



STATE OF WASHINGTON
DEPARTMENT OF LICENSING
PO Box 9020, Olympia, Washington 9850-9020

**Washington Administrative Code
Notice of Permanent Rules for
Funeral and Cemetery Board**

Adoption of: WAC 98-20-030 proposed new section, Allowing burials in an abandoned cemetery.

Effective date: These rule changes will become effective 31 days after filing or on November 5, 2018.

What are the agency's reasons for adopting this rule?

To comply with HB 1907, this new section outlines the requirements for landowners to allow for burials; records management and endowment care fund requirements.

Summary of all public comments received on this rule proposal and the agency's response to those comments:

Comment:

Comment I:

Has the proposed regulation gone far enough? Does it answer enough questions for the average person?

With a prepaid package, who opens and closes that grave? Who digs that grave? Who prepares that grave? Who pays for that? Gave example of a person not being able to do business with a mortuary to get a loved one buried there because the mortuary didn't feel they could enter that cemetery.

If it is adopted by the Board as written, it would be asked that there be a commitment to work with the families to see that these questions be answered and the families be taken care of.

Response I:

1. Can a person enter an abandoned cemetery?

Once dedicated, a cemetery remains permanently dedicated as a cemetery in perpetuity under RCW 68.24.070. No person is prevented from entering a cemetery for cemetery purposes. Cemetery purposes include all of the activities related to grave sites: digging, opening, closing, erecting a grave marker, maintaining the grave site.

Ownership in plots or rights of conveyance are not affected by the designation "abandoned cemetery." Under RCW 68.24.120, such rights are indivisible, which means they are permanent and ownership of unused plots shall remain consistent with chapter 68.24 RCW and chapter 68.32 RCW.

The Administrative Procedure Act (RCW 34.05.325(6)) requires agencies to complete a concise explanatory statement before filing adopted rules with the Office of the Code Reviser. This statement must be provided to anyone who gave comment about the proposed rulemaking.

The Department of Licensing appreciates your involvement in this rulemaking process. If you have any questions, please contact Damon Monroe, Agency Rules Coordinator, at (360) 902-3843 or email dmonroe@dol.wa.gov.

2. If there is a prepaid package, who opens and closes the grave?

Title to cemetery plot or interment right in an abandoned cemetery remains valid, and is addressed by this rule authorizing burials in abandoned cemeteries for the holders of cemetery plots or interment rights. However, any additional pre-paid services from a cemetery authority of an abandoned cemetery are not addressed by the rule because they are contractual rights and subject to other laws. The Board has no authority or control over contract rights. That is an issue between the two parties to the contract to work out.

With respect to prepaid contracts with funeral establishments, RCW 68.60.060 and this rule establish that burials may take place, where the proper ownership can be established as described in chapter 46.32 RCW. This rule should not affect pre-paid contracts with funeral establishments.

3. What if a mortuary refuses to do business to bury a loved one who has a plot in an abandoned cemetery?

The Board will not adjudicate a contractual dispute between a funeral establishment and a client. By enabling burials in abandoned cemeteries, for plot owners, this rule should smooth the concerns of funeral establishments.

Where there is no prior contract with a mortuary, the mortuary can choose whether to do business with any person. A mortuary cannot be forced to enter into a contract or work with a family to bury a loved one. However, a funeral establishment will be more likely to work with a family where the loved one has a cemetery plot or interment right under the new RCW and WAC.

Comment II:

Wants to see rules move forward and have recommendations for amendments if they could be amended before being adopted. If not, would like to see us continue to work on it and perhaps adopt some of these:

Conditions under which human remains may be buried in an abandoned cemetery- agree with a,b,c, and add: d) Allow that documents from the cemetery be allowed to count as evidence to inter into cemetery.

Response II:

Instead of adding a sub-section d), the Board will include language in part b to state: (b) The person(s) having the right to control disposition per RCW 68.50.160 has documentation issued by the cemetery authority prior to the date of abandonment establishing ownership of the plot, right of interment or vested right of placement for the human remains to be buried.

Comment III:

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Under #5, The person(s) having the right to control disposition may place a grave marker on the grave... would like see some language added that they also have the right to maintain and repair not just place a marker; and also have the right to visit.

Response III:

Any person may enter a cemetery for cemetery purposes, which includes visiting a grave and maintaining a grave site. Under current law, once dedicated, a cemetery remains permanently dedicated as a cemetery in perpetuity under RCW 68.24.070. No person can be prevented from entering a cemetery for cemetery purposes.

Comment IV:

Add a #7 the State would be able to permit someone to operate and maintain and has authority to do so in an abandoned cemetery and listed examples. If these items could be amended into these rules and passed please do so, if not, please pass these and let's work on incorporating these into another set of rules.

Response IV:

Preservation of abandoned cemeteries is addressed in RCW 68.60.030. DAHP has the authority to grant nontransferable certificates of authority to preservation organizations to restore, maintain and protect abandoned cemeteries.

Changes made to the proposed WAC as a result of public comment:

Added language to WAC 98-20-030(1)(b): The person(s) having the right to control disposition per RCW 68.50.160 has documentation issued by the cemetery authority prior to the date of abandonment establishing ownership of the plot, right of interment or vested right of placement for the human remains to be buried.

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