ALABAMA HISTORICAL COMMISSION ADMINISTRATIVE CODE

CHAPTER 460-X-10 BURIALS

TABLE OF CONTENTS

460-X-10-.01 Permits

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(1) The purpose of these regulations is to provide for the lawful excavation, relocation, and/or restoration of cemeteries and human remains as described in Alabama Act 2010-723. The Alabama Historical Commission (AHC) as charged in Act 2010-723 shall oversee the provisions of this Act relating to permitting activities.

(a) Definitions

1. Archaeologist - A person meeting the professional qualifications of Archaeologist, as found in 36 CFR Part 61.

2. Bioarchaeologist - A person meeting the professional qualifications of Archaeologist, as found in 36 CFR Part 61, with the addition of specialized training in human osteology and six months experience working with human remains.

3. Human Osteologist/Biological Anthropologist/Forensic Anthropologist - A person with a graduate degree (Master's Degree or PhD) with specialized training in human osteology and a minimum of six months experience working with human remains.

4. Permit - A document necessary to conduct activities involving human remains or funerary objects at marked or unmarked sites.

5. Cemetery - A place of burial for human remains with or without markings or indications, including both public and private property.

6. CFR - Code of Federal Regulations.

7. Funerary Objects - Objects of, used for, or associated with burial, including but not limited to a tomb,

monument, gravestone, burial mound, earthen or shell monument containing human skeletal remains or associated burial artifacts, or other structure or thing placed or designed for a memorial of the dead, or any fence, railing, curb, or any enclosure for the protection or ornamentation of any tomb, monument, gravestone, burial mound, earthen or shell monument containing human skeletal remains or associated burial artifacts, or other structure before mentioned, or for any enclosure for the burial of the dead. Also including any tree, shrub, plant, flower, decoration, or other real or personal property within any cemetery or graveyard.

8. Burial - A burial shall be considered to include the human remains, all funerary objects, and the grave or other place of deposition to include burial mounds and earthen or shell monuments.

(b) General Permit Conditions

1. The following entities are exempt from the need for permitting, as specified in Act 2010-723: all county or municipal Coroners, all county or municipal Health Officers, all City, County and State law enforcement agencies; licensed Funeral Home Operators, all licensed Cemetery Operators, all licensed Morticians, and any person authorized to take any action on municipal property. This exemption is strictly for carrying out the lawful duties assigned them by the State of Alabama.

2. If all burials involved in a proposed permit action have been interred for less than 75 years, no permit is required and no consultation with the AHC is necessary. No further reporting or permitting is required by the AHC. In no case shall this be interpreted as absolving applicants of any other requirements under Alabama state law.

3. If any burial associated with a proposed permit action has been interred for 75 years or longer, or if the date of interment is undetermined, the permittee shall consult with the AHC for purpose of being issued an additional specific permit limited to that burial(s) only.

4. All Relocation Permit applications, or Non-Relocation Permit applications that would directly impact human remains interred for more that 75 years, must be accompanied by a Research Design/Methodology from either a qualified Bioarchaeologist or a qualified professional archaeologist working in cooperation with a qualified Human Osteologist/Biological Anthropologist/Forensic Anthropologist. Activities conducted under section b(2)are exempt from this stipulation.

5. At the completion of permit activities, a final report must be filed with the AHC detailing activities conducted under the permit. For permits involving the disturbance and/or relocation of human remains, the report must outline the place, the date and the disposition of any remains or burials disturbed. Activities conducted under Section b(2), are exempt from this stipulation.

(c) Single Use permits - In cases where one of the above persons or entities defined in Section b(1), is not controlling the disturbance, an individual or entity may request a permit from the AHC. The request must be accompanied by a complete description of the location, known information concerning the remains, and the purpose for the disturbance. These permits are differentiated by Non-relocation (preservation/clean up and/or identification-level activities) or Relocation (Cemetery Abandonment and relocation of human remains and associated funerary objects).

(d) Violation - If violation of the terms of the permit is found after a complete review by the AHC staff, the staff may recommend to the Executive Director that the permit be withdrawn. The Executive Director, if unlawful use is determined, may choose to withdraw the permit or set conditions under which the agency or individual may retain the permit.

(e) Consultation - All permit requests involving ground disturbance and/or Relocation will be considered by the Executive Director after consultation with the archaeological staff. Based upon provided information, when necessary and not otherwise provided for by Alabama state law, the Executive Director may at their discretion assume the responsibility for coordinating consultation for previously unknown/unmarked cemeteries or individual human burials between interested or concerned parties including, but not limited to, where appropriate, the Indian Affairs Commission and other groups representing significant cultural or ethnic affiliations. The objective of this responsibility is to provide for a mechanism of public comment in those cases where it may be necessary and not otherwise provided.

(f) Notification - Any person who knows, or has reason to know, of the discovery of human remains and/or funerary objects on state or private lands shall notify law enforcement immediately. If the discovery occurred in connection with a land-disturbing activity including, but not limited to, construction, mining, logging, or agriculture, the person shall cease the activity in the area of the discovery, make reasonable efforts to protect the items discovered until law enforcement may investigate and contact the AHC, as warranted under Sections b(1)and(2).

Author: Gregory Rhinehart; Eric Sipes

Statutory Authority: Code of Ala. 1975, §13A-7-23.1, Alabama Cemetery and Human Remains Protection Act 93-905, as amended; Alabama Act 2010-723.
History: New Rule: Filed February 9, 1994; effective March 15, 1994. Footnote: Emergency Rule 460-X-10-.01-.01ER. Re-certification **Amended:** Filed March 24, 1994; effective April 28, 1994. **Amended:** Published October 31, 2024; effective December 15, 2024.