

INCORPORATED 1765



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**TO: CPHS BOH Members**

**FROM: Andrea Crete, RS, MPH, Regional Health Director**

**RE: Optional Board of Health Checklist for responding to requests from residents for establishing a Family Burial Plot**

**Overview:** This document is intended to provide guidance to members of local Boards of Health in how to respond to requests from residents to approve future burials at home. Because the establishment of such a plot requires approval from DEP, residents need to carefully prepare a portfolio for DEP to review. This document is designed to recommend a process that will be successfully approved at DEP, but following the recommended steps it is entirely optional. This memo is not intended for residents. If you are a resident interested in a home burial plot, please call you Board of Health to begin the discussion.

**Legal context:**

Board of Health members should know what the current laws are that impact home burial. Below is a summary of the State DEP requirements for the siting of Family Burial Plots:

1. The Massachusetts Rivers Protection Act (Chapter 258 of the Acts of 1996) restricts the siting and use of Burial Plots within 200 feet of rivers.
2. Burial plots are prohibited within the Zone I of all Public Water Supplies (PWS).
3. Pursuant to the requirements of 310 CMR 22.20B (5), burials shall be excluded within 100 feet of the high water mark of a surface water source of a Public Water Supply or tributary thereto, unless permitted in writing by the affected PWS.
4. 310 CMR 22.21 (2)(b)(6) prohibits the removal of overburden soils within 4 feet of the historical high groundwater table elevation, unless the soils are re-deposited within 45-days of its removal to achieve a grading greater than the 4 feet above the historical high water mark.
5. The plot should not be within a FEMA Velocity Zone or 100 or 500 year flood zone.

(310 CMR 22.00 are the DEP Drinking Water Protection Regulations)

In addition, the Board of Health, pursuant to MGL Chapter 114 sec 37, is authorized to regulate the establishment of family burial plots, which are located on private property and reserved for the exclusive use of the property owner(s) and their family members.

#### **A. Initial Steps to Establish a Family Burial Plot:**

Our recommended set of steps for a local approval process are as follows:

- ☐ To ensure that the burial area is on the owner's property, the Board should request a survey of the property made by a licensed surveyor if the proposed burial plot is within 75 feet of the property line. The exact location and sizing of the burial plot, in relation to nearby property boundaries, should be provided by the applicant on a site plan, scale 1" = 20'. In lieu of the burial plot survey, the Board could also accept properly geo-referenced boundaries provided by a GPS unit, as long as the actual field locations are delineated by permanent monuments that are geo-referenced and located. Tie-in distances from property line markers should be provided to at least one of the permanent boundary monuments. A description of the permanent corner markers, any fencing, and other burial plot features should be provided. Proving the legal location of the plot will protect the Board from any liability should there be a question later.
- ☐ The Board should request that the number of proposed individual burials be identified on the plan.
- ☐ In order to comply with 310 CMR 22.21 (2)(b)(6), the Board should ensure that an *abbreviated soil evaluation* conducted by a Massachusetts DEP Certified Soil Evaluator is completed within the proposed plot boundaries to determine:
  - the estimated seasonal high groundwater elevation (ESHWT)
  - soil profile description to a depth of 4 feet
  - soil variability
  - depth to shallow bedrock, ledge, or other site limitations

This evaluation can be done using a form provided by the BOH (see attached). The abbreviated soil evaluation should be witnessed by a BOH member or their Health Agent (who must also be an approved Soil Evaluator). A member of the BOH may also perform the soil evaluation, provided they are an approved Soil Evaluator.

- ☐ The Board of Health should check that the finished slope of the proposed area does not exceed 3:1 unless a satisfactory slope stabilization method is implemented. This is to ensure that erosion does not expose the grave site.
- ☐ In order to comply with the Massachusetts Rivers Protection Act, residents should show setback distances to all wetlands, ponds, rivers, streams, runoff, and private and public wells within 200 feet on the site plan submitted to the Board of Health and DEP. Setback distances to Family burial plots must be located more than one-hundred-fifty (150) feet from such features. Manmade features including roads, buildings, and other structures and improvements should be shown on the plan if within 200 feet of the burial plot boundary.
- ☐ In accordance with the Drinking Water Protection laws, the Board of Health should advise residents that any body buried in a family burial plot must be covered with at least two (2) feet of soil. The bottom of the excavation must maintain at least two (2) feet of separation distance of naturally occurring soil above the Estimated Seasonal High Water Table (ESHWT) as determined in #2 above.

## **B. Green Burial Options for Establishing a Family Burial Plot**

In order to prevent contamination of groundwater resources, the Board of Health may wish to encourage Green Burial practices. Green Burial practices minimize the use of metal, concrete, non-naturally occurring chemicals, and shall emphasize the use of biodegradable materials that are used and interred during the burial process. Many local and internet resources exist to provide guidance to residents about their options for Green Burials.

## **C. Review Process and Approval or Denial in Writing**

Once the Board has received the above information, the recommended permitting process is as follows:

- ☐ First, The Board of Health should review the submission of the information detailed in Section A, above, and make an initial determination in writing. If the Board of Health feels that all of its requirements have been met, the resident should get an *initial* approval in writing. If denied, the BOH should provide the reasons for denial.
- ☐ Next, the owner should have the location reviewed and approved by the local Conservation Commission to ensure that the Family Burial Plot complies with the Wetlands Protection Act.
- ☐ The Board of Health should then provide final written permission to establish the family burial plot.
- ☐ If approved by the Local Board of Health, the owner can submit the site plan and BOH written approval to the Regional Office of the Department of Environmental Protection (DEP) for review. Contact Information for DEP is as follows:

James Gibbs  
Department of Environmental Protection, Western Regional Office  
436 Dwight Street  
Springfield, MA 01103  
Main telephone: 413-784-1100  
Email: [james.gibbs@state.ma.us](mailto:james.gibbs@state.ma.us)

- ☐ If approved by DEP, the owner will need to file a copy of the approved site plan as an addendum to the deed for the property and have it recorded at the Franklin County Registry of Deeds in Greenfield.

**Please note: The approval of a home burial plot does not change the state requirements for a burial permit for the body and death certificate. Residents should coordinate with the Town Clerk on these matters.**

**TOWN OF \_\_\_\_\_ BOARD OF HEALTH**

**ABBREVIATED SOIL EVALUATION FORM**

Location \_\_\_\_\_ map \_\_\_\_\_ lot \_\_\_\_\_ Date \_\_\_\_\_

Current Land Use \_\_\_\_\_

Property owner \_\_\_\_\_ Phone \_\_\_\_\_ Present? Yes No

Others present \_\_\_\_\_

Soil Evaluator \_\_\_\_\_ BOH Representative

\_\_\_\_\_

Distance to nearest: wetlands(type) \_\_\_\_\_ well \_\_\_\_\_ prop line \_\_\_\_\_ structure \_\_\_\_\_

Cons. Com involved? Notes: \_\_\_\_\_ Weather \_\_\_\_\_

**SOIL PROFILE DESCRIPTIONS**

DH# \_\_\_\_\_ Parent Material \_\_\_\_\_ Depth to bedrock: \_\_\_\_\_ ESHGW \_\_\_\_\_

Horizon	Depth	Color	Texture	Mottles color & %	NOTES

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Horizon	Depth	Color	Texture	Mottles color & %	NOTES

## **Relevant Mass General Law references:**

### **TITLE XVI. PUBLIC HEALTH, CHAPTER 114. CEMETERIES AND BURIALS -- USE OF CEMETERIES**

**Chapter 114: Section 34. Use of land for burial; new cemeteries or extensions; approval of board of health; description of land:** Except in the case of the erection or use of a tomb on private land for the exclusive use of the family of the owner, no land, other than that already so used or appropriated, shall be used for burial, unless by permission of the town or of the mayor and aldermen of the city in which the same lies; but no such permission shall be given until the location of the lands intended for such use has been approved in writing by the board of health of the town where the lands are situated after notice to all persons interested and a hearing; and the board of health, upon approval of the use of any lands either for new cemeteries or for the extension of existing cemeteries, shall include in the records of the said board a description of such lands sufficient for their identification. For every interment in violation of this section in a town in which the notice prescribed in section thirty-seven has been given, the owner of the land so used shall forfeit not less than twenty nor more than one hundred dollars.

**Chapter 114: Section 35. Lands to be used for burial; approval:** No land other than that so used and appropriated on April tenth, nineteen hundred and eight, shall be used for the purpose of burial if it be so situated that surface water or ground drainage therefrom may enter any stream, pond, reservoir, well, filter gallery or other water used as a source of public water supply, or any tributary of a source so used, or any aqueduct or other works used in connection therewith, until a plan and description of the lands proposed for such use have been submitted to, and approved in writing by the department of environmental protection.

**Chapter 114: Section 36. Appeal from order of board of health; hearing:** Any person, including those persons in control of any public land, or the officers of any municipality, aggrieved by the action of a board of health in approving the purchase, taking or use of any lands for cemetery purposes may, within sixty days, appeal from the order of said board to the department of environmental protection, and said department may, after a hearing, rescind such order or may modify and amend the same by approving a part of the lands so proposed for such use.

#### **Chapter 114: Section 37. Regulations by local boards of health; notice**

Section 37. Boards of health may make regulations concerning burial grounds and interments within their towns; may impose penalties not exceeding one hundred dollars for a breach thereof; may prohibit the use by undertakers, for the purpose of speculation, of tombs as places of deposit for bodies committed to them for burial; and may close any tomb, burial ground, cemetery or other place of burial within the town for such time as they consider necessary for the protection of the public health. Notice of such regulations shall be given by publishing them in a newspaper, if any, of the town; otherwise, by posting a copy in a public place therein. Such publication shall be notice to all persons.

**Chapter 114: Section 38. Closing of tombs, burial ground or cemetery; hearing; notice:** Before a tomb, burial ground or cemetery is closed by order of the board of health for more than one month, all persons interested shall have an opportunity to be heard, and personal notice of the time and place of hearing shall be given to at least one owner of the tomb, and to three at least, if there are so many, of the owners of such burial ground or cemetery, and notice shall be published for at least two successive weeks preceding such hearing in two newspapers published in the county.

### **MISCELLANEOUS PROVISIONS**

**Chapter 114: Section 43I. Removal of bodies constituting menace to public health:** Whenever any mausoleum, vault, crypt or other structure containing one or more dead human bodies shall, in the opinion of the department of public health, become a menace to public health, and the owner thereof fails to remedy or remove the same to the satisfaction of said department, any court of competent jurisdiction may order the owner of said structure to remove such dead body or bodies for interment in some suitable cemetery at the expense of such owner. If such owner cannot be found, such removal and interment shall be at the expense of the cemetery association or other agency in the cemetery of which such mausoleum, vault, crypt or other structure is situated.

**Chapter 114: Section 43L. Abating or enjoining nuisance:** Any cemetery, community mausoleum or columbarium established, maintained or operated in violation of or contrary to any provision of this chapter shall be a nuisance and may be abated or enjoined as such at the suit of any taxpayer of the commonwealth.