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**RULE NO.: R161-17.17**

**NOTICE OF PROPOSED RULE**

**POSTING DATE: December 11, 2017**

The Director of the Department of Parks and Recreation proposes to adopt the following rule after January 12, 2018.

Comments on the proposed rule are requested from the public. Comments may be submitted in writing to D'Anne Williams; Department of Parks and Recreation, 919 W. 28 ½ Street, Austin, Texas 78705, (512) 974-9456 To be considered, comments must be submitted before January 12, 2018, the 32nd day after the date this notice is posted. A summary of the written comments received will be included in the notice of rule adoption that must be posted for the rule to become effective.

**EFFECTIVE DATE OF PROPOSED RULE**

A rule proposed in this notice may not become effective before the effective date established by a separate notice of rule adoption. A notice of rule adoption may not be posted before January 12, 2018 (the 32nd day after the date of this notice) or not after February 19, 2018 (the 70th day after the date of this notice).

If a proposed rule is not adopted on or before February 19, 2018, it is automatically withdrawn and cannot be adopted without first posting a new notice of a proposed rule.

**TEXT OF PROPOSED RULE**

A copy of the complete text of the proposed rule is available for public inspection and copying at the following locations. Copies may be purchased at the locations at a cost of ten cents per page:

The Parks and Recreation Department located at 919 W. 28 ½ Street, Austin Texas 78705, see D'Anne Williams; and

Office of the City Clerk, City Hall, located at 301 West 2nd Street, Austin, Texas.

**BRIEF EXPLANATION OF PROPOSED RULE**

Rule R161-17. : Proposed addition to the Building Criteria Manual, Section 14.4.0  
**RULES FOR CEMETERIES OWNED AND OPERATED BY THE CITY OF AUSTIN**

- Proposes to update and incorporate the rules for City of Austin Cemeteries adopted in 1978 into the Building Criteria Manual where City of Austin Park Rules are posted.

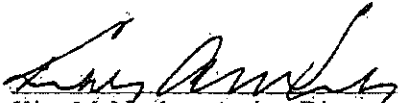
#### **AUTHORITY FOR ADOPTION OF PROPOSED RULE**

The authority and procedure for adoption of a rule to assist in the implementation, administration, or enforcement of a provision of the City Code is provided in City Code Chapter 1-2. Authority to prescribe rules necessary to implement City Code provisions regulating city cemeteries is provide in City Code Section 10-1-2 (*Cemetery Administrator*).


**CERTIFICATION BY CITY ATTORNEY**

By signing this Notice of Proposed Rule R161-17.17, the City Attorney certifies the City Attorney has reviewed the rule and finds that adoption of the rule is a valid exercise of the Director's administrative authority.

**REVIEWED AND APPROVED**

  
Kim McNeeley, Acting Director  
Parks and Recreation Department

Date: 11-27-17

  
Anne L. Morgan  
City Attorney

Date: 12/7/17

## SECTION 14 PARKS AND RECREATION DEPARTMENT (PARD)

### 14.4.0 RULES FOR CEMETERIES OWNED AND OPERATED BY THE CITY OF AUSTIN

#### 14.4.1-Purpose

These are written rules for the use of the municipal cemeteries. These rules are intended to maintain the public's health, safety, comfort, and welfare in municipal cemeteries and to show respect for those interred there.

#### 14.4.2-Applicability

These rules apply to, and in, all cemeteries managed by the Parks and Recreation Department.

#### 14.4.3-Terms; Definitions

(A) In these rules, unless otherwise provided, words and phrases mean what they mean in the City Code. The rules of construction that apply to the City Code apply to these rules.

(B) In this section:

- (1) "Block" or "Section" means a subdivided land area within a cemetery consisting of a systematic layout of spaces.
- (2) "Cemetery" unless otherwise expressly stated, includes all tracts of land designated as a municipal cemetery by the City.
- (3) "Cemetery Administrator" means the person appointed by the City Manager under City Code Section 10-1-2 (*Cemetery Administrator*).
- (4) "Interment" means the entombment or burial of the remains of a deceased person.
- (5) "Lot" means a subdivided land area within a Block or Section consisting of a specified number of spaces.
- (6) "Memorial" means any marker, monument, headstone, tablet, or other structure on or in any space for identification or in memory of the individual(s) interred there.
- (7) "Mausoleum" means a durable, fireproof structure used or intended to be used for entombment.

- (8) "Owner" means a person in whose name a burial space is listed in the city cemetery office as the owner of the exclusive right of sepulture.
- (9) "Relevel" as it pertains to monuments, means a monument is lifted and brought to ground level utilizing sand or pea gravel.
- (10) "Reset" as it pertains to monuments, means a monument is recast on a new concrete base, level with the ground.
- (11) "Sepulture" means the act of burying.
- (12) "Space" means the area designated for a single casketed interment.

#### **14.4.4-Use of Cemetery Facilities Generally**

(A) The operating hours of a cemetery shall be:

- (1) Gate Access: Daily, 7:00am – 7:00pm
- (2) Business Office: Monday thru Friday, 8:00am – 5:00pm, and Saturdays, 10:00am – 2:00pm

(B) A person may not be in a cemetery outside of the posted operating hours.

(C) A person may enter or leave a cemetery only through the public gates.

(D) A person must use designated walkways and roadways to access monuments and spaces.

(E) A person may not enter areas reserved for the use of cemetery employees.

(F) A person may not drive or park outside designated roadways or parking areas.

#### **14.4.5-Interments**

(A) A person may not conduct an interment or disinterment without the consent of the Cemetery Administrator.

(B) The Cemetery Administrator may require a minimum of 12 business hours for the preparation of a burial space before an interment or disinterment.

(C) The Cemetery Administrator shall not allow an interment or disinterment to proceed until presented with written authorization from the owner.

(D) The Cemetery Administrator shall not be liable for the accuracy of the data contained in an authorization for interment or disinterment or for the identity of the person to be interred or disinterred.

- (E) All interments, disinterments, and re-interments shall be performed by a funeral director or other person as required by the State and local laws.
- (F) Cemetery personnel shall only be responsible for the opening and closing of the grave.
- (G) Burial vaults either partially or entirely above ground are prohibited.
- (H) A permanent type container, such as a concrete liner or burial vault, is required for all interments of 36 inches or deeper.

#### **14.4.7-Instructions for Space Holders and Space Holder's Rights**

- (A) The use of a space is for the owner or person designated by the owner.
- (B) Construction or installation of slabs, curbing, steps, fencing, hedging, or enclosures of any kind will not be permitted on or around any space or lot.
- (C) No more than one casket will be permitted in each space.
- (D) No more than one cremation interment is permitted in a space which also contains a casket.
- (E) No more than four cremation interments are permitted in a space which does not contain a casket.

#### **14.4.8-Transfer of Cemetery Lot or Burial Space**

- (A) In the event an owner sells a space, a record of such sale must be provided to the Cemetery Administrator prior to interment.
- (B) In the event an owner dies, the privileges of the owner shall pass according to applicable state law.

#### **14.4.9-Memorials**

- (A) All memorials shall be installed and maintained at the owner's expense.
- (B) Only one memorial will be permitted at the head of a space. A companion or family memorial may be placed upon two or more spaces. Memorials placed at the foot of a space will be flush, centered and in alignment with adjacent memorials. The final location for memorials must be approved by the Cemetery Administrator.

- (C) Space or lot corner markers must be set flush with the turf inside the boundaries of the space and may be no larger than 8 inches by 8 inches.
- (D) Memorials shall be made of granite, marble or cast bronze installed on a granite or marble base with a minimum thickness of 4 inches.
- (E) All memorials shall be 18 inches or less in width.
- (F) The length of memorials shall be a minimum of 10 inches less than the width of a full sized space.
- (G) Upright or raised memorials shall not exceed 42 inches in height.
- (H) For cremation sized spaces, memorial size may be no larger than 20 inches by 10 inches.
- (I) Memorials which contain niches for cremated remains are not permitted.
- (J) All flush type memorials shall be set flush with the turf,
- (K) Should any existing memorial or mausoleum become unsightly or unsafe, the Cemetery Administrator shall have the right to correct the condition or remove the memorial or mausoleum. The expense of such correction, removal, or repair may be charged to the space owner.

#### **14.4.10-Memorial Foundations**

- (A) All memorials must include a foundation.
- (B) Concrete foundations for raised or upright memorials shall be one inch larger in length and width than the size of the base.
- (C) The top of concrete foundations shall be from 1 to 2 inches below the top of the ground level to allow for adding cement grout to level the memorial base.
- (D) Concrete foundations shall be a minimum of 5 inches thick and have perpendicular sides and a flat bottom.
- (E) Excavations for foundations for raised or upright memorials shall be a minimum of 7 inches deep from the top of the ground.
- (F) Concrete for all memorial foundations shall be 1 part cement, 2 parts sand and 4 parts gravel.

#### **14.4.11-Rules for Memorial Work**

- (A) The Cemetery Administrator must approve the size, craftsmanship, quality, inscriptions, and foundations of all memorials to be placed in the cemeteries.
- (B) A person placing, erecting, resetting, releveling or cleaning memorials or other structures is prohibited from scattering material over adjoining spaces, blocking roads or walks, or leaving material on the grounds once work is complete. Damage done to spaces, walks, drives, trees, shrubs or other property shall be repaired at their expense to the satisfaction of the Cemetery Administrator.
- (C) The Cemetery Administrator may stop any work if proper approvals have not been received; if necessary preparations have not been made; if the work is a danger to life or property; if there is evidence of misrepresentation; if the work is not being executed according to specifications approved by the Cemetery Administrator; or if the work or any person employed in the work violates any rule or regulation of the cemeteries.
- (D) Owner and owner's heirs are responsible for cleaning and repairing damaged memorials, monuments, markers, coping, mausoleums, and vaults. These activities require the approval of the Cemetery Administrator.

#### **14.4.12-General Regulations**

##### **(A) Peace and Quiet**

- (1) A person shall preserve the peace and quiet of the cemetery by observing the law governing noise and amplified sound.
- (2) A person may not use offensive language, make unreasonable noise, discharge weapons or fireworks, or engage in gestures or conduct in a cemetery that would be offensive to a person of ordinary sensibility.
- (3) A person may not operate a noise-making device in a cemetery in violation of applicable law.
- (4) A person may not consume alcohol in a cemetery.
- (5) A person may not bring a pet into a cemetery.



(6) A person may not light, build, or maintain a fire in a cemetery.

**(B) Disruptive Behavior; Ejection from Facilities**

(1) If a person's conduct violates these rules, or is unlawful, disruptive, destructive, or hazardous, the person may be warned and asked to stop the conduct immediately by any cemetery employee. If a person persists in the conduct after a warning, a cemetery employee may eject the person from the cemetery.

(2) If a person's conduct is criminal, poses an imminent threat of injury or property damage, or prevents the public use of the premises, a cemetery employee may eject the person from the cemetery.

**(C) Public and Private Events**

(1) Organized events and tours must be approved in advance by the Parks and Recreation Department's Special Events Office.

(2) Filming and Commercial Photography

(a) Commercial filming and photography must be approved in advance by the Parks and Recreation Department's Special Events Office.

(b) Drones are not permitted in cemeteries.

**(D) Ornamentation and Decoration**

(1) A person may not place any object, including ornaments, decorations, furniture, plants, or signs, in a cemetery that is not specifically permitted under these rules.

(2) The Cemetery Administrator may remove any object in a cemetery that is not specifically permitted under these rules.

(3) Cut and artificial flowers are permitted in a space if:

a. placed in an invertible vase or other container;

b. placed on a memorial; and

c. the flowers are not dead or deteriorated.

(4) Flowers placed on a memorial flush to the ground shall be placed in an invertible vase designed for that purpose.

- (5) The Cemetery Administrator may remove any flower in a cemetery that is dead or deteriorated.
- (6) Trees, shrubs, and other live plants are permitted with the approval of the Cemetery Administrator.
- (7) The Cemetery Administrator may remove any tree, shrub, or other plant in a cemetery that is dead, deteriorated, or interferes with mowing or other cemetery maintenance.
- (8) An ornament or decoration is permitted in a space if:
  - a. placed on a memorial;
  - b. no longer than six inches in any dimension; and
  - c. the ornament or decoration will not interfere with mowing or other cemetery maintenance.
- (9) The City is not responsible for vandalism or theft of any permitted or unpermitted object left in a cemetery.

#### (E) Weapons and Firearms

- (1) A person may not carry or possess a weapon or firearm while in a cemetery except:
  - (a) Where the use is expressly allowed;
  - (b) As allowed by state and federal law; or
  - (c) When otherwise authorized in writing by the Cemetery Administrator.
- (2) The use of an air gun, paintball gun, pellet or B.B. gun, bow and arrow, or projectile device capable of inflicting personal injury is prohibited.

#### (F) Appeals

- (1) A person may appeal a decision made by the Cemetery Administrator under these rules to the Director of the Parks and Recreation Department.
- (2) An appeal must be made to the Director in writing within 30 calendar days of the date of the Cemetery Administrator's decision.
- (3) An appeal must include the name and address of the person making the appeal, a copy of the Cemetery Administrator's decision, and the grounds for the appeal.

- (4) The Director may reverse the decision of the Cemetery Administrator within 30 calendar days of receipt of an appeal.

#### **14.4.13-Maintenance of Cemeteries**

(A) Notwithstanding anything to the contrary in these rules, the City maintains the right to perform the following maintenance activities in order to preserve the public health, safety, comfort and welfare:

- (1) Repair and maintain fences, walls, building, roads or other improvements.
- (2) Level or straighten markers or memorials.
- (3) Maintain lawns, shrubbery, and other plants; remove debris, including dead flowers and deteriorated plastic ornaments.
- (4) Restore graves following an interment.

#### **14.4.14-Reservations of the City of Austin**

- (A) The Cemetery Administrator may correct errors associated with interments or conveyance of property.
- (B) The Cemetery Administrator may correct interment errors or conveyance of property errors by relocating remains to a space within the same cemetery or to a space in another cemetery if space is not available within the same cemetery.
- (C) The City may revise these rules as authorized by City Code.