

RULE NO.: R161-18.08

NOTICE OF PROPOSED RULE

POSTING DATE: May 24, 2018

The Director of the Department of Parks and Recreation proposes to adopt the following rule after June 25, 2018.

Comments on the proposed rule are requested from the public. Comments may be submitted in writing or email to D'Anne Williams; Department of Parks and Recreation at danne.williams@austintexas.gov , 919 W. 28 ½ Street, Austin, Texas 78705, (512) 974-9456. To be considered, comments must be submitted before June 25, 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 June 25, 2018 (the 32nd day after the date of this notice) or not after August 2, 2018 (the 70th day after the date of this notice).

If a proposed rule is not adopted on or before August 2, 2018, it is automatically withdrawn and cannot be adopted without first posting a new notice of a proposed rule.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 R161-18.08: 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.

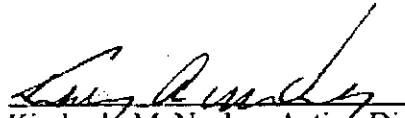
AUTHORITY FOR ADOPTION OF PROPOSED RULE

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*).

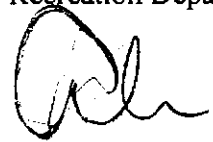
CERTIFICATION BY CITY ATTORNEY

By signing this Notice of Proposed Rule R161-18.08, 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


Kimberly McNeeley, Acting Director
Parks and Recreation Department

Date: 5-17-18


Anne L. Morgan
City Attorney

Date: 5/23/18

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) "Cremains" means the cremated remains of a deceased person.
- (5) "Director" means the director of the Parks and Recreation Department.
- (6) "Interment" means the entombment or burial of the remains of a deceased person.
- (7) "Lot" means a subdivided land area within a Block or Section consisting of a specified number of spaces.
- (8) "Mausoleum" means a durable, fireproof structure used or intended to be used for entombment.
- (9) "Memorial" means any marker, monument, headstone, tablet, or monument bench on or in any space for identification or in memory of the individual interred there.

- (10) "Memorialization Space" means an area with the following defined boundaries within a space. For spaces designed specifically for cremains, the memorialization space extends 12 inches from the top of the space and 42 inches above the horizontal plane of the space. For other spaces, the memorialization space extends 24 inches from the top of the space and 42 inches above the horizontal plane of the space.
- (11) "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.
- (12) "Relevel" as it pertains to monuments, means a monument is lifted and brought to ground level utilizing sand or pea gravel.
- (13) "Reset" as it pertains to monuments, means a monument is recast on a new concrete base, level with the ground.
- (14) "Sepulture" means the act of burying.
- (15) "Space" means the area designated for an 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; Saturdays by appointment

(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 reinterments shall be performed by a funeral director or other qualified person as designated by 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 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 interment of cremains is permitted in a space which also contains a casket.
- (E) No more than four interments of cremains 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 or marble with a minimum thickness of 4 inches or cast bronze of any thickness.
- (E) The base of 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 a space designed for cremains, memorials shall be no larger than 24 inches tall and 10 inches wide.
- (I) Memorials which contain niches for cremated remains are not permitted.
- (J) All flush memorials shall be set flush with the turf.
- (K) Should any existing memorial or mausoleum become 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.
- (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) A person may not place a memorial in a cemetery until the Cemetery Administrator has approved the memorial's size, craftsmanship, quality, inscription, and foundation.
- (B) A person placing, erecting, resetting, releveling or cleaning memorials or other structures is prohibited from scattering material over adjoining spaces, blocking roads or walkways, or leaving material on the grounds once work is complete. Damage done to spaces, walkways, drives, trees, shrubs or other property shall be repaired at their expense and 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- Ornamentation and Decoration

- (A) The Cemetery Administrator may remove any object in a cemetery that is not specifically permitted under these rules or that the Cemetery Administrator determines to present a current or foreseeable threat to the public's health or safety.
- (B) An ornament, potted plant, floral piece, basket, or other decoration is permitted in the memorialization space if:
 - (1) Located entirely within the memorialization space; and
 - (2) Firmly anchored and secured, using means other than concrete or chain, to prevent any part from leaning, falling over, breaking or blowing outside of the memorialization space.
- (C) Cut and artificial flowers are permitted in a space if:
 - (1) Placed in an invertible vase or other non-breakable container in the memorialization space; or
 - (2) Placed on a memorial.

(D) Cut and artificial flowers may be removed by the Cemetery Administrator:

- (1) If they are dead or deteriorated;
- (2) 30 days after a holiday, if placed on a grave for the holiday; or
- (3) No sooner than 72 hours after a funeral service, if placed on a grave for a funeral service.

(E) Trees, shrubs, or other live plants are permitted with the written approval of the Cemetery Administrator.

(F) The Cemetery Administrator may remove any tree, shrub, or other plant in a cemetery that is dead, deteriorated, interferes with mowing or other cemetery maintenance, or was planted in violation of these rules.

(G) Benches installed prior to the adoption of these rules are permitted if:

- (1) Placed entirely within a space at the foot or head of the space;
- (2) Not encroaching on a maintenance easement, public area, or another owner's space;
- (3) Maintained in a safe and stable condition; and
- (4) Not interfering with an interment or setting of a monument.
- (5) Benches removed due to interference or deterioration may only be replaced by the space owner in accordance to the standards in 14.4.9 of these rules.

(H) The City is not responsible for the vandalism or theft of any permitted or unpermitted object left in a cemetery.

14.4.13-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 ask the person to leave 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 ask the person to leave the cemetery immediately.

(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) 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.

(E) Decisions and Appeals

(1) The Cemetery Administrator shall issue any consent, approval, authorization, or

denial specified under these rules to the requesting party in writing within 30 calendar days of receiving a request.

- (2) A person may appeal a decision made by the Cemetery Administrator under these rules to the Director.
- (3) An appeal must be made in writing within 30 calendar days of the date of the Cemetery Administrator's decision and include:
 - (a) The name and address of the person making the appeal;
 - (b) A copy of the Cemetery Administrator's decision being appealed; and
 - (c) The grounds for the appeal.
- (4) The Director shall render a written decision on an appeal within 30 calendar days of receiving the appeal.

14.4.14-Reservations of the City of Austin

- (A) Notwithstanding anything to the contrary in these rules, the City reserves and maintains the right to perform the following activities within a cemetery in order to preserve the public health, safety, comfort and welfare:
 - (1) Repair and maintain fences, walls, buildings, roads or other improvements;
 - (2) Level or straighten markers or memorials;
 - (3) Maintain lawns, shrubbery, and other plants;
 - (4) Remove debris, including dead flowers and deteriorated ornamentation; and
 - (5) Restore graves following an interment.
- (B) The Cemetery Administrator may correct errors associated with interments or conveyance of property.
- (C) 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.
- (D) The City may revise these rules as authorized by City Code.