

Chapter 12

CEMETERIES*

* **Cross References:** Commission on historical cemeteries, § 6-121 et seq.
State Law References: Regulation of burial grounds, G.L. 1956, § 23-18-10; penalty for violating such section, G.L. 1956, § 23-18-9.

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ARTICLE I.

IN GENERAL

Sec. 12-1. Cemeteries to be approved by zoning board of review.

No cemetery, or any extension of an already existing cemetery, shall hereafter be established in the city without the consent and approval of the zoning board of review.
(Code 1971, § 5-1)

Sec. 12-2. Disinterment of human corpse.

No person shall remove from its place of burial in this city the body of any human being without first securing a permit from the city clerk.
(Code 1971, § 5-2)

State Law References: Disinterment of bodies, G.L. 1956, § 11-20-1.

Sec. 12-3. Provisions of chapter supersede city zoning laws.

The provisions of this chapter shall be construed to supersede any provision of the zoning laws of the

city, or any amendment or addition thereto, relative to the use of land for cemetery purposes.
(Code 1971, § 5-3)

State Law References: Effect of zoning ordinances on other regulatory ordinances, G.L. 1956, § 45-24-12.

Sec. 12-4. Archaeological and historical burial sites.

(a) *Authority.* In order to comply with G.L. tit. 23, ch. 18, the City of Warwick hereby adopts the following regulations governing the preservation of archaeological and historic burial sites in the City of Warwick.

(b) *Purpose.* The City Council of the City of Warwick finds that archaeological and historical grave sites possess scientific value, cultural and religious significance, have artistic qualities, and represent for all cultures a respect for the sanctity of human life and a legacy of our heritage. It is, therefore, the policy of the City of Warwick that marked and unmarked historic and prehistoric cemeteries are to be preserved and are not to be altered or removed except as provided for in this section.

(c) *Definitions.*

Applicant. The owner of the land adjacent to where an archaeological burial site or family cemetery is located for which a permit must be sought for alteration or removal.

City. The City of Warwick, Rhode Island, its agents or officials.

Contact period. The era of history during which European and Native American cultures came into contact with one another. In Rhode Island this epoch spans the sixteenth and early seventeenth centuries.

Historic cemetery. Any tract of land which has been, for more than 100 years, used as a burial place, 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 persons. For the purpose of this section, "historic cemetery" shall also include an area 25 feet in width around the perimeter of the cemetery. An historic cemetery shall also include all archaeological burial sites (an area of land which has been used for the interment of human remains in the prehistoric, contact, or protohistoric periods. Archaeological burial sites may include those created by cultures recognized as Native American, American Indian, Indian, or other ethnic groupings), family cemeteries (an historic cemetery which is not associated with a specific religious organization but which is the site of burial for persons related by blood, or otherwise associated by marriage or household) and religious cemeteries (any cemetery owned or maintained by a religious organization.)

Human remains. Any part of remains of deceased persons including skeletal fragments, or cremated human bone and ashes.

Grave. Any site where human remains have been purposefully interred. The term shall also include grave markers, funerary objects, and associated cultural remains and artifacts. A grave shall include mausoleums, crypts or other structures designed to house human remains.

Least disruptive means. A means of construction, excavation, removal, or any other activity

which, in the opinion of the Warwick Historic Cemeteries Commission in coordination with the Warwick Historic District Commission and the Rhode Island Historical Preservation, has the least overall destructive impact on the grave, human remains, or cemetery.

Owner. The owner of a parcel of land.

Prehistoric. Pertaining to cultures without written histories.

Protohistoric Period. The area of history following European and Native cultural contact through the seventeenth century.

Site alteration plan. A document showing in written text, and by measured drawing, the proposed alteration of an historic cemetery, archaeological burial site or family cemetery, including detailed specifications for alteration, removal and reburial of human remains.

(d) *Regulations regarding archaeological or historical burial sites and cemeteries.* It shall be unlawful for any person to disturb, disrupt, excavate, deposit fill in or on, remove or destroy grave markers, burial objects, or buried human remains, or conduct any other activities which would damage or diminish the integrity of any historic cemetery.

The Warwick Historic Cemeteries Commission may issue a permit to allow the alteration or removal of historic cemeteries, archaeological burials, or family cemeteries only after concluding, based upon evidence submitted to the historic cemeteries commission at a public hearing as set forth herein at Section 5, that all alternatives to the proposed activity have been examined and that no prudent and feasible alternative to the proposed activity exists or that said alteration only serves the interests, health, welfare, and safety of the public and is not for commercial expediency.

In order for the Warwick Historic Cemeteries Commission to clearly assess the proposed project, the following information shall be submitted unless otherwise required by the historic cemeteries commission:

- (1) Detailed site plans drawn to scale by a licensed professional registered land surveyor or professional engineer as applicable, at a minimum scale of 1":40', showing the boundaries of the property in question, existing topographical contour intervals of no more than two feet, a surveyed boundary of the cemetery and a setback area of no less than 25 feet, and a proposed plan of all improvements on the site which would necessitate disturbance of the cemetery, or archaeological grave site.
- (2) If known a written description of the cemetery, its age and condition, historical importance, whether the cemetery is religious, family, organizational, publicly owned, a prehistoric or historic archaeological discovery. A written description of names and vital dates of those interred.
- (3) A detailed site alteration plan indicating the extent of disruption of the cemetery, methods of construction or removal of human remains, and reburial plan, describing text and drawing, the relocation of graves.

- (4) In the event of a family cemetery, a genealogical study to identify whether descendants of the families of the interred still reside within the State of Rhode Island.
- (5) In the event of a religious cemetery, a listing of the religious organization that owns or maintains the cemetery.
- (6) Any further information and study the Warwick Historic Cemeteries Commission deems necessary to complete its consideration of the request to alter a cemetery in compliance with G.L. § 23-18.
- (7) Previously unknown or archaeological burial sites. Once a discovery of a previously unknown burial site is made or suspected, the owner or contractor shall immediately suspend operations and notify the building inspector, who in turn shall contact the planning department and the state medical examiner and the Rhode Island Historical Preservation Commission pursuant to G.L. § 23-18.

The city shall require the cessation of construction activities pending preliminary verification by the state medical examiner and historical preservation commission. If the site is verified as a human burial site, work within 25 feet of the site shall be halted unless or until a permit to alter or remove is issued by the Warwick Historic Cemeteries Commission pursuant to these regulations.

The owner shall be required at his/her expense to conduct an archeological investigation of the area to establish the boundaries of the burial/cemetery sites via the least disruptive means feasible. The least disruptive means shall be determined in consultation with the Rhode Island Historical Preservation Commission. A survey report shall be produced incorporating the findings of the investigations in text and graphic form.

The applicant shall then submit the report and a detailed engineering plan as in subsection (d)(1) above of the proposed construction project, and all other activities on the property in question which in the opinion of the applicant necessitates disruption of the cemetery, grave, or archaeological deposit.

The applicant shall also submit a detailed site alteration plan proposal of the extent and method of removal of human remains and a reburial plan in text and drawing of the new grave site.

- (e) *Hearing.*
 - (1) *Public notice.* Upon receipt of the required documents the Warwick Historic Cemeteries Commission shall set the date of hearing and cause the matter to be publicly advertised in a local newspaper not less than two weeks prior to the hearing, at the applicants expense. The Rhode Island Historical Preservation Commission shall simultaneously be notified and an advisory opinion shall be requested.
 - (2) *Notice to interested parties.*
 - a. In the event that an application involves archaeological burials, prehistoric burials, contact period or protohistoric period burials determined to contain remains of Native Americans, the city shall cause the Tribal Council of the Narragansett Indian Tribe to be

notified in writing by mail, of the subject, date and time.

- b. In the event that an application involves the cemetery of an extant religious society, said society shall be so notified in writing, by mail of subject, date and time.
- c. In the event that the application involves a family cemetery the interred of which have living lineal descendants, the applicant shall make all reasonable efforts to notify lineal descendants, which efforts may include sending notice to descendants in writing, by mail, and/or publication of the notice in a newspaper of Statewide circulation at least once per week for two successive weeks prior to the hearing.

(3) *Burden of proof.* At the hearing the applicant shall prove to the satisfaction of the Warwick Historic Cemetery Commission that:

- a. The applicant has examined all alternatives and conclusively demonstrated that no prudent and feasible alternative to the proposed alteration is possible; or
- b. That the proposed alteration serves only the interests of health, welfare, and safety of the public.

(f) *Final action.* The Warwick Historic Cemeteries Commission 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 G.L. 23-18-1 et seq.

(g) *Legal status.* Nothing in this section shall be construed to prohibit the routine maintenance and repairs of historical grave sites or the use of historic cemeteries as places of internment, nor shall it be construed to preclude the boards or commissions or agents of the City of Warwick from otherwise acting within their authority to regulate and protect historical and archeological burial places.

(h) *Severability.* If any section, clause, provision, or portion of this ordinance 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 the ordinance.

(i) *Appeal.* Any person aggrieved by the decision of the Warwick Historic Cemeteries Commission, acting pursuant to this ordinance, shall have the right to appeal the decision to Superior Court pursuant to G.L. §§ 23-18-11.1 and 45-5-12.
(Ord. No. O-08-29, § I, 12-9-08)

Secs. 12-5--12-30. Reserved.

ARTICLE II.

ESTABLISHMENT OR EXTENSION OF CEMETERIES

Sec. 12-31. Application required; fee.

Any application for the establishment of a cemetery or for the establishment of an extension to an existing cemetery shall set forth the name and post office address of the owner of the land, the part or parts thereof to be used for burial purposes, and the part or parts thereof to be used for screening purposes, and such other information as may be helpful to the zoning board of review in its consideration of the application. Such applicant shall pay to the zoning board of review a sum sufficient to pay for the cost of advertising the application.

(Code 1971, § 5-14)

Sec. 12-32. Referral of application to planning department.

Any application for the establishment of a cemetery or for an extension to any already existing cemetery shall be referred to the planning department for its consideration and recommendations.

(Code 1971, § 5-15)

Sec. 12-33. Consideration and recommendations by planning department.

(a) The planning department shall consider, among other things, the need for the proposed cemetery or extension, and the desirability of its location, and report its findings to the zoning board of review.

(b) The planning department may also consider and recommend to the zoning board of review any conditions that should be imposed on the applicant relative to landscaping and the setting aside of part of the proposed area for screening purposes. It may also recommend that a bond be furnished by the applicant for the fulfillment of any conditions imposed by the zoning board of review, and the amount thereof.

(Code 1971, § 5-16)

Sec. 12-34. Notice of hearing on application.

On receipt of the report of the planning department the application required by this article shall be set down for a public hearing to a day certain, and the city clerk shall cause notice thereof to be mailed, postage prepaid, to every person owning land within 200 feet of the proposed cemetery or extension and public notice thereof by advertisement in a newspaper having a general circulation in the city.

(Code 1971, § 5-17)

Sec. 12-35. Conditions of approval to be specified.

In case the zoning board of review grants the application to create or extend a cemetery, it shall set forth specifically the area to be used for burial purposes and such other conditions as it may see fit to impose on the applicant.

(Code 1971, § 5-18)

Secs. 12-36--12-60. Reserved.

ARTICLE III.

BURIALS

Sec. 12-61. Burials to be done in approved cemeteries.

It shall be unlawful for any person to bury or cause to be buried any dead body or dig or cause to be dug any grave in the city except in an already existing cemetery or one hereafter established by the zoning board of review.

(Code 1971, § 5-29)

Sec. 12-62. Type of casket; depth to bury casket.

No person shall bury a human body or place the same in any vault in the city unless such body shall be first placed in a box or casket, the top, bottom and all sides of which shall be securely fastened, and no person shall bury any such box or casket unless in such manner that every part and portion of such box or casket shall be at least four feet below the natural surface of the ground where the same is buried.

(Code 1971, § 5-30)

Sec. 12-63. Miscellaneous ordinances not affected by Code.

Nothing in this Code or the ordinance adopting this Code shall affect any ordinance establishing areas in which burial is prohibited, pursuant to G.L. 1956, § 23-18-10, and all such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this Code.

(Code 1971, § 5-31)