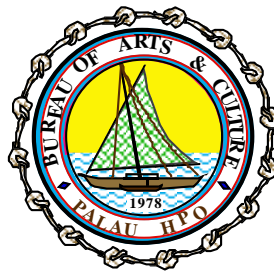
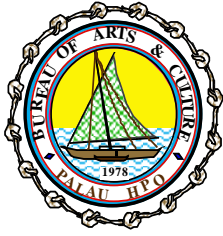


# Regulations Regarding the Treatment and Disposition Of Human Remains and Burial Furnishings



BUREAU OF ARTS AND CULTURE/  
HISTORIC PRESERVATION OFFICE  
MINISTRY OF COMMUNITY AND CULTURAL AFFAIRS  
REPUBLIC OF PALAU  
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## **PART I – SHORT TITLE**

These regulations may be cited as the Regulation for the Treatment of Human Remains.

### **1.2 Authority**

In accordance with the Palau National Code, Title 19, Section 131 (o) and 6 PNC § 125, the Director of the Bureau of Arts and Culture adopts these Regulations for the Treatment of Human Remains.

### **1.3 Effective Date**

The Regulations for the Treatment of Human Remains shall take effect with the approval of the President of the Republic of Palau sixty (60) days after the date the Director of Bureau of Arts and Culture published the regulation for public comment, in accordance with 6 PNC § 127.

### **1.4 Purpose**

The purpose of these regulations is to preserve and protect the historical and cultural resources of the Republic of Palau for the benefit of the people of Palau, and to prevent the undue disturbance of human remains and associated burial furnishings or artifacts. These regulations provide the framework for the Director of the Bureau of Arts and Culture to initiate a consultative process which will ultimately determine how human remains encountered in the course of development will be treated. These regulations provide the minimum requirements necessary to protect burial sites, human remains and associated burial furnishings from unwarranted disturbance or inappropriate exploitation.

### **1.5 Definitions**

Unless the context otherwise requires, the following definitions shall apply in the interpretation and enforcement of the provisions of these regulations:

- a) “Human remains” are defined as the skeleton or individual bones from a human being, or other organic remnants from a deceased individual;
- b) “Burial site” means any natural or prepared physical location, whether originally below, or above the surface of the earth, into which human remains have been deposited;
- c) “Burial furnishing” means any goods or items, whether natural, deliberately altered or manufactured, which have been deposited within a burial site;
- d) “*In Situ*” means the original location of a burial site as discovered during ground disturbing activities.
- e) “Historic Preservation Officer” (hereafter referred to as HPO) means the Director of the Bureau of Arts and Culture who coordinates the implementation of PNC Title 19 and the U.S. National Historic Preservation Act of 1966, as amended, at 16 U.S.C. § 470, et. seq., and is a key participant in the project review process and the Act’s Section 106 process, or her/his designee or any other person who by law, is named as the officer responsible for the function of the Director of Bureau of Arts and Cultural Affairs;

- f) “Lineage” means a historically constituted matrilineal descent unit which controls traditional ownership of land and titles which in the context of Palauan social organization;
- g) “Ethnographic mitigation” means that extensive investigation of relevant oral, textual and social information available to alleviate the adverse effects of development upon a known tangible cultural property to the extent determined necessary by a professional anthropologist or equivalently qualified professional;
- h) “Archaeological mitigation” means an extensive physical investigation carried out to alleviate the adverse effect of development upon a known tangible cultural property to the extent determine necessary by a professional archaeologist or equivalently qualified professional;
- i) “Developer” means the party with ultimate responsibility, under law, for the effects of ground disturbing activity upon the burial site, human remains or burial furnishing in question, and/or that party’s representative or agents;
- j) “Bureau of Arts and Culture” means the entity established by law under Title 19 of the Palau National Code and/or the relevant Executive Orders concerning the organization of the Executive Branch, with the responsibility to prove for cultural preservation in Palau.

## **PART II – COVERAGE AND BASIC PRESUMPTIONS**

### **2.1 Scope of Authority**

These regulations apply equally to national, state and privately owned lands, in accordance with subchapter IV of PNC Title 19.

### **2.2 Priority of Alternatives**

For all remains, particularly those determined to be over 50 years old and/or remains for which specific individual can be identified regardless of age of interment, it is presumed that *in situ* preservation is the preferred alternative. The preservation of remains *in situ* is of a higher priority than any scientific or commercial consideration because of cultural prohibitions and respect for ancestral spirits that are unique to burial sites. It is the responsibility of the developer to rebut the presumption that *in situ* preservation is the most appropriate treatment of the remains.

### **2.2 Presumption of Origin**

If remains cannot be determined by initial examination to be either Palauan or non-Palauan, it is presumed that they are Palauan and will be treated as such until proven otherwise.

## **PART III – REQUIREMENTS FOR THE TREATMENT OF ALL BURIAL SITES**

Any disturbance of a burial site in the Republic must follow the requirements of these regulations.

### 3.1 Notification of the HPO

The HPO must be notified of the intention to disturb a known burial site prior to any ground disturbing activities which will affect the site in question.

### 3.2 Issuance of Permits

Any permits for the disinterment, re-interment, analysis and disposition of human remains may be issued only by the HPO upon completion of the consultation process provided for in Part IV or Part V.

### 3.3 Responsibility of Costs

The developer will be responsible for all costs relating to archaeological and ethnographic mitigation, disinterment, relocation of artifacts and structures and re-interment of remains.

### 3.4 Control of Remains by Lineage of the Deceased

Lineage members are required to comply with the notice provisions of 3.1 and the permit provisions of 3.2, in order for the HPO to monitor any potential disturbances to historical sites and tangible cultural properties. However, nothing shall infringe upon the right of a lineage to remove or relocate burials of lineage members situated within traditional burial platforms or other sites. Nothing in these regulations shall prevent a lineage from relinquishing control over any human remains, or title to any burial furnishings, to any other entity within Palau.

## **PART IV – GUIDELINES FOR NOTIFICATION UPON DISCOVERY OF HUMAN REMAINS**

### 4.1 Discovery of Human Remains

All ground disturbing activity, including agriculture, construction and archaeological investigation must immediately cease upon the discovery of any unknown, unmarked or unexpected human remains. Such activities may resume only with the permission of the HPO. Only archaeological excavations with a previously executed agreement regarding anticipated burials may proceed without acquiring additional clearance.

### 4.2 Unmarked Burial Sites

The HPO must be notified by the developers by close of business of the next working day after the discovery of any previously unknown burial site. All ground disturbing activities around the burial site must cease immediately, until the HPO is notified and a permit is issued. This will allow the HPO to act quickly to ensure the dignity and preservation of the remains and initiate the consultative process provided for in Part 4.5 in a timely fashion.

### 4.3 Unmarked Burial sites Found During an Archaeological Investigation

The HPO must be notified by the developer by close of business of the next working day after the discovery of human remains during the course of archaeological investigations. All excavation must cease immediately until a permit is issued, in compliance with Part 4.5 of these regulations, unless prior concurred agreement has been made with the HPO.

#### 4.4 Establishment of Burial Review Committee

A Burial Review Committee will be established pursuant to these regulations on an *ad hoc* basis to monitor and review the implementation of these regulations and the proper disposition of human remains protected by these regulations, and may be referred to as the BRC. This committee will consist of members of the Palau Historical and Cultural Advisory Board (PHCAB) and the Society of Historians. The committee must include the Board member and the Historian from the state in which the burial at issue is located (unless they have a direct or indirect financial interest as defined by RPPL 5-32, Palau Code of Ethics, in the site in question), along with a minimum of five other individuals drawn from either or both bodies, including either the chair of the PHCAB or the Society of Historians. The chair of the PHCAB shall act as chair of the review committee, or in his/her absence, the chair of the Society of Historians shall act as chair of the review committee.

#### 4.5 Consultative Process

The required consultative process, upon notification of the HPO of the discovery of human remains by the developer, shall be as follows:

- a) By close of business of the next working day after notification from the developer, the HPO must notify the landowner (if necessary) and constitute the Burial Review Committee (BRC);
- b) Within 72 hours the HPO or designee must perform an initial field review to determine if the remains can be preserved *in situ* and recommend initial treatment of the remains;
- c) The titleholder of the lineage with which the remains are affiliated, if this can be determined, must be notified by the HPO by the close of business of the next working day after the initial field review is completed, or as soon as possible upon determination of lineage affiliation. The lineage has three weeks to submit written recommendations to the BRC. If the lineage fails to meet that deadline they may participate in the consultative process at the discretion of the BRC;
- d) Once the BRC has been established, they have 30 days after the completion of the initial field review to provide written recommendations to all interested parties. During this period, the BRC will review the report of the Bureau of Arts and Culture, any recommendations of the affiliated lineage and may, at their discretion, invite submissions by other interested parties, including any reports by archaeologist hired by the developer;
- e) If a final agreement between the lineage (if participating), developer, BRC and HPO is not developed within 30 days of the issuance of the BRC's recommendations, the HPO and the BRC may jointly determine the terms of the agreement.
- f) The final agreement must be reduced to writing and shall include, at the minimum, a research plan, management plan and timetable.
- g) During the review process, the developer may petition for permission to conduct limited ground disturbing activities if the HPO is satisfied that such activities represent no threat to the human remains or to the integrity of the site.

## **PART V – DEVELOPMENT AND TREATMENT OF SITES KNOWN OR SUSPECTED TO CONTAIN HUMAN REMAINS**

The following regulations apply to the development of sites known or suspected to contain or that have the potential to contain human remains.

### **5.1 Eligibility for Development**

Any site which shows clear physical evidence of human remains (e.g. headstone, *bluks* or known *odesongel*), or is otherwise known or suspected to contain human remains, is considered as low eligibility for development. Historic Clearance will not be granted without requiring complete archaeological mitigation.

### **5.2 Collection of Oral History for Known Burial Sites**

If development is proposed for such a site, the developers must fund the collection of oral history prior to any excavation. Clearing or preparation of the area of the site effected, in order to determine the affiliation, significance and nature and extent of burials within the site.

### **5.3 Collection of Oral History for Suspected Sites**

For a site not showing clear physical evidence of human remains but which has been identified by the Bureau of Arts and Culture to be potentially a location for human remains, the developer must fund the collection of oral history relating to human remains by a qualified researcher to determine the likelihood of the presence of burials.

### **5.4 Role of the Related Lineage**

The appropriate titleholder of the lineage of the deceased shall be consulted by the developer, may inspect a burial site and recommend reasonable measures for treating the remains and associated grave site. The cost for carrying out these measures will be the responsibility of the developer. If the developer objects, s/he must reinter the remains and associated items, with dignity, in their original location. The HPO shall make the final determination in the event of a dispute between the developer and the lineage titleholders.

## **PART VI – REINTERMENT OR RELOCATION OF HUMAN REMAINS**

The act of disinterring and/or relocating human remains is a very rare thing in Palau, and it is not to be undertaken lightly. Approval will not be given automatically. Respect for *ra bladek* (ancestral spirits) is of a paramount importance. Therefore, the following requirements have been established to ensure that such relocation proceeds with gravity and care.

### **6.1 Notification of *Bladek***

Upon disinterment, a ceremony shall be held to notify the spirits of the deceased that the remains are going to be relocated to a safer place, that no disrespect is intended and that those involved apologize for disturbing the dead.



## 6.2 Storage

If human remains are stored temporarily prior to re-interment or relocation, they must be treated in a respectful fashion as befits human dignity and may not be displayed or used for any other purpose. They must be stored in a safe and secure manner.

## 6.3 Provision for Relocation

In a case where the remains are to be relocated a banana tree trunk or other log must be placed in the empty grave before it is filled up again.

## 6.4 Reburial or Re-interment Prayer

When the remains are ready to be reburied at a new site, or reinterred in their old site, a farewell prayer shall be said at the site, followed by the serving of a meal or refreshments.

## 6.5 Recitation of Oral History

At both the disinterment ceremony and the re-interment ceremony the relevant oral history of the site and/or the lineage involved shall be recited by the appropriate titleholders.

## 6.6 Responsibility of the Developer

The ceremony described herein shall be sponsored and organized by the developer, with the assistance of the HPO, and developer will be required to be present at the ceremony.

## 6.7 Representation of the Affiliated Lineage

The ceremony shall be carried out with members of the deceased's lineage present and the recitation and prayers shall be said by the appropriate members of that lineage. When no lineage member is available, the removal shall be supervised by the appropriate elders, as determined by the HPO.

## 6.8 Precedence of the Lineage in Determining Ceremonial Procedure

In the case of uncertainty about the procedure of the ceremony, the deceased's lineage or other appropriate elders shall make the final determination.

# **PART VII – RECEIPT AND DISPLAY OF REMAINS**

## 7.1 Receipt of Burial Artifacts

Anyone receiving burial artifacts (remains or burial items/furnishings) must notify the HPO within two working days of the receipt of such items.

## 7.2 Display of Burial Items

It is prohibited to display remains or objects associated with a burial for profit or to aid a commercial enterprise. An exemption to this provision may be obtained by application to Bureau of Arts and Culture and the execution of a Memorandum of Understanding between the Bureau of Arts and Culture and the applicant in order to assist museum or other educational or cultural institutions in educational endeavors.

## **PART VIII – PENALTIES**

Pursuant to Title 19, subchapter IV, Section 157, and Subchapter V, Section 181, the following penalties may be imposed for any violation of the law or of these regulations:

### **8.1 Basic Penalties**

- a) Any person who violates the provisions of Title 19 or the regulations may be fined \$1000 for each day of each separate offense;
- b) For the loss of, or damage to, any burial site, human remains or burial furnishings, the violator shall be fined an additional amount determined by the court to be equivalent to the value of the lost or damage site, remains or furnishings;
- c) Equipment used in the commission of such an offense is subjected to seizure and disposition by the Republic without compensation to the owner;
- d) Each day of continued violation shall constitute a separate offense for which the offender may be punished.

### **8.2 Administrative Fines**

The Bureau of Arts and Culture may choose to impose administrative fines for violations of these regulations, rather than prosecuting offenders through the courts. If the offender and the HPO do not settle the matter administratively, the HPO will seek the full fine of \$1000 per day per violation and the seizure of relevant equipment.

For the purpose of these administrative fines, each day of violation will not constitute a separate offense:

- a) Failure to notify the HPO of the discovery of human remains within the time limit established constitutes an offense subject to an administrative fine of \$500;
- b) Failure to cease ground disturbing activities until a permit has been issued by the HPO constitutes an offense subject to an administrative fine of \$700;
- c) Any person who knowingly or intentionally disturbs a human burial site on national, state, or private land will be subject to an administrative fine of \$500. The offender will forfeit all objects, artifacts and human remains to the temporary custody of the HPO who will determine the appropriate action to be taken;
- d) Any person who buys, sell or barter for profit human remains or burial furnishing previously buried in Palau will be subject to an administrative fine of \$500. The offender will forfeit all objects, artifacts and human remains to the temporary custody of the HPO who will determine the appropriate action to be taken;
- e) Failure of museum and other cultural, scientific or educational institutions that come into possession or knowledge of such human remains or burial furnishings, to consult with the HPO regarding their disposition will subject the institution to an administrative fine of \$600;
- f) Any other failure to comply with there regulations is subject to a fine of \$300.
- g) The HPO may waive or reduce fines at his/her discretion, if undertaking for alternate restitution on the part of the offender warrant such action. However,

this in no way may be construed as a waiver of future action if the HPO feels that the offender has failed to make proper or sufficient restitution.