The appropriateness of the general design, arrangement, texture, materials, and siting proposed in the plans. The commission shall pass only on exterior features of a structure and its appurtenances and shall not consider interior arrangements.
- (e) All decisions of the commission shall be in writing. The commission shall articulate and explain the reasons and bases of each decision on a record, and, in the case of a decision not to issue a certificate of appropriateness, the commission shall include in the bases for its conclusion that the proposed activity would be incongruous with those aspects of the structure, appurtenances, or the district which the commission has determined to be historically or architecturally significant. The commission shall send a copy of the decision to the applicant.
- (f) In the case of an application for construction, repair, alteration, removal, or demolition affecting the exterior appearance of a structure, or its appurtenances, which the commission deems so valuable to the city, town, state, or nation, that the loss of that structure will be a great loss to the city, town, state, or nation, the commission shall endeavor to work out with the owner an economically feasible plan for the preservation of that structure. Unless the commission is satisfied that the retention of the structure constitutes a hazard to public safety, which hazard cannot be eliminated by economic means available to the owner, including the sale of the structure to any purchaser willing to preserve the structure, or unless the commission votes to issue a certificate of appropriateness for the proposed construction, alteration, repair, removal, or demolition, the commission shall file with the building official or duly delegated authority its rejection of the application. In the absence of a change in the structure arising from casualty, no new application for the same or similar work shall be filed within one year after the rejection.
- (g) In the case of any structure deemed to be valuable for the period of architecture it represents and important to the neighborhood within which it exists, the commission may file with the building official, or other duly delegated authority its certificate of appropriateness for an application if any of the circumstances under which a certificate of appropriateness might have been given under subsection (6) are in existence or if:
- (1) Preservation of the structure is a deterrent to a major improvement program which will be of substantial benefit to the community;
 - (2) Preservation of the structure would cause undue or unreasonable financial hardship to the owner, taking into account the financial resources available to the owner, including the sale of the structure to any purchaser willing to preserve the structure; or
 - (3) The preservation of the structure would not be in the interest of the majority of the community.
- (h) When considering an application to demolish or remove a structure of historic or architectural value, the commission shall assist the owner in identifying and evaluating alternatives to demolition, including the sale of the structure and its present site. In addition to any other criteria, the commission also shall consider whether there is a reasonable likelihood that some person or group other than the current owner is willing to purchase, move, and preserve the structure, and whether the owner has made continuing, bona fide, and reasonable efforts to sell the structure to any purchaser willing to move and preserve the structure.
- (i) No less than fifteen (15) days after receiving an application to demolish or to remove an historic cemetery, the commission shall forward the application to the commission to study historic cemeteries. The commission shall also immediately forward to the commission to study historic cemeteries its finding of fact, if any, together with its action on the application.

South Kingstown Town Code

Ch. 2, Art. III - Boards & Commissions

Sec. 2-41. - Historic district commission.

The historic district commission was established by Section 4930 of the Home Rule Charter of 1968, pursuant to the authority contained in Title 45, Chapter 24.1 of the Rhode Island General Laws. The jurisdiction and duties of the commission are provided in Article 21 of the Zoning Ordinance. The commission reviews plans for construction, demolition, relocation, and exterior alterations of structures located in designated historic districts, and reviews plans for alterations to historic cemeteries.

Ch. 14, Art. IV – Historical and Archeological Cemeteries & Burial Sites

Sec. 14-41. Authority.

In compliance with G.L. Tit. 23, Ch. 18, the town hereby adopts the following regulations and standards to govern the protection of historic and archaeological cemeteries within the town.

Sec. 14-42. Purpose.

The town council of the town recognizes that cemeteries and burial sites possess historic, archaeological, cultural and religious significance and represent for all cultures a respect for the sanctity of human life and a legacy of the community's heritage. It is therefore the policy of the town that marked and unmarked historic and archaeological cemeteries are not to be disrupted or disturbed except as provided for in this article.

Sec. 14-43. Definitions.

Disrupted or disturbed includes any excavation, depositing of fill on, or the filling in of a cemetery or burial site or other ground disturbing activity, and the destruction or removal of a grave marker, burial object or human remains.

Historic cemetery means any tract of land which has been for more than fifty (50) years used as a burial place, whether or not marked with an historic marker, including, but not limited to, ancient burial places known or suspected to contain the remains of one (1) or more Native Americans.

Least disruptive means refers to the method of construction, excavation, removal or other activity which has the least overall destructive impact on the cemetery, burial site, or human remains.

Sec. 14-44. Regulation of excavation and construction around cemeteries.

- (a) It shall be unlawful for any person to cause or permit construction, excavation or other ground disturbing activity within twenty-five (25) feet of an historic cemetery located in the town except in compliance with the following provisions:
- (1) The historic cemetery has been recorded by the town building official on the plat map filed with the tax assessor and in accordance with the provisions of G.L. § 23-18-10.1; and
 - (2) The boundaries of the cemetery are documented in accordance with the provisions of this article; and
 - (3) The town council is satisfied that (i) no additional graves exist outside the recorded cemetery and (ii) the proposed construction or excavation activity will not damage or destructively alter the historic cemetery through erosion, flooding, filling or other possible encroachment.

- (b) The requirements in subsection (a) shall not apply if the proposed construction or excavation activity is reviewed and approved by the **town council** pursuant to G.L. § 23-18-11.1 and the standards set forth in this article on the alteration or removal of an historic cemetery.

Sec. 14-45. Discovery of unmarked cemetery or human skeletal material.

- (a) Whenever an unmarked cemetery or human skeletal material is located inadvertently during construction, excavation or other ground disturbing activity, including archaeological excavation, the property owner or contractor shall immediately suspend operations and **notify the town building official, who in turn shall notify the South Kingstown Police, the state medical examiner and the Rhode Island Historical Preservation and Heritage Commission** pursuant to G.L. § 23-18-11.
- (b) The town shall require the cessation of all ground disturbing activities pending verification by the state examiner and state historical preservation and heritage commission that the discovery is a human burial site or historic cemetery. If the site is verified as a historic cemetery, work within twenty-five (25) feet of the site shall be halted until compliance with the provisions of section 14-44 of this article.

Sec. 14-46. Alteration or removal of an historic cemetery.

- (a) Pursuant to G.L. § 23-18-11.1, the **town council** may issue a permit to allow the alteration or removal of an historic or archaeological cemetery or burial site if the town council is satisfied that:
- (1) The applicant has examined all alternatives and that no prudent and feasible alternative to the proposed alteration is possible;
 - (2) The alteration or removal of the historic cemetery serves the interests of public health, safety and welfare and is not for commercial expediency alone;
 - (3) The applicant has conducted an archaeological investigation of the historic cemetery pursuant to this article and has determined the actual boundaries of the cemetery;
 - (4) Due consideration has been given to the rights of the descendants of the interred;
 - (5) Suitable arrangements have been made for the reinterment of all human remains and burial objects on similarly situated property within the town under the supervision of an archaeologist; and
 - (6) Any other requirement which the town council finds reasonably necessary.
- (b) The applicant shall provide the following items for the **town council's** consideration:
- (1) A completed application provided by the **town building official**;
 - (2) A written description of the cemetery including its age and condition, historical and archaeological significance, whether it is a religious, family, organizational, or publicly owned cemetery or burial site;
 - (3) The names and vital dates of those interred as may be determined from the grave markers on the site and a cemetery plan indicating the position of graves and to the extent possible the identities of the interred;
 - (4) A detailed site plan drawn by a licensed surveyor and at a minimum of one inch to fifty feet (1": 50'), showing the boundaries of the property in question, existing topography, a surveyed boundary of the cemetery and a set back area of no less than twenty-five (25) feet;
 - (5) A detailed site alteration plan indicating the extent of disruption of the cemetery, proposed methods of removal of human remains, and/or any proposed improvements on the site which would necessitate disturbance of the historic cemetery, or grave site;

- (6) A detailed reburial plan describing the relocation of grave markers and sculpture, burial objects, tombs, and human remains.

Sec. 14-47. Notice to interested parties.

The town shall provide for the notification and participation in the permitting process of any person or organization which may be interested in the proposed alteration or removal including the Rhode Island Historical Preservation and Heritage Commission, the South Kingstown **Historic District Commission**, the Pettaquamscutt Historical Society, any other private or nonprofit historical, genealogical, religious or civic organizations, and any living lineal descendants of the interred. In the event that a site contains archaeological, prehistoric, or Native American burials, the Narragansett Indian Tribal Historic Preservation Office or other appropriate tribal organization shall be notified.

Sec. 14-48. Documenting the boundaries of an historic cemetery.

The property owner shall be required, at his or her own expense, to conduct an archaeological investigation to establish the boundaries of the cemetery using the least disruptive means feasible. The least disruptive means shall be determined in consultation with the **Rhode Island Historical Preservation and Heritage Commission** and the South Kingstown **Historic District Commission**. A survey report shall be produced incorporating the findings of the investigations in both text and graphic form.

Sec. 14-49. Town council action.

The **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 and reburial plans, and may set other requirements as deemed reasonable to carrying out the purposes of G.L. Tit. 23, Ch. 18.

Sec. 14-50. Legal status.

Nothing in this article shall be construed to prohibit the use of historic cemeteries as places of interment or the routine maintenance and repair of historical grave sites.

Sec. 14-51. Penalties.

Any person acting in violation of this article shall be subject to a fine of not more than two hundred fifty dollars (\$250.00). Each day that such violation continues shall constitute a separate offense. The provisions of this section shall be considered in addition to any penalty imposed for the desecration or vandalism of a cemetery or burial site pursuant to G.L. Tit. 23, Ch. 18.2.

Sec. 14-52. Appeal.

Any person aggrieved by the decision of the town council shall have a right to appeal the decision to the Rhode Island Superior Court pursuant to G.L. § 23-18-11.1.

Sec. 14-53. Severability.

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

SOUTH KINGSTOWN ZONING ORDINANCE

Article 6 - Overlay Zones, Special Zones & Special Management Districts

Sec. 600. - Historic Overlay District.

600.3. *Definitions.* The following terms shall have the following respective meanings unless a different meaning clearly appears from the context:

- F. *Historic cemetery.* A cemetery registered by the Town of South Kingstown pursuant to Rhode Island General Laws, Section 23-18-10.1, as amended.

600.6. *Historic cemeteries.*

- A. Before a property owner may authorize or commence construction, alteration, repair, removal, or demolition affecting a historic cemetery or its appurtenances, **whether or not the cemetery is located within a historic district**, the owner must apply for and receive a certificate of appropriateness from the commission.
- B. In the case of any work requiring the demolition, removal or relocation of all or part of a historic cemetery, the property owner shall comply with all provisions of local and state law and shall make suitable and appropriate provisions for the reinterment of any human remains in an established cemetery. Original or existing headstones and markers shall be preserved and reinstalled at the site of reinterment.