TRANSMITTAL

TO: **Allyson Evans, Legal Department**

FROM: D'Anne Williams, Parks and Recreation, Rules SPOC

DATE: July 31, 2018

SUBJECT: **Cemetery Rules Adoption Notice**

Transmitted herewith are:

1. Notice of Rule Adoption for Rule No. R116-18.08
2. 14.4.0 – Rules for Cemeteries Owned and Operated by the City of Austin (no changes from proposed rules)
3. Public Comments received and responses
4. Memos and Letters referred to in comment responses
5. Enforcement Notification Policy and Engagement process

As noted, the rules have not changed from the proposed to final adopted rules. Chad Shaw was our legal reviewer.

Our final date for adoption is August 2, 2018.

Please let me know if you have any questions. Thank you,

D'Anne Williams
Parks and Recreation
512-974-9456
Danne.williams@austintexas.gov

RULE NO.: R161-18.08

NOTICE OF RULE ADOPTION **ADOPTION DATE: August 2, 2018**

By: Kimberley McNeeley, Acting Director
Austin Parks and Recreation Department

The Director of the Austin Parks and Recreation Department has adopted the following rule. Notice of the proposed rule was posted on May 24, 2018. Public comment on the proposed rule was solicited in the May 24, 2018 notice. This notice is issued under Chapter 1-2 of the City Code. The adoption of a rule may be appealed to the City Manager in accordance with Section 1-2-10 of the City Code as explained below.

A copy of the complete text of the adopted 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 Austin 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.

EFFECTIVE DATE OF ADOPTED RULE

A rule adopted by this notice is effective on August 2, 2018.

TEXT OF ADOPTED RULE

R161-18.08: Section 14.4.0 Rules for Cemeteries Owned and Operated by the City of Austin

No changes have been made to the text of the Proposed Rule.

SUMMARY OF COMMENTS

All comments received regarding Proposed Rule R161-18.08 were submitted through email to the Parks and Recreation Department. The Parks and Recreation Department has reviewed comments received and has determined that changes are not warranted. A spreadsheet of the comments and Department responses is attached along with supplemental letters, memos, general theme responses and enforcement policy to assist in response clarifications.

A copy of the comments and responses 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 Austin 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.

AUTHORITY FOR ADOPTION OF 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 Chapter 1-2 of the City Code.

APPEAL OF ADOPTED RULE TO CITY MANAGER

A person may appeal the adoption of a rule to the City Manager. **AN APPEAL MUST BE FILED WITH THE CITY CLERK NOT LATER THAN THE 30TH DAY AFTER THE DATE THIS NOTICE OF RULE ADOPTION IS POSTED. THE POSTING DATE IS NOTED ON THE FIRST PAGE OF THIS NOTICE.** If the 30th day is a Saturday, Sunday, or official city holiday, an appeal may be filed on the next day which is not a Saturday, Sunday, or official city holiday.

An adopted rule may be appealed by filing a written statement with the city clerk. A person who appeals a rule must (1) provide the person's name, mailing address, and telephone number; (2) identify the rule being appealed; and (3) include a statement of specific reasons why the rule should be modified or withdrawn.

Notice that an appeal was filed will be posted by the city clerk. A copy of the appeal will be provided to the City Council. An adopted rule will not be enforced pending the City Manager's decision. The City Manager may affirm, modify, or withdraw an adopted rule. If the City Manager does not act on an appeal on or before the 60th day after the date the notice of rule adoption is posted, the rule is withdrawn. Notice of the City Manager's decision on an appeal will be posted by the city clerk and provided to the City Council.

On or before the 16th day after the city clerk posts notice of the City Manager's decision, the City Manager may reconsider the decision on an appeal. Not later than the 31st day after giving written notice of an intent to reconsider, the City Manager shall make a decision.

CERTIFICATION BY CITY ATTORNEY

By signing this Notice of Rule Adoption R161-18.08, the City Attorney certifies that 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

Date: 7-31-18

Kimberly McNeeley, Acting Director
Austin Parks and Recreation Department

Date: 8/1/18

Anne L. Morgan
City Attorney

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.

MEMORANDUM

TO: Mayor and City Council

FROM: Kimberly A. McNeeley, CPRP, Acting Director
Austin Parks and Recreation Department

DATE: January 26, 2018

SUBJECT: Cemetery Rules and Regulations Update

The Cemetery Rules and Regulations (Rules) revision process was initiated on October 17, 2013, when City Council approved Resolution No. 20131017-042, directing the City Manager and by extension the Parks and Recreation Department (PARD) to conduct a public engagement process to evaluate the Rules. The Rules' purpose is to maintain the public's health, safety, comfort and welfare in the municipal Cemeteries, while showing respect for those interred.

In 2013, PARD reviewed the existing Rules and developed a dispute resolution process. In July 2014, PARD prioritized the completion of the Cemetery Master Plan in order for the plan to provide a framework for the Rules revision. In 2015, Austin City Council approved the Historic Cemeteries Master Plan.

In the summer of 2015, McDoux Preservation, LLC, finalized a Cemetery Rules Report. The report focused on grave ornamentation practices in the five municipal cemeteries, and included a summary of public responses related to grave ornamentation and recommendations. While the report recommended a working group to consider grave ornamentation, the Department believed that a small group was not an appropriate process for a subject matter this important to a diverse community. As such, in March 2016, the Cemetery Manager developed a public process for gathering the maximum feedback related to updating and enforcing the Rules, with a focus on grave ornamentation.

Following the initial March 2016 meeting, the following community engagement opportunities were implemented:

- **October 27, 2016** – The first community meeting was held, and public feedback was accepted via Speak-Up Austin

- **February to April, 2017** – Conversation Corps led guided discussions in two locations, Yarbrough Library and Britton, Durst, Howard, and Spence Building. The conversations focused on grave ornamentation, associated religious and cultural practices, and the maintenance requirements that restrict ornamentation placement and materials. The goal was to gather input from stakeholders of many different professions, ethnic backgrounds, and religious communities. A summary of input through the facilitated conversations, and Speak-Up Austin discussion was shared with stakeholders.

- **June 2017** – The draft Rules were completed. This draft incorporated recommendations from the 2015 Cemetery Rules Project Report, stakeholder feedback, as well as safety and maintenance challenges. PARD considered carefully ornamentation to determine practices that could be permitted that are now restricted in the currently adopted Rules. The draft Rules were subsequently reviewed by the City of Austin Law Department.

- **October 2017** – The updated Rules were presented to stakeholders during two public engagement meetings. Additional input and feedback was received and was incorporated into the final draft of the Rules. Following the two community meetings in October, PARD added section 14.4.12-General Regulations, (F) Appeals that outlines the process for anyone wishing to appeal a decision made by the Cemetery Administrator under the Rules.

The proposed Cemetery Rules were posted at the City Clerk's office and public review began on Tuesday, December 12, 2017 and ran through midnight January 11, 2018. *Process, Chapter 1-2. Adoption of Rules* establishes the administrative process and authority to establish the Rules.

A link to the *Process, Chapter 1-2. Adoption of Rules* is provided below:
(https://library.municode.com/tx/austin/codes/code_of_ordinances?nodeId=TIT1GEPR_CH1-2ADRU)

To Summarize Chapter 1-2, the rule adoption process outlines PARD's responsibility to post public notice of the proposed Rules, allow for a comment period, and respond to the comments before adopting the Rules. At the conclusion of the public comment period, the PARD Director will file a notice of rule adoption with the City Clerk. The adopted Rules are subject to an appeal process that is also outlined in Chapter 1-2. A person may appeal the adoption of the Rules to the City Manager within 30 days after the notice of rule adoption is posted by the City Clerk.

The comments received during the public comment period will be reviewed by PARD. Responses to all comments received will be posted on PARD's webpage and emails will be sent to all citizens that provided comments by February 16, 2018.

In addition, due to an inadvertent omission during the posting and public comment period, the PARD Director has decided to extend the public review of the proposed Rules. Extending the review requires letting the final rule adoption date of February 19 for this proposal to pass, and requires a re-posting of the proposed Rules with any updates or changes, based on public comments, to begin a new 31-day public review. The new posting is expected to occur before the end of February 2018.

After this review, a recommendation will be made to the Cemetery Administrator for adoption. This will be the final stage of a multi-year public engagement progression.

Once the new Rules have been adopted, a ninety (90) day notification period will begin. Notifications will include direct mail and email to Cemetery stakeholders, press releases, signage at the five (5) cemeteries, notification to partner agencies, and social media/print advertising. Enforcement of the Rules will begin after the notification period is complete. At that time, any outstanding non-compliant issues in the cemeteries will receive tags on the gravesites notifying plot owners that they will have 30 days to become compliant.

It is worth noting that the proposed Rules are less restrictive than the existing Cemetery Rules adopted in 1978. During a lengthy public engagement process, the Parks and Recreation Department received, reviewed and incorporated public input pertaining to ornamentation practices and religious accommodations.

In case the proposed Rules are not approved, the existing Rules will remain in effect and they will be enforced in order to maintain the public's health, safety, comfort and welfare.

Should you have any questions, please contact my office at (512) 974-6722.

cc: Elaine Hart, Interim City Manager
Sara Hensley, Interim Assistant City Manager

MEMORANDUM

TO: Mayor and City Council

FROM: Kimberly A. McNeeley, CPRP, Acting Director
Austin Parks and Recreation Department

DATE: November 17, 2017

SUBJECT: Cemetery Rules and Regulations

The Cemetery Rules revision process was initiated on October 17, 2013, when City Council approved Resolution No. 20131017-042, directing the City Manager and by extension the Parks and Recreation Department (PARD) to conduct a public engagement process to evaluate the Cemetery Rules. In 2013, PARD reviewed the existing Cemetery Rules and developed a dispute resolution process. In July 2014, PARD prioritized the completion of the Cemetery Master Plan in order for the plan to provide a framework for the rules revision. In 2015, Austin City Council approved the Historic Cemeteries Master Plan.

In the summer of 2015, McDoux Preservation, LLC, finalized the Cemetery Rules Report. The report focused on grave ornamentation practices in the five municipal cemeteries, and included a summary of public responses related to grave ornamentation and recommendations. In March 2016, the Cemetery Manager developed a public process for gathering the maximum feedback related to updating and enforcing the Cemetery Rules with a focus on grave ornamentation. The first community meeting was held on October 27, 2016. Public feedback was accepted via Speak-Up Austin.

February to April, 2017 – Conversation Corps led guided discussions in two locations, Yarbrough Library and Britton, Durst, Howard, and Spence Building. The conversations focused on grave ornamentation, associated religious and cultural practices, and the maintenance requirements that restrict ornamentation placement and materials. The goal was to gather input from stakeholders of many different professions, ethnic backgrounds, and religious communities. A summary of input through the facilitated conversations and Speak-Up Austin discussion was shared with stakeholders.

June 2017 – The draft Cemetery Rules and Regulations were completed. This draft incorporated recommendations from the 2015 Cemetery Rules Project Report, stakeholder feedback, as well as safety and maintenance challenges. The draft rules were subsequently reviewed by the City of Austin Law Department.

October 2017 – The updated rules were presented to stakeholders during two public engagement meetings. Additional input and feedback was received and was incorporated into the final draft of the Cemetery Rules and Regulations.

November 2017 – The Cemetery Rules and Regulations will be submitted to the City Clerk's Office to initiate the adoption of rules process, in accordance with the established City of Austin Rule Adoption

Process, Chapters 1-2.
(https://library.municode.com/tx/austin/codes/code_of_ordinances?nodeId=TIT1GEPR_CH1-2ADRU)

To Summarize Chapters 1-2, the rule adoption process outlines PARD's responsibility to post public notice of the proposed rules, allow for a comment period, and respond to the comments before adopting the rules. At the conclusion of the public comment period, the PARD Director will file a notice of rule adoption with the City Clerk. The adopted rules are subject to an appeal process that is also outlined in Chapters 1-2. A person may appeal the adoption of the rules to the City Manager within 30 days after the notice of rule adoption is posted by the City Clerk. This is the final stage of a multi-year public engagement progression.

Once the new Rules have been adopted, a ninety (90) day notification period will begin. Notifications will include direct mail and email to Cemetery stakeholders, press releases, signage at the five (5) cemeteries, notification to partner agencies, and social media/print advertising. Enforcement of the Rules will begin after the notification period is complete. At that time, any outstanding non-compliant issues in the cemeteries will receive tags on the gravesites notifying plot owners that they will have 30 days to become compliant.

Should you have any questions, please contact my office at (512) 974-6722.

Cc: Elaine Hart, Interim City Manager
Sara L. Hensley, CPRP, Interim Assistant City Manager

MEMORANDUM

TO: Mayor and Council

FROM: Kimberly A. McNeeley, CPRP, Acting Director
Austin Parks and Recreation Department

DATE: May 8, 2018

SUBJECT: Cemeteries Perpetual Care Fund

As you may know, the Parks and Recreation Department (PARD) assumed management of the City's five historic cemeteries on November 1, 1986. Until March 2013, PARD used a contractor, InterCare Corporation, exclusively for cemetery sales, operations, maintenance and management. As a result of industry trends, severe deterioration and degradation of historic buildings, monuments and maintenance, as well as stakeholder input, a City of Austin Parks and Recreation Board Cemeteries Working Group recommended an alternative business model for the maintenance and management of the City's five historic cemeteries. The contract with InterCare Corporation was therefore terminated, and PARD assumed direct sales, operations and maintenance of the cemeteries, contracting only the interment and monument-setting functions of cemetery operations.

In assuming direct management of the five City cemeteries, PARD staff uncovered a number of operational and administrative challenges that not only required thorough research, but also required the development and implementation of new processes and procedures in accordance with established State and City laws and industry best practices. Systematically, PARD addressed a number of issues and recently uncovered an additional challenge related to the Perpetual Care Fund (PCF). Unfortunately, other immediate challenges associated with direct cemetery management prevented PARD from addressing this issue until this time.

Outlined below are the challenges associated with the PCF and the specific steps PARD intends to take to resolve the uncovered challenges.

Challenges

Due to recent community member inquiries, PARD has examined the cemetery PCF. Through this examination, PARD realized the management and administration of the PCF has had a complex history. The challenges associated with the fund include:

- historically deficient record keeping;
- City code procedures that had not been followed for decades, long before PARD took over management of the cemeteries;
- City code outlined procedures that are antiquated and non-reflective of the current operational structure;
- lack of structure for accounting of plot specific maintenance investments;
- lack of understanding of the fund's original intent and how this corresponds to modern day regulations; and,
- lack of understanding of the benefits of the perpetual care fund.

Recommended Actions

1) Complete a full internal audit to account for records associated with PCF investments to identify:
    a. specific investors;
    b. specific amounts invested;

c. contractual maintenance obligations agreed upon with regards to the PCF investment; and,
d. accounting practices previously used to outline specific individualized plot care expenditures.

2) Revise *Austin Municipal Code of Ordinances Chapter 10-1: Cemeteries* to emphasize State regulations, reflect current industry best practices, and reflect current operational practices.
3) Explore and recommend legally allowable options for cemetery maintenance to ensure efficient procedures and compliance with PCF intent:
    a. individual plot maintenance; and,
    b. holistic cemetery maintenance.
4) Complete a thorough examination of the regulations associated with the PCF and the impacts related to sustainable long-term cemetery maintenance.
5) Evaluate legally allowable funding mechanisms related to sustainable long-term cemetery maintenance.

Because both the complex history and municipal code outline a varied degree of responsibility associated with a number of City departments, PARD intends to invite representatives from the Office of the City Clerk, the Financial Services Department and the Law Department to work collaboratively on addressing the outlined challenges. Until PARD can sufficiently resolve the issues, it is recommended that any collections or donations associated with the PCF be suspended.

Should you have any questions, please contact my office at (512) 974-6722.

Cc: Spencer Cronk, City Manager
Sara L. Hensley, CPRP, Interim Assistant City Manager

July 27, 2018

RE: City Begins Cemetery Rules Enforcement at City of Austin Cemeteries

Cemeteries: Austin Memorial Park, Oakwood, Oakwood Annex, Evergreen and Plummers

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The City of Austin Parks and Recreation Department has updated the existing cemetery rules and will begin enforcement of these rules effective at the time of the final rule adoption. All items that are found to be out of compliance based upon the updated rules will be removed and discarded.

We understand, respect and honor the needs of families and friends to memorialize their loved ones who are at rest in our cemeteries. While being sensitive to your needs, our hope is that with a uniform approach in adhering to the pre-existing Rules and Regulations, our citizens and surrounding communities will benefit as well.

The number of benches, adornments, and site amenities such as grave borders, trellis and rock gardens, has been evaluated. Certain items can make an impact on the public's safety and disrupt effective maintenance operations and services. As a result, a clean-up day is being planned to remove all non-compliant items.

Ninety days prior to the clean-up day, large signs will be placed at the entrances of all five City of Austin cemeteries, and small signs will be posted throughout the cemeteries. Considerable efforts will be made to contact families to remove items via media, email, newspapers, Facebook, City of Austin website, mail-outs, Next Door and Twitter. We recognize that some decorations may be expensive or hand-crafted, and we would not want these types of memorials damaged or discarded.

Sixty and Thirty days prior to the clean-up day notices via media, email, newspapers, Facebook, City of Austin website, mail-outs, Next Door and Twitter will be repeated.

The items that need to be removed include, but are not limited to perishable, breakable and hazardous materials, benches, borders, paving stones, bird baths, bird houses, wind chimes, decorative flags, articles of clothing, glass containers, balloons, pinwheels, candles, stuffed toys, and ornaments. The benches that are currently in the cemetery with a concrete foundation, and that are made out of materials referenced in the updated rules 14.4.9D, will be allowed to remain.

After bringing the cemeteries into compliance, the process for notifying stakeholders of future out-of-compliance graves will be as follows:

Cemetery crews that observe a gravesite violation will create a work order through a non-compliance form. A 30-day notice tag will be placed on the space and it will ask the family to call or go by the Cemetery Office. Photographs of the violation, as well as the headstone and violation notice, will be taken for documentation purposes. During the 30 days, administrative staff will attempt to contact the family regarding the non-compliance. If the family is reached, they are presented with an option to remove the violation, or an option allowing the grounds crew to remove it, with a due date for completion.

After 30 days, if the items are not already removed by the family, the Grounds Supervisor will assign crew members to remove the non-compliant items and tidy up the site, noting on the work order what materials were disposed of, and what materials might have been kept/stored. Thorough documentation of each non-compliance matter, from the beginning to the end, will be recorded into the Violations Excel Database which will be updated with a description of materials disposed of and materials kept, as well as the date of completion and photographs.

Below is an example of the 30 Day Notice Tag that will be placed on the graves:

30 DAY NOTICE

The items on this burial site are not in compliance with the City of Austin's Cemetery Rules & Regulations. Please review the rules at http://austintexas.gov/department/cemeteries and promptly remove the items. After thirty (30) days, the City will remove and dispose of any remaining items in violation. You may also contact us at the information below.

Thank you,
Cemetery Operations
Phone: (512) 978-2320
Email: cemeteries@austintexas.gov

Cemetery Rules Notice and Enforcement

When enforcing new cemetery rules, the Austin Parks and Recreation's Cemeteries Division is committed to diligent and transparent public notification. Updated rules are effective and enforceable after the date of final rule adoption. Patrons should review the updated rules and ensure compliance by removing any previously placed and installed items that may be subject to clean-up.

Stakeholder Notification Schedule Prior to Enforcement

90 Days Notice

- Website promo (COA Homepage)
- Stakeholder Email (558 Contacts)
- Direct mail to stakeholders 2013-present (2000 Contacts)
- Citywide Nextdoor Announcement (217,826 households)
- Press Release to all major and community media outlets
- Signage at Cemeteries
    - Large signage will be placed at the entrance of all five of the City of Austin municipal cemeteries.
    - Small signage will be posted throughout cemetery.
- Develop and promote FAQ regarding rule changes
    - Distribute document to area funeral homes, mortuaries, and other private partners.
- Share content with partner agencies for distribution (e.g. Austin Public Health, Social Services, etc).

60 Days Notice

- Website promo (COA Homepage)
- Stakeholder Email (558 Contacts)
- Citywide Nextdoor Announcement (217,826 households)
- Press Release to all major and community media outlets
- Print ads in major and community newspapers (costs?)
- Article in PowerPlus newsletter

30 Days Notice

- Website promo (COA Homepage)
- Stakeholder Email (558 Contacts)
- Citywide Nextdoor Announcement (217,826 households)
- Press Release to all major and community media outlets
- Print ads in major and community newspapers (costs?)
- Social Media (Facebook and Twitter) Advertising ($1,000 - 2,000)

Cemetery Rules
Public Review Comments

Name: Kay Boyd
Date: 05/25/18 & 6/12/18
Submitted by: Email **Rules Section:** 14.4.9, 14.4.11, 14.4.12

Comment: What exactly is an invertible base? 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 AFTER NOTIFYING THE SPACE OWNER. The expense of such correction, removal, or repair may be charged to the space owner.
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. THIS WOULD NOT PERMIT MEMORIALS BY FAMILIES OF LOWER INCOME IN THE ANNEX AND EVERGREEN. THIS IS NOT EVEN PRACTICAL. TIME DOES NOT ALLOW APPROVAL OF EVERY MEMORIAL. THE CEMETERY ADMINISTRATOR PROBABLY DOES NOT HAVE KNOWLEDGE OF VIETNAMESE OR HEBREW LANGUAGES.
(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. THESE MEMORIALS ARE THE PROPERTY OF THE SPACE OWNER AND FAMILY AND APPROVAL SHOULD NOT BE REQUIRED TO CLEAN AND LEVEL THEM.
14.4.12- Ornamentation and Decoration (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. AFTER NOTIFICATION TO THE SPACE OWNER.

PARD Response: Thank you for your feedback on the proposed cemetery rules amendment. Your input is valuable to us and helps our Cemeteries Operations understand the features, functional concerns, and questions that are most important to you. We carefully review all feedback to determine how to best accommodate both current and new customers. We agree that people should be able to grieve in the manner of their choosing.

An invertible vase is a vase that has an outer casing that can be buried in the ground and holds the vase in an inverted position when not in use, and on a substantial level with the ground. The construction of an invertible vase also provides for the escape of water from the bottom of the vase.

Often trees and shrubs have to be removed when they are diseased or can cause emanate danger to ensure the safety of our cemetery maintenance staff, and to protect nearby monuments. The grantee of a burial lot in a deed of conveyance does not acquire a fee-simple title (absolute title to land, free of any other claims against the title, which one can sell or pass to another by will or inheritance); purchasing a burial plot is not like purchasing most other real estate. When an individual purchases a lot in a dedicated cemetery, it is understood to be limited to burial purposes only.

The Cemetery Administrator will continue to ensure all proposed memorials are reviewed prior to approval and will work on ensuring that all cultural ceremonial ornament proposals are addressed within a timely manner.

The Cemetery Administrator will also attempt to notify space owners should any existing monuments require removal of items and or vegetation that impedes on other monuments or is deemed a safety and or health issue. Approval of cleaning and leveling of monuments is required to ensure that chemicals used are safe to use on monuments and to the environment. Approval of leveling is needed to ensure that monuments do not impede on the space of other monuments.

PARD has recently hired an architectural conservator to fill the position of Environmental Program Coordinator and will be responsible for developing and implementing a cemetery monument conservation program, based on recommendations in the City of Austin Cemeteries Master Plan. This includes maintaining monuments as well as working on revising those monuments that have broken or damaged over time.

We understand implementing these rules pose challenges, and we are more than willing to discuss individual needs with the understanding that we must preserve the rights of all customers and provide overall safety. With the updated rules and a continuous open line of communication, we hope to be able to better serve our community.

Name: John Felchak
Date: 05/26/18
Submitted by: Email **Rules Section:** 14.4.9, 14.4.12

Comment: My question is about benches. The rules state benches are permitted prior to the adoption of these new rules. I do not see if benches are permitted with the new rules. My wife and I have our two burial plots already purchased with our headstone in place. I have always admired and want to install a bench at our space (at the foot). What are the requirements to do so?

PARD Response: Thank you for your feedback on the proposed cemetery rules amendment. Your input is valuable to us and helps Cemeteries Operations understand the features, functional concerns, and questions that are most important to you. We carefully review all feedback to determine how to best accommodate both current and new customers.

Special considerations were made to accommodate as many of the grieving practices as possible in a safe and fair manner. We have revised the proposed rules to accommodate existing benches with restrictions, as outlined in 14.4.12(G). New benches will only be allowed if they are monument benches that are at the head of the space as outlined in 14.4.9(B). We look forward to further engagement in enhancing our performance with the community's needs and safety in mind. The City is also considering a memorial bench program.

We understand implementing these rules pose challenges and we are more than willing to discuss individual needs with the understanding that we must preserve the rights of all customers and provide overall safety. With the updated rules and a continuous open line of communication, we hope to be able to better serve our community.

Name: Jennifer Ward-Bentley
Date: 05/30/18
Submitted by: Email **Rules Section: None**

Comment: My whole family is out there including my brother they better not move anyone.

PARD Response: Thank you for your feedback on the proposed cemetery rules amendment. Your input is valuable to us and helps Cemeteries Operations understand the features, functional concerns, and questions that are most important to you. Rest assured that your loved ones will remain in their current resting location.

Name: Jane N. Lippmann
Date: 06/18/2018
Submitted by: Email **Rules Section:** 14.4.12

Comment: I would like to propose that you include in the Proposed Cemetery Rules a clear statement allowing cemetery workers to cut down bushes and trees close to a grave that prevent gravesites of other people from getting enough water to allow grass to grow. I have been at the cemetery when the grounds people were watering and watched the water from the automatic sprinklers bypass my husband's gravesite while other gravesites around his had grass that looked fine because no bush or tree blocked them from getting water. I called this to the attention of the people who manage the cemetery while that area was being watered, and they also watched the water bypass my husband's gravesite because the water was blocked by a tree and bush. While the cemetery officials were kind and tried to be responsive, they felt their hands were tied because there was no regulation that allowed them to remove a tree planted by a family's loved one. In principle, I don't object to people being able to plant bushes and trees near a loved one's grave, but the cemetery Director or appointee should have the authority to approve or disapprove the request before anything is planted. And, for trees already planted and causing a problem, I propose that the cemetery Director be given authority to have the tree/shrub moved as close to the loved one's gravesite as possible but in a place where it wouldn't affect any other gravesite in a negative way. If it is not possible, the cemetery Director should have the problematic tree or bush removed entirely. I would hope that the Director of the cemetery would be able to work out a compromise with the family of the problematic tree. Planting of trees and shrubs should not be allowed in areas where they would keep other gravesites from getting proper watering! The folks at the cemetery even tried planting new, drought tolerant grass by my late husband's gravesite, but it quickly died. Even drought tolerant grass must have some water, especially with the Texas heat, and where grass can't live entirely on rainfall. Another possibility to consider might be the installation of soaker hoses in areas that might have similar issues. They would also be environmentally responsible. Thank you for considering these requests.

PARD Response: Thank you for your feedback on the proposed cemetery rules amendment. Your feedback is extremely valuable to us, and helps the City of Austin Cemetery Operations understand which features, functionality concerns and questions are most important to you. We carefully review all community feedback when determining how to accommodate both current and new customers of the City of Austin Cemeteries. We recognize and are extremely sensitive to the fact that people have a right to grieve in the manner of their choosing. All families should, and will have, a place to share, remember and grieve. The new proposed cemetery rules are less restrictive, safety regulated and more empathetic to the 1978 78504-22 resolution.

As outlined in 14.4.12 (F), 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. We understand implementing these rules pose challenges and we are more than willing to discuss individual needs with the understanding that we must preserve the rights of all customers and provide overall safety. With the updated rules and a continuous open line of communication, we hope to be able to better serve our community.

Name: Janet Marsh
Date: 06/18/18
Submitted by: Email **Rules Section:** 14.4.12

Comment: In addition to RULES you are implementing, please consider adoption of maintenance issues on 100+ year old oak trees located within cemeteries. The air ferns DESTROY limbs and affect the health of the tree.

PARD Response: Thank you for your feedback on the proposed cemetery rules amendment. Your input is valuable to us and helps Cemeteries Operations understand the features, functional concerns, and questions that are most important to you. We greatly appreciate your comments regarding the maintenance of the 100+ year old oak trees. We will continue to work closely with our Forestry Department and the City Arborist to address these concerns.

As outlined in 14.4.12 (F), 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. We understand implementing these rules pose challenges and we are more than willing to discuss individual needs with the understanding that we must preserve the rights of all customers and provide overall safety. With the updated rules and a continuous open line of communication, we hope to be able to better serve our community.

Name: Nancy Cooper
Date: 06/18/18
Submitted by: Email **Rules Section: None**

Comment: Even though I did send a rather lengthy email when the original proposal was shown, this is the first notice I've received about this impending one for June 22nd, 4 days from now. It was forwarded by family. I have a hard time understanding, and cannot really fathom, the proposals for changing the ground rules, as it were, for the Austin Memorial Park on Hancock. The continual unnerving proposals are wrenching for those of us who are trying to find peace - in what was a beautiful, quiet, respectful place - but are being continually upended with distressing, changing requirements. It seems that more care is being shown to those who are employees who come and go, but have no connection to the sacredness and emotional value of the cemetery. For those who have spent hours, and years, tending to the final resting place of loved ones, this upheaval and uncertainty is tragic. Please find it in your heart to understand what all of us are being put through and help us. At least "Grandfather" in the current owners and families of the plots. Think of all the time, effort and money, and feelings and anguish which have been put into this with our love and care, and with our trust that it will "always" be there.

PARD Response: Thank you for your feedback on the proposed cemetery rules amendment. Your input is valuable to us and helps our Cemeteries Operations understand the features, functional concerns, and questions that are most important to you. We carefully review all feedback to determine how to best accommodate both current and new customers. We agree that people should be able to grieve in the manner of their choosing. The intent of rules in a public setting is to protect the rights of all customers while providing a safe and accessible environment. The proposed rules are less restrictive and more safety oriented than the current rules adopted in 1978. The current rules have not been consistently enforced so before implementing equal enforcement we have taken the opportunity to update the language and incorporate current needs and practices. We understand implementing these rules pose challenges and we

are more than willing to discuss individual needs with the understanding that we must preserve the rights of all customers and provide overall safety. With the updated rules and a continuous open line of communication, we hope to be able to better serve our community.

Name: Pamela Ferguson
Date: 06/19/18
Submitted by: Email **Rule Section**: 14.4.3, 14.4.12

Comment: I urge you and your colleagues to honor religious rights and practices re family graves - specifically-the centuries old Jewish tradition of placing stones on graves to honor the departed. To deny this right is cruel, ignorant, and totally unnecessary. I shared these thoughts with your colleagues when you held an "open house" some months ago and you welcomed our comments on a flip chart. Similarly, the Dia de los Muertos practice of decorating graves should also be honored each year, as it involves thousands of families in Austin and across the state. When I raised the matter at the "open house" I was told that families need to "seek permission" to decorate the graves. Oh come on. That's totally unrealistic. Certainly the decorations do not hamper maintenance. In short - please honor religious practices. To deny those rights is cruel and totally unAmerican. Thank you!

PARD Response: Thank you for your feedback on the proposed cemetery rules amendment. Your input is valuable to us and helps Cemetery Operations understand the features, functional concerns, and questions that are most important to you. We carefully review all feedback to determine how to best accommodate both current and new customers. The community input on the rules has been extensive and dates back to 2013. We agree that people should be able to grieve in the manner of their choosing. The intent of rules in a public setting is to protect the rights of all customers while providing a safe and accessible environment. The proposed rules are less restrictive and more safety oriented than the current rules adopted in 1978. The current rules were not consistently enforced which resulted in safety hazards, constrained maintenance, and inconsistent practices. Before implementing equal enforcement we have taken the opportunity to update the language and incorporate current needs and practices. Special considerations were made to accommodate as many of the grieving practices as possible in a safe and fair manner.

Ornamentation will be permitted with restrictions to ensure the safety of individuals coping with a loss, the visitors, and the staff tasked with maintaining the cemeteries. The intent is to allow for cultural and religious expression. "Memorialization Space", as outlined in (14.4.3 and 14.4.12) the intent is to allow for cultural and religious expression: Stones, flowers, and memorabilia may be placed at the head of a space or on the headstone. We understand implementing these rules pose challenges and we are more than willing to discuss individual needs with the understanding that we must preserve the rights of all customers and provide overall safety. With the updated rules and a continuous open line of communication, we hope to be able to better serve our community.

Name: John Bingham
Date: 06/19/18
Submitted by: Email **Rules Section**: 14.4.3, 14.4.12

Comment: I have not attended any of the recent meetings, but have responded to all the surveys that I was able to find over the years. I appreciate everything that the City of Austin has done over the last few years to upgrade it's cemeteries and their ongoing care. I understand and support the need for rules and regulations, but would like to offer the following hoping and believing that there can be individual compromise and still uphold the standards we are all working for. Our family buried our son, Brad

Bingham, at Austin Memorial Park in 2002. The reason we picked this location was because our son loved Austin and its uniqueness and when we visited there, we knew that it had the uniqueness he enjoyed. He was buried in Section 6 and at that time there were only approximately twenty or so graves there. We also purchased five other sites adjacent to his. With pride we outlined his grave with stones that we found at the cemetery, planted grass, erected a bench specifically designed with the logo of his scholarship fund we established at his old high school. We have fertilized, watered and with the approval of the contractors and now the city officials now there, we have mowed and weedeated and maintained the area on a weekly basis for almost 16 years now. During that time, we have met and become friends with families of those buried close to Brad, and with their approval, we now do the mowing of an area approximately 10 x 20 yards including many of their families graves. Many of the 'neighbors' have told us that the reason they picked that area was because of the care taken there, all with the knowledge and approval of the cemetery management, past and present. I have attached pictures of the area for review. We have become familiar and worked hand in hand with the current city crews in our section. They approve of how we maintain Brad's area and we have done everything they have asked us to do. I don't believe we have ever been a nuisance or problem to them. We understand and agree that the cemetery must have rules and regulations for it to operate and be maintained properly. We would suggest that hard and fast rules be looked at with compromise on an individual basis with what has been done over the years and would ask for such a compromise in Brad's area to continue as we have done for so long. We would also ask that we all remember that we are in Austin, Texas and we have a history of doing things different, but right.

PARD Response: Thank you for your feedback on the proposed cemetery rules amendment. Your input is valuable to us and helps Cemetery Operations understand the features, functional concerns, and questions that are most important to you. We carefully review all feedback to determine how to best accommodate both current and new customers.

We would like to thank you for all of the work that you have done to honor your late son and your support of the new rules. We agree that people should be able to grieve in the manner of their choosing. The intent of rules in a public setting is to protect the rights of all customers while providing a safe and accessible environment. Special considerations were made to accommodate as many of the grieving practices as possible in a safe and fair manner.

"Memorialization Space", as defined in 14.4.3(10) and 14.4.12, ornamentation will be permitted with restrictions to ensure the safety of individuals coping with a loss, the visitors, and the staff tasked with maintaining the cemeteries. The intent is to allow for cultural and religious expression. Stones, flowers, and memorabilia may be placed at the head of a space or on the headstone. Stone boarders will be reviewed on a case by case basis by the Cemetery Administrator for approval. Under provision 14.4.12 (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.

Please be advised however that under 14.4.13 (E)-(2), (3), (4) A person may appeal a decision made by the Cemetery Administrator under these rules to the Director. An appeal must be made in writing within 30 calendar days of the date of the Cemetery Administrator's decision. The Director shall render a written decision on an appeal within 30 calendar days of receiving the appeal.

We understand implementing these rules pose challenges and we are more than willing to discuss individual needs with the understanding that we must preserve the rights of all customers and provide overall safety. With the updated rules and a continuous open line of communication, we hope to be able to better serve our community.

Name: Kate Carbone
Date: 06/19/18
Submitted by: Email **Rules Section**: 14.4.9, 14.4.13

Comment: Most of the changes to the cemetery rules (dated 05-18-18) provide more clarity for better understanding, and thus are greatly appreciated. However, I ask that specific wording that was deleted from previous versions of the rules be reinstated as follows: 14.4.9-Memorials (K) Should any existing memorial or mausoleum become [reinstate "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. What if an item is not unsafe but it is unsightly due to an offensive nature? It is reasonable that the Cemetery Administrator be responsible to correct or remove unsightly—as well as unsafe—items. 14.4.13-General Regulations (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 [reinstate "eject the person from"] [remove "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 [reinstate "eject the person from"] [remove "ask the person to leave"] the cemetery immediately. >> What if someone ignores a cemetery employee's request to leave the cemetery? It is reasonable that a cemetery employee be empowered to eject from the cemetery anyone whose conduct is as described in items (1) and (2) above.

PARD Response: Thank you for your feedback on the proposed cemetery rules amendment. Your input is valuable to us and helps Cemeteries Operations understand the features, functional concerns, and questions that are most important to you. We carefully review all feedback to determine how to best accommodate both current and new customers. We agree that people should be able to grieve in the manner of their choosing. The intent of rules in a public setting is to protect the rights of all customers while providing a safe and accessible environment.

As outlined in 14.4.11 (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. Under provision 14.4.12 (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. We are doing this as a pre-cautionary step toward greater diversification and inclusion, particularly in light of hate crimes, cemetery vandalism, etc. that have increased over the past couple of years. It is not intended to exclude people from freedom of expression, but to simply support the changing times and to insure that all of the requirements are met in 14.4.9-11.

Per 14.4.13 (B) Disruptive Behavior; Ejection from facilities. 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 warming, a cemetery employee may ask the person to leave the cemetery. If someone ignores a cemetery employee's request to leave the cemetery, then City staff will be authorized to dial 911 for assistance from the Austin Police Department.

Name: Dr. & Mrs. Edwin & Catherine Boldry, Great Aunt & Uncle of Wiley Cooper
Date: 06/21/18
Submitted by: Email **Rules Section**: 14.4.3, 14.4.12

Comment: We'd like to comment on the proposed changes in cemetery rules at the Austin Memorial Park where our grandnephew Wiley Cooper is buried. You may already be aware of his story. He was stillborn in 2008 on Thanksgiving Day after an uneventful pregnancy, the greatly loved and anticipated first child of our nephew Madison Cooper and his wife Laura. The devastating blow of his stillbirth shook the whole family, and most were able to attend the funeral from locally or from around the country. Memorial Park was chosen for Wiley's final resting place because of the peace, beauty and solace that could be found there, as well as for the willingness of the Parks and Recreation Department to allow the modest memorial and symbolic items that the family wished to place, each item having a special meaning to the family. The Cooper family still lives locally and visits the site regularly, using it as a place to meditate and connect, and receives great comfort from the small memorial items that are there. When Memorial Park was chosen for Wiley's burial, all Park rules were followed, the family's design plans were approved ahead of time, and our understanding was that what we had done there would be permanent, as is usually the case with cemetery memorials. If we had known that we could later be required to tear apart what had been done, we would have gone elsewhere. Please be understanding and don't retroactively make us tear apart this memorial that means so much to us! Thank you for your consideration.

PARD Response: Thank you for your feedback on the proposed cemetery rules amendment. Your input is valuable to us and helps Cemeteries Operations understand the features, functional concerns, and questions that are most important to you. We carefully review all feedback to determine how to best accommodate both current and new customers. We agree that people should be able to grieve in the manner of their choosing. The intent of rules in a public setting is to protect the rights of all customers while providing a safe and accessible environment. Based on Public feedback we have added clarifications that decorations are allowed on memorials with restrictions to ensure the safety of individuals coping with a loss, the visitors, and the staff tasked with maintaining the cemeteries. The proposed rules are less restrictive and more safety oriented than the current rules adopted in 1978. The current rules have not been consistently enforced so before implementing equal enforcement we have taken the opportunity to update the language and incorporate current needs and practices.

"Memorialization Space", as outlined in 14.4.3 (10) and 14.4.12. Ornamentation will be permitted with restrictions to ensure the safety of individuals coping with a loss, the visitors, and the staff tasked with maintaining the cemeteries. The intent is to allow for cultural and religious expression; stones, flowers, and memorabilia may be placed at the head of a space or on the headstone. Special considerations were made to accommodate as many of the grieving practices as possible in a safe and fair manner.

We understand implementing these rules pose challenges and we are more than willing to discuss individual needs with the understanding that we must preserve the rights of all customers and provide overall safety. With the updated rules and a continuous open line of communication, we hope to be able to better serve our community.

Name: Sharon Blythe
Date: 06/21/18
Submitted by: Email **Rules Section**: 14.4.3, 14.4.9, 14.4.14

Comment: (2) "Cemetery" unless otherwise expressly stated, includes all tracts of land designated as a municipal cemetery by the City. A cemetery does not have to be so designated. Incorrect definition under

State Law Health and Safety Code Sec. 711 definitions is: (4) "Cemetery" means a place that is used or intended to be used for interment, and includes a graveyard, burial park, mausoleum, or any other area containing one or more graves. 14.4.9(A) All memorials shall be installed and maintained at the owner's expense. This is incorrect. The City is responsible according to state law: State Law in Health and Safety Code says in Sec. 713.011: Texas Health and Safety Code 713.011 – Maintenance of Municipal Cemeteries Current as of: 2018 (a) A municipality that operates or has jurisdiction over a public cemetery shall maintain the cemetery in a condition that does not endanger the public health, safety, comfort, or welfare.
(b) A municipality's responsibility to maintain a cemetery under this section includes:

(1) repairing and maintaining any fences, walls, buildings, roads, or other improvements;
(2) leveling or straightening markers or memorials;
(3) properly maintaining lawns, shrubbery, and other plants;
(4) removing debris, including dead flowers and deteriorated plastic ornaments; and
(5) promptly restoring gravesites following an interment.

In fact. the city moved 216 markers from section 9 to section 9-A in 1969 without property installation and no foundations. The families were not appropriately notified. The markers are now tilting and some are covered under grass, weeds and under fence lines. The families are not responsible for these markers nor any marker within the cemeteries. The City is responsible for all markers. See attached file.(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. See comment under Sec. 14.4.9 (A).14.4.14-Reservations of the City of Austin. This is not reserved by the City - its State Law (see Sec. 14.4.9 above). The City is responsible not the plot owner.

PARD Response: Thank you for your feedback on the proposed cemetery rules amendment. Your input is valuable to us and helps Cemeteries Operations understand the features, functional concerns, and questions that are most important to you. We agree that people should be able to grieve in the manner of their choosing but in a public setting there must be rules to protect the rights of all customers while providing a safe and accessible environment. The statute does not say that everything in the cemetery must be perfect, only that conditions in the cemetery not endanger the public health, safety, comfort, or welfare. I believe PARD has justifiably focused on the words "health" and "safety" in the past because "welfare" would seem to be largely synonymous with the former and "comfort" is such an unhelpfully subjective term.

Subsection (b) of Section 713.011 states that "a municipality's responsibility to maintain a cemetery under this section includes..." a long list of tasks including leveling or straightening markers or memorials. Therefore, it would be a reasonable interpretation to say that the City must engage in the leveling or straightening of markers or memorials to the extent necessary to not endanger the public health, safety, etc.

This statute does not say that the City must engage in leveling or straightening for aesthetic purposes. The statute does not say that the City is solely financially responsible for leveling or straightening and cannot seek (perhaps unsuccessfully) the financial assistance of the owners of the marker or memorial after the public has been protected.

We understand implementing these rules pose challenges and we are more than willing to discuss individual needs with the understanding that we must preserve the rights of all customers and provide overall safety. With the updated rules and a continuous open line of communication, we hope to be able to better serve our community.

Name: Tina Huckabee
Date: 06/22/18
Submitted by: Email **Rules Section**: 14.4.3, 14.4.12, 14.4.13

Comment: I'm writing concerning R161-18.08. I've been involved with the review of cemeteries since autumn of 2013 and have experienced little—if any—real commitment from PARD to work with the cemetery stakeholders and consider legitimate ideas and opinions of those who have loved ones buried at Austin Memorial Park, as well as other Austin cemeteries. Yes, there have been public surveys and certainly the City of Austin taxpayers funded plenty for "consultants" to sift through that information, but until recently, no one has ever invited myself or anyone else (that I'm aware of) to participate in legitimate discussions about moving forward with improvements at the city's cemeteries. The "public input" consisted of a few online surveys and a few meetings to review the findings of the surveys, supervised by facilitators hired by PARD, with little or no discussion and few, if any PARD representatives, a few weeks ago, Sharon Weintraub and I were invited to meet with Kimberly McNeeley and Anthony Segura to discuss this ongoing issue and problems that we've experienced with PARD. For the first time in over 4 years, I feel like someone listened to our concerns. It remains to be seen whether they will facilitate a different relationship with the stakeholders who have loved ones buried at the cemeteries, but the meeting was, at least, as effort in the right direction. The recent complaints from PARD seem to revolve around one issue (which has changed from what it was in 2013) and that is that the cemeteries are underfunded (which I have no doubt) and that PARD wishes to change the basic landscape and "personality" of various cemeteries. The solution for PARD's labor/maintenance issues appear to be to scrape all (or most) personal grave gardens and mementos and lay sod for the mowers to mow more efficiently. To me, the argument isn't logical: to save money, time and labor, PARD will completely remove gardens, grass, decorations—which will require money, time, and labor—and plant sod (which I understand will be a water-wise hybrid turf)—which will require money, time, and labor.

For decades, PARD (and "contractors" hired by PARD/City of Austin) have implicitly and explicitly allowed personal gardens/benches/mementos in City of Austin cemeteries. To drastically change the rules, to not allow a grandfathering of existing graves, especially with no input and discussion with families (and grave owners/city of Austin taxpayers), is unconscionable and may well be illegal. Once more, there's been no attempt at negotiate in good faith with cemetery stakeholders and compromise with those whose love ones are buried at Austin cemeteries, either to grandfather in the existing grave memorial gardens/decorations or develop a set of rules and regulations in which all can agree. Section 713.002 (Local Trust for Cemetery), Texas Health and Safety Code, which states that a city that owns, operates and has control of a cemetery may set up a permanent trustee for perpetual maintenance of graves and the City of Austin set up such a trust: Section 10-1-11 of the Austin Code of Ordinances established a Perpetual Care Trust Fund for the perpetual maintenance of cemeteries in Austin. With PARD's complaints that they're underfunded and don't have the employees to adequately manage the cemeteries, it seems that a valuable tool for cemetery funding has been overlooked--or ignored. What's more, there are no records of when and how this fund was started and who has donated to it, though there is money in the fund. I'm sure that many family members with loved ones buried in Austin cemeteries would like to know about this perpetual care process and that many would take advantage of a perpetual care system if PARD bothered to advertise and make it available. Twice last autumn, I requested an application from the city clerk's office to become a trustee for my daughter's grave and have yet to receive any information about this process.

The most recent iteration of rules includes a change that I am concerned about. In section 14.4.12-Ornamentation and Decoration, (B) An ornament, potted plant, floral piece, basket, or other decoration is permitted in the memorialization space if: (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. How does this change impact the memorial rocks placed on headstones or graves in the Jewish section? Will small rocks be allowed? Do they have to be "Firmly anchored and secured..."? If they're not allowed because they can't be "Firmly anchored and secured...", does this constitute direct discrimination toward one religious group? Similarly, Dio de los Muertos decorations will be impacted; will observers have to "anchor" the items placed? If items are not "anchored" and therefore, not allowed, is this discriminatory to another religious group. I'm sure there are many other examples like these two—and I'm sure that is a problem that PARD doesn't want to create. PARD has never reasonably engaged with the public and concerned families about the issues facing maintenance of Austin's cemeteries. There have been no meaningful discussions—ever. Online surveys, money spent on meetings in which the "public" had little true input, and draconian rules published which are (more than likely) illegal and unenforceable given that the City Council is tasked with these kinds of regulations, as well as the long history of ignoring (or sometimes, actively supporting) the grave gardens, decorations, memorials developed over decades, do not count as meaningful discussions and efforts to compromise. I would be more than happy to sit down, engage in on-going meetings, with designated PARD representatives and other concerned citizens to develop a nuanced set of rules—but that suggestion has never been made or promoted, by any representative from the city of Austin. PARD has excelled at bureaucratic delays and purposeful obfuscation, but that isn't, or shouldn't be, how regulations are developed. PARD should be following the original intent of the Austin City Council and work with concerned citizens to develop a comprehensive set of rules for Austin's cemeteries.

PARD Response: Thank you for your feedback on the proposed cemetery rules amendment. Your input is valuable to us and helps Cemeteries Operations understand the features, functional concerns, and questions that are most important to you. The intent of rules in a public setting is to protect the rights of all customers while providing a safe and accessible environment. The proposed rules are less restrictive and more safety oriented than the current rules adopted in 1978. The current rules have not been consistently enforced so before implementing equal enforcement we have taken the opportunity to update the language and incorporate current needs and practices. We understand implementing these rules pose challenges and we are more than willing to discuss individual needs with the understanding that we must preserve the rights of all customers and provide overall safety. The intent of rules in a public setting is to protect the rights of all customers while providing a safe and accessible environment. With the updated rules and a continuous open line of communication, we hope to be able to better serve our community.

As reported to Mayor and Council under the January 26, 2018 Memorandum, PARD has engaged in several citizen community meetings. These include:

- October 27, 2016- The first community meeting was held, and public feedback was accepted via Speak- Up Austin;
- February to April, 2017- Conversation Corps led guided discussions in two locations, Yarbrough Library and Botton, Durst, Howard, and Spence Building. The conversations focused on grave ornamentation, associated religious and cultural practices, and the maintenance requirements that restrict ornamentation placement and materials. The goal was to gather input from stakeholders of many different professions, ethnic backgrounds, and religious communities. A summary of input through the facilitated conversations, and Speak-Up Austin discussion was shared with stakeholders.
- June 2017-The draft Rules were completed. This draft incorporated recommendations from the 2015 Cemetery Rules Project Report, stakeholder feedback, as well as safety and maintenance challenges. PARD considered ornamentation carefully to determine practices that could be permitted that are now restricted in the currently adopted Rules. The draft Rules were subsequently reviewed by the City of Austin Law Department.

- October 2017- The draft Rules were presented to stakeholders during two public engagement meetings. Additional input and feedback was received and incorporated into the final draft of the Rules. Following the two community meetings in October, PARD added section 14.4.12-General Regulations, (F) Appeals that outlines the process for anyone wishing to appeal a decision made by the Cemetery Administrator under the Rules.

Ornamentation will be permitted with restrictions to ensure the safety of individuals coping with a loss, the visitors, and the staff tasked with maintaining the cemeteries. The intent is to allow for cultural and religious expression. "Memorialization Space", as outlined in (14.4.3 and 14.4.12) the intent is to allow for cultural and religious expression: Stones, flowers, and memorabilia may be placed at the head of a space or on the headstone. Stone boarders will be reviewed on a case by case basis by the Cemetery Administrator for approval. Under provision 14.4.12 (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.

PARD does recognize religious events such as Dia Del Los Muertos as well as other types of religious events and will work with individuals on a case by case basis to address cultural ceremonial ornamentation. PARD asks that adequate notification of proposed cultural ceremonial ornamentation is provided to the Cemetery Administrator in advance to ensure all requests are reviewed and responded to within a timely manner.

We have revised the proposed rules to accommodate existing benches with restrictions, as outlined in 14.4.12(G). Benches are more than welcome however, we require that they be placed at the head as a memorial. These rules are intended to address those memorials and benches which were not approved by the City, while still allowing for cultural and religious expression. Be advised that the City is also considering a memorial bench program. We are being conscious to the overall safety of the public, visitors and staff of City of Austin Cemeteries.

Native vegetation will be allowed as long as it does not impede on the space of other monuments with the written approval of the Cemetery Administrator, 14.4.12 (E). Under provision 14.4.12 (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. Please be advised however that under 14.4.13 (E)-(2), (3), (4) A person may appeal a decision made by the Cemetery Administrator under these rules to the Director. An appeal must be made in writing within 30 calendar days of the date of the Cemetery Administrator's decision. The Director shall render a written decision on an appeal within 30 calendar days of receiving the appeal.

A complete and thorough examination of the regulations associated with the Perpetual Care Fund and the impacts related to sustainable cemetery maintenance are being done to evaluate legally allowable funding mechanisms related to the long-term cemetery maintenance. As outlined to Mayor and Council in the May 8, 2018 Memorandum, PARD is currently working on challenges and recommended actions to formulate a better means for administering the Perpetual Care Fund and as PARD continues to work with multiple departments anticipate a resolution in the near future.

Name: Steven Weintraub
Date: 06/22/18
Submitted by: Email **Rules Section**: 14.4.3, 14.4.12

Comment: Firstly, I'd like to share my history with these cemetery issues. My daughter died in April 2006 and soon afterwards we noticed the cemetery had not adequately re-sodded; we continually seeing the track

marks from the mowers over her grave. At that point my wife and I called the cemetery caretaker, asking permission to plant gardens on her grave (like these we observed at Austin Memorial Park). We verbally offered a date that, if we didn't hear back from anyone, we assumed we had permission to install the garden. We never received a response from anyone at the cemetery, so with that tacit permission, we planted garden a garden. The garden has now been in place for over 11 years. As we received no reply from cemetery officials, the city was granting tacit permission to grant a variance to those rules. Under Texas land use laws, a variance, once granted or given (whether implicit or explicit) cannot be withdrawn. I should add, that while our variance was tacit, we know of people where the permission was explicit. In fall of 2013, I found out about the proposed cemetery rules rewrite/enforcement when I was visiting my daughter (who is buried in Austin Memorial Park) in October 2013. At that time, I was attending the annual synagogue service remembering the dead. The synagogue member in charge of the coordination with the cemetery at that time told me that in 2 months I would have to remove the garden on top of Shoshana's grave. My wife, Tina Huckabee, and I pursued a dialogue on the cemetery rules, resulting in a city council resolution on October 17, 2013 instructing PARD and the cemetery department to work with stakeholders to resolve this equitably. The specifics of the cemetery rules were shelved as PARD focused on the cemetery master plan and in the 4 years since, there has been limited outreach, two short abrupt meetings early on, informal surveys, with explanatory meetings following, and eventually, the presentation of the new rules as a fait accompli. In that 4-year period, neither my wife nor myself were ever directly engaged in discussions, nor were any other individuals that we know, who have concerns about Austin's cemeteries.

The latest rule changes aren't much different from what has been proposed before and to which many stakeholders have objections. Section '14.4.9-Memorials' states that the memorials will be installed and maintained at owner's expense. I think this is in violation of State Law in Health and Safety Code, Sec. 713.011, which states clearly that municipalities bear that set of responsibilities. As well, my sister, Sharon Weintraub has discovered that there is a Perpetual Care Trust Fund available and until that fund and whatever monies it has accrued are a part of the cemetery rules, any changes to these rules should be suspended and delayed. I want to see the perpetual care fund IN WRITING as part of the cemetery rules; taxpayers and loved ones of those buried in Austin cemeteries should have knowledge of this fund, to be able to donate to this fund, and have annual reporting which is transparent about this fund. There is another change in these most recent rules that I will object to and that is the where the rule suggests that decorations much be permanently affixed to the "memorialization space." I'm concerned how that would impact the placing of small, memorial rocks which is traditional in Jewish practice. These rocks are not permanently attached to the space, so will they be not allowed? If so, does that constitute a violation of freedom of religious practice? There are other religious and ethnic groups who decorate graves, will those be disallowed as well? I think this rule could cause serious problems for PARD and the City of Austin. We're not trying to be stubborn or belligerent and are more than willing to compromise and accommodate in development of sound rules regarding decorations and memorialization of the graves at the cemeteries. We understand short staffing and budget restraints. We are still willing to dialogue, with fairness and equitable understanding. After 11 years in place on Shoshana's grave, the garden is a sacred space and we believe we cannot disturb it. So too are the mementos, many of which we did not place, but were left by people who knew my daughter and were touched by her life. The Jewish tradition of leaving a stone on the visit to the grave has resulted in hundreds left by us, as well as many others. Until PARD representatives work cooperatively with stakeholders, I will work against the proposed rules.

PARD Response: Thank you for your feedback on the proposed cemetery rules amendment. Your input is valuable to us and helps Cemeteries Operations understand the features, functional concerns, and questions that are most important to you. We agree that people should be able to grieve in the manner of their choosing, but in a public setting there must be rules to protect the rights of all customers while providing a safe and accessible environment.

Decorations that are allowed are covered in "Memorials" with restrictions to ensure the safety of individuals coping with a loss and the staff tasked with maintaining the cemeteries. "Memorialization Space", as outlined in (14.4.3 and 14.4.12) the intent is to allow for cultural and religious expression: Stones, flowers, and memorabilia may be placed at the head of a space or on the headstone. PARD does recognize religious events and is culturally sensitive to respecting those customs such as cultural ceremonial ornamentation. PARD asks that adequate notification of proposed cultural ceremonial ornamentation is provided to the Cemetery Administrator in advance to ensure all requests are reviewed and responded to within a timely manner.

PARD acknowledges that the cemetery rules process has been lengthy and we regret any frustration experienced by cemetery stakeholders. It is our intention to ensure clear communications and clear public processes with respect to cemetery operations. We understand implementing these rules pose challenges and we are more than willing to discuss individual needs with the understanding that we must preserve the rights of all customers and provide overall safety. With the updated rules and a continuous open line of communication, we hope to be able to better serve our community.

Name: Sharon Weintraub
Date: 06/23/18
Submitted by: Email **Rules Section**: 14.4.3, 14.4.12, Ch. 1-2 City Code

Comment: I really do not know why I am bothering to comment on the newest proposed cemetery rules and regulations. It is very clear that the Austin Parks and Recreation Department (PARD) has absolutely no interest in complying with the City Council resolution enacted October 17, 2013, which required the City Manager, stakeholders, and PARD to work together on evaluating current cemetery policies, and no desire or intention of working with or listening to stakeholders. It is apparent that PARD has already decided what it wants to do and is only going through the motions of pretending to interact with the public or caring about the feelings or concerns of those with loved ones or friends interred in Austin cemeteries. I am responding not because I think PARD is going to give my comments even passing consideration but to establish a documented trail of PARD's incompetence, negligence, and past and continuing violations of state and local law for future legal redress. However, because I am an optimist and hoping that PARD will prove these perceptions are wrong, I am also including recommended additions and revisions to the current proposed rules. As an example of PARD's failure to engage the public in any meaningful way, I note that I sent a lengthy and detailed response to the first proposed rules and regulations to D'Anne Williams of PARD's Development Division on January 11, 2018. I never received any personal response, but learned through another stakeholder that PARD, typical of its lack of transparency, had posted a link to "Cemetery Rules Public Comments and Staff Responses" on the PARD Cemetery Division website in lieu of engaging personally with all those who took the time and made the effort to comment. Because of the terrible formatting, the entire document is not only very difficult to read but impossible to print in full. I discovered that in this document, PARD divided up my comments into 31 sections. In thirteen of those sections, PARD responded only with "See previous response" with no link or other direction to indicate which previous response. For nine sections, there was no response at all, even to comments raising urgent and important questions including: PARD's lack of legal authority to impose new regulations on existing grave sites; how PARD intended to deal with existing grave site gardens and memorials, many decades old, that had been created with PARD's explicit and implicit consent; and issues regarding PARD's failure to implement the Austin Perpetual Care Trust Fund (PCTF). That means that PARD only responded to 10 sections, or less than one-third of my comments. And these responses were at best only cursory replies either asserting PARD's authority to impose new rules and regulations or referencing specific proposed rules. I sent a 17-page letter and received a total of 21 brief sentences in response.

I want to make one thing very clear—I and other stakeholders completely understand and agree that there is a need for reasonable regulations. All we have ever wanted is sit down at a table with PARD to express our concerns and exchange ideas regarding the development of reasonable cemetery rules and restrictions, as envisioned by the October 17, 2013, City Council resolution. All the delay in the process has been due to bureaucratic foot-dragging, equivocation, and utter lack of transparency by PARD and its refusal to comply with that resolution. These latest proposals are just further evidence of PARD's absolute lack of good faith and its failure to truly engage with the stakeholders or the public. Despite over four years of surveys, meetings, and comments, PARD has clearly failed to work with or to listen to the public or stakeholders. This process has been a complete waste of stakeholder time and taxpayer funds. Further, the rules do not even address PARD's supposed initial concerns regarding deteriorating or allegedly dangerous or inappropriate grave ornamentation. They also fail to address issues regarding existing grave site memorials and gardens. If anything, PARD's four years of delays and obstruction has made the problem even worst. The memorial garden over my niece's grave in Austin Memorial Park (AMP) has now flourished for over a decade. My father has rested in AMP since 2012 and when my mother passed away in 2015 we extended the original stones outlining my father's grave and his memorial garden to encompass my mother's grave, so that my father and mother are again united. Further, I and my sister-in-law Tina Huckabee have both been told by Kimberly McNeeley, PARD Acting Director that the proposed rules and regulations will not apply to existing grave site gardens and memorials. As set forth below it is therefore vital that the proposed rules clearly state that they will apply only prospectively. One other thing is also clear—if PARD approves the proposed rules as they now exist and continues to ignore the issue of existing memorial gardens, we will once again appear before City Council, testifying in great detail how PARD has willfully ignored the council's resolution and significantly wasted both taxpayer time and resources. This time it will also be necessary for I and other stakeholders to consider legal redress and to push for a criminal investigation regarding the possible fraudulent misuse of PCTF.

Neither the City of Austin nor PARD has the legal authority to impose new rules or regulations regarding existing grave site memorials and gardens. Therefore, the proposed rules must expressly state that they will apply only prospectively.In my January 11, 2018, comments, I extensively discussed PARD's failure to publicize or enforce the existing cemetery rules and regulations following the enactment of the rules and regulations in 1978. I noted that even though my family has purchased a total of six grave lots in AMP, PARD never provided me or any of my family members with a single pamphlet, brochure, contract, or any other document setting forth these rules. I also noted that these rules and regulations are not included in the City of Austin Code of Ordinances. I explained that this was significant for two reasons: first, the said ordinances would be the most logical and readily accessible resource for a citizen trying to determine if there were rules and regulations regarding grave site memorials; and second, these existing rules and regulations are not ordinances, lacking the authority of law, and therefore can be waived by failure of the City of Austin or PARD to timely enforce them. Having failed to publicize or enforce these rules and regulations for over three decades, despite open, obvious, and continuing violations, PARD therefore had effectively waived such rules and regulations and no longer has any legal right to try to retroactively enforce them. Nor does PARD have any authority to impose new rules on existing grave site memorials and gardens to the extent such new rules and regulations would force the entire or substantial removal of existing memorials or gardens. As I explained in my previous comments, it is well established under law that when a city enacts an ordinance, law, rule, or regulation that significantly affects the enjoyment or use of an existing property or business, that existing use must either be grandfathered for as long as the initial use continues or the city must fairly compensate the property holder for the loss of the value or use of the property. In this case, any existing memorials or gardens must be grandfathered as long as the initial use continues; PARD would be able to impose the new rules and regulations once the site holder failed to maintain the initial use, such as abandoning and substantially failing to maintain the grave site. Further, as I stated in my previous comments, not only has PARD failed to enforce the rules and regulations, for over three decades PARD and its agents have both implicitly and expressly authorized stakeholders to create memorials and gardens on grave sites.

Finally, as I explained in my prior comments, PARD has no moral or ethical right to retroactively enforce either the current or the new rules and regulations on existing grave site memorials and gardens. Such attempts by PARD would arbitrarily punish those Austin citizens who over the past three decades in good faith relied upon the acts and omissions by PARD and its agents and created grave site memorials and gardens, many of which have been in place for years. These grave site memorials and gardens were created by families and friends as part of the mourning process and were created to reflect the personality of the departed. Forcing the removal or destruction of these personal tributes will cause tremendous and unnecessary grief. Austin citizens should not suffer because of PARD's neglect and dereliction of its duties. PARD's only response to my prior comments was to assert that: "The City Council directed and authorized it to adopt rules by a prescribed process by approving City Code Section 10-1-2. City Council set out the process for the adoption of rules under City Code Chapter 1-2."; and "The proposed rules are less restrictive and more safety oriented than the current rules adopted in 1978. The current rules have not been consistently enforced so before implementing equal enforcement we have taken the opportunity to update the language and incorporate current needs and practices. We understand implementing these rules pose challenges and we are more than willing to discuss individual needs with the understanding that we must preserve the rights of all customers and provide overall safety."

Neither of these responses addressed the fact that under law PARD is effectively barred from imposing new rules and regulations that significantly affect the enjoyment or use of an existing property or business and that such existing use must be grandfathered for as long as the initial use continues or the city must fairly compensate the property holder for the loss of the value or use of the property. PARD has the legal duty and moral obligation to grandfather in existing memorials and gardens, but is free to work in good faith with the site holders to try to reach reasonable resolutions of issues. Further, if PARD is going to illegally attempt to enforce these proposed rules on existing grave sites, how is it planning to do so? Throughout the Austin cemetery system there are hundreds, if not thousands, of grave site memorials or gardens that do not comply with the proposed rules. Is PARD willing to redirect its limited resources from regular and much needed maintenance work to tear up benches, stones, curbing, trees, and plantings throughout the entire cemetery system? Many of the memorials and gardens have been in place for years and cannot be removed without substantially destroying or desecrating much of the grave site, leaving gaping holes, trenches, and exposed soil. Is PARD willing to sustain the public outcry that will follow when families start posting pictures of desecrated graves, destroyed memorials, and torn up gardens to news organizations and public media? Is PARD willing to provide the substantial materials, resources, and city employees to remove such memorials and to then immediately repair, fill-in, level, sod, water, and maintain these grave sites? Or are families and friends going to be forced to visit and watch the desecrated graves erode and deteriorate? Looking at the current and significant maintenance issues at AMP, such as the rusting and collapsing fence, dead and neglected trees, cracked and pot-holed roads, and periodic flooding, it is very clear that PARD already lacks the resources to even minimally maintain the cemeteries (see attached documentation. I must note that I took these pictures and I did not go searching for these examples of significant neglect and deterioration—they are what I see each time I visit my parents' and niece's graves).Finally, but most significantly, I and Ms. Huckabee have both been told by Kimberly McNeeley, Acting Director, PARD, that the proposed rules and regulations will not apply to existing grave site gardens and memorials. Therefore, to make the intent of the rules clear and avoid any future controversy, the following provision must be added to Section 14.4.2-Applicability:

These rules and regulations take effect upon the day of adoption and are solely prospective. All existing uses of and modifications to lots, spaces, memorials, and memorial spaces by space holders are expressly grandfathered, except as otherwise provided herein. PARD would still have the right under the proposed rules to remove any items that present an imminent danger to public safety, that are broken or deteriorated, or encroach on public ways or other grave sites. Further, to avoid any future issues regarding the cemetery rules and regulations, PARD must publish these rules and make they readily accessible to the public. I

recommend the addition of the following: 14.4.15-Notice and Publication of Rules: The Parks and Recreation Department shall ensure that rules, and any proposed or adopted revisions or changes, are published and readily available to the public, including, but not limited to, prominently posting these rules on its website and making copies of the rules available at all cemeteries under its management. Further, the Parks and Recreation Department must provide a written copy of the rules to any and all persons who inquire about purchasing or who purchase a lot or space within any cemetery managed by the Parks and Recreation Department. The Austin Parks and Recreation Department still has failed to comply with the City Council resolution enacted October 17, 2013. This entire process must be put on hold until PARD finally agrees to negotiate in good faith with the public as intended by the City Council. In my January 11, 2018, comments I set out a lengthy and detailed timeline demonstrating unequivocally that for over four years PARD has utterly refused to comply with the October 17, 2013, Austin City Council resolution. As clearly set out in my previous comments, members of PARD have refused any direct discussion or negotiation with the public or stakeholders. Not once in over four years were the stakeholders ever actually allowed to sit down at the table with PARD and work together on some sort of reasonable compromise, which was certainly what was envisioned in the original City Council resolution. This evidence, I explained, demonstrated a typical pattern for PARD, long delays with little or no communication with the public interrupted by a handful of hastily called public meetings with no meaningful discussion or negotiation, and then PARD trying to rush through rules and regulations that clearly were drafted with little thought or concern for the public or stakeholders. I asserted that PARD should not be allowed to flout the City Council resolution. PARD's only response to my extensive comments was "See previous response," but there was no link or other indication regarding which, if any, response. This entire rules and regulations process must be put on hold until PARD finally agrees to end its bureaucratic delay and equivocations and meet face to face with the public as intended by the City Council.

PARD has again failed to properly notify the public and stakeholders of the comment period and deadline. Because PARD has failed to give sufficient public notice, any finalization of cemetery rules and regulations are completely illegitimate, invalid, and of questionable legality. In my January 11, 2018, comments, I set out how PARD had failed to properly notify the public of both the proposed rules and the comment period. I pointed out that PARD's own website was completely silent regarding the comment period for the rules and failed to set forth the deadline for comments. A member of the public wishing to comment on the rules would find only a link to the proposed rules and instructions: "For more information about public input on Cemetery Rules & Regulations, please contact cemeteries@austintexas.gov." I noted that it would have been an extraordinarily simple thing for PARD to post notice of the comment period and the deadline on its website and that its failure to do so underscored PARD's complete lack of transparency and engagement in this process. However, despite my previous comments, PARD has again has failed to put any public notice of the posting of the new proposed rules or regulations or comment period on its website. This was not rectified until June 19, 2018, less than one week before the end of the public comment period, after I personally pointed out this lack of public notice to Anthony Segura, assistant director, PARD. The revision is far too late and constitutes insufficient notice to the public. Although I had expressly pointed out this issue of lack of notice regarding the website during the first round of public comment, PARD obviously utterly ignored my comment. This brings into question whether the PARD gave any serious consideration to the public comments during the first comment period and underscores its continuing failure to engage in a transparent and open dialogue with the public. I did find the original posting of the new proposed rules on the City Clerk's website: https://austintexas.gov/news/proposed-cemetery-rules-have-been-resubmitted-city-clerks-office However, to find them a citizen must first know that new rules and regulations have been submitted and then be able to do a successful Internet search. There are Austin citizens who lack computer resources and are therefore effectively barred from participating. This certainly is not what I consider a good faith effort to obtain public comment or comply with the opening meetings law and invalidates the entire comments process.

Finally, why are there not open public meetings regarding this very important and sensitive issue? There are many citizens in Austin who are not computer savvy or who do not have access to the Internet. These citizens have no way of even knowing that new cemetery rules and regulations are being considered and no way of commenting on them. They therefore have been effectively disenfranchised by PARD's decision to limit public notice to a single site on the Internet and to avoid any open public meetings. Only those who have been involved in the process from the beginning and are on PARD's e-mail list have received actual notice of the new deadline, but this in no way constitutes any notice to the public at large. And to make matters even more confusing, the e-mail I received from PARD dated June 18, 2018, declares that the end of the public comment period runs through June 22, 2018, even through the posting with the City Clerk states that it runs through June 24, 2018. Someone who goes by the posting with the City Clerk and is not on PARD's e-mail list could miss the public comment period by two days. This too was rectified after I personally brought it to the attention of Mr. Segura, but again not until June 19, 2018, less than one week before the end of the public comment period. In my January 11, 2018, comments, I noted that the only other public notice I have seen was a single small sign posted at AMP. This time around I have not seen any sign posted at AMP and I must assume no signs have been posted in the other city cemeteries. Therefore, for this round, PARD has even made less of an effort to inform and involve the public. These facts demonstrate PARD's refusal to engage in an open and transparent public process and a complete lack of good faith on its part. PARD's own actions call into question the legitimacy of the process and the draft rules. As a department of the City of Austin, it is both illegal and unethical for PARD to deny the public input in negotiating and commenting on the cemetery rules and regulations. After such blatant malfeasance by PARD, any action by PARD at this point to finalize cemetery rules and regulations are completely illegitimate, invalid, and of questionable legality.

The proposed rules even more blatantly violate federal law barring discrimination. As another example of PARD's complete failure to either listen to or attempt to understand public concerns, in my January 11, 2018, comments, I pointed out that the proposed rules violated federal law. Under the previously proposed Section 14.4.12-General Regulations, (D) Ornamentation and Decoration, a person was expressly prohibited from placing any object, including ornaments, decorations, furniture, plants, or signs, in a cemetery that is not specifically permitted under the rules. An ornament or decoration would be permitted in a space only if it was: placed on a memorial; was no longer than six inches in any dimension; and would not interfere with mowing or other cemetery maintenance. I explained that in Jewish tradition, visitors leave a small stone when visiting a grave site as a symbol of the permanence of love and memory. The stones are traditionally placed on the headstone or at its foot and they are never meant to be removed. In the Jewish section of AMP, stones have been left by mourners and visitors on their loved ones graves for decades; there is even a receptacle holding stones for visitors to use. I stated that no document I received through my public information requests discussed or mentioned the stones left at Jewish grave sites and that this had never been an issue. However, I asserted that if the proposed rules were interpreted in the strictest sense, then the stones could only be placed on the headstone itself and all other stones would not only be prohibited, but would be subject to removal by the Cemetery Administrator. This would be a blatant violation of Jewish tradition and a desecration of Jewish resting places. I pointed out that Title II of the United States Civil Rights Act of 1964 prohibits discrimination on the grounds of race, color, religion, or national origin in any place of public accommodation.

The cemeteries are public parks and imposing any new regulation prohibiting Jewish citizens placing stones on graves when there has been no such limitation before and authorizing public employees to remove stones from Jewish graves would clearly discriminate against the Jewish citizens of Austin. Barring Jewish visitors from engaging in this long established ritual would not only make Jewish citizens feel unwelcome in a public cemetery but could result in Jewish families refusing to bury their loved ones there or even moving current burials to a more welcoming venue. I noted that that a stringent and narrow interpretation of this proposed rule could possibly violate the religious beliefs or traditions of other religious or ethnic groups as well. PARD's only response: "Due to public feedback we have added to the definition of 'Memorial' to

include a tablet, monument bench or other structure and have added a definition for 'Memorial Space' for the area the ornamentation can be placed which will further be described in 14.4.12 (D). The City of Austin and the Parks and Recreation Department are proud to comply with Title II of the United States Civil Rights Act of 1964. If you feel that there are specifics violations of Title II, please contact the Department to review." However, the revision of Section 14.4.12 (D) now provides that: "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." In other words, under the new proposed rules anyone who wants to fulfill the Jewish tradition and leave a stone on a loved one's headstone or grave has to somehow "firmly anchor and secure" every individual pebble, not using "concrete or chain." How exactly does PARD expect visitors to comply with this—use all-weather duct tape to secure the stones to the headstone? Superglue a tiny spike onto every single pebble and hammer it into the ground?

Further, are PARD employees going to use public time and resources to desecrate Jewish graves by removing every small stone that is not deemed individually secured? This new proposed rule is even more blatantly discriminatory than its predecessor, not only violating the rights of Jewish citizens, but possibly those of other religious and ethnic groups as well. Further, in October of 2013, I and other stakeholders were told that PARD wanted to enforce the rules and regulations in part because of concerns regarding public safety. We were told that people were leaving dangerous, deteriorating, or inappropriate items on graves, including non-weather-proof items as clothing and paper, glass or other breakable items, items that could blow away or fall over, or items such as cigarettes or alcohol. However, under the new proposed rules, any item can be placed on the "memorial" or in the "memorial space" as long it is "firmly anchored and secured." This means alcoholic beverages, packages of cigarettes or cards, clothing, and non-weatherproof items like paper flags and plastic banners can be left on the memorial as long as they are anchored in some way "to prevent any part from leaning, falling over, breaking or blowing outside of the memorialization space." In other words, placing a small pebble on a headstone in accordance with long-established Jewish tradition is a violation of the new proposed rules but it would acceptable to leave a bottle of beer as long as it is anchored by sticking it neck first in the ground or a pack of cigarettes, a piece of clothing, a paper sign, a stuffed toy, or any other object, as long as it is secured to a stake.

On January 26, 2018, I received electronically a handful of disparate documents in response to my request. I did not receive a single document showing that PARD had even implemented or attempted to comply with either the City of Austin Code or state law regarding PCTF. I did discover that as of 2016, there was $1,011,000 in PCTF and even more significantly that from 1991 through 2016, $2,216,255 of expenditures were made from PCTF. Under both state and local law the interest, revenue, or other accrual or increase in the funds deposited for a specific cemetery lot or burial space must first be applied to maintain that specific lot or space. If there is any revenue in excess of the amount necessary to accomplish the trust for that specific lot or grave, that excess may be used only to beautify the cemetery where the lot or grave is located. There is no other permitted use of this revenue. However, there were absolutely no records showing that these expenditures were made in accordance with such state and local law. In fact a number of these expenditures were denoted as "Public recreation and culture." If this indeed was what the proceeds of PCTF were spent on, it is a blatant violation of state and local law. On January 11, 2018, in my comments to PARD regarding the proposed cemetery rules and regulations, I discussed how the implementation of a cemetery trust to allow citizens to fund the perpetual care of grave sites would provide significant funding for PARD, as well as provide for a more ecologically sustainable and attractive cemeteries, noting that Austin has in fact implemented such a trust. I stated that I would be more than willing to pay into such trust to preserve and care for the grave site garden for my parent's graves. Properly administered, I noted, such a trust could not only resolve issues regarding the grandfathering of existing grave site memorials and gardens, but could provide much needed funds to PARD for maintaining and beautifying the cemeteries as a whole. I have never received any response from PARD regarding my PCTF

comments; similar comments from Ms. Huckabee regarding PCTF also went unaddressed, PARD responding with only a bland bureaucratic "your input is valuable to us" and utterly failing to answer her remarks regarding PCTF.

PARD's mishandling of PCTF requires that any further actions by PARD regarding the cemetery rules and regulations must be placed on hold until PARD complies with both state law and Austin ordinances and fully implements such a trust. This fund should also be incorporated in and made part of the cemetery rules and regulations as it directly involves space holder's rights and the maintenance of individual grave sites and the city cemeteries. I recommend the following addendum to the proposed Section 14.4.7-Instructions for Space Holders and Space Holder's Rights:(F) The City of Austin has implemented the Perpetual Care Trust Fund pursuant to Section 713.002 (Local Trust for Cemetery), Texas Health and Safety Code, to assure the perpetual maintenance of the city cemeteries. Participation in the trust fund is wholly voluntary. A person may submit an application to act as trustee and pay a deposit into the trust fund. The deposit is invested in interest-bearing bonds or governmental securities and the interest, revenue, or other accrual or increase in the funds deposited for a specific cemetery lot, grave, or burial space must be used to maintain that specific lot, grave, or burial space. Any revenue in excess of the amount necessary to accomplish the trust for a specific lot, grave, or space may then be applied to beautify the cemetery where the lot, grave, or space is located. For more information, contact the Cemetery Administrator or the City Clerk.

The proposed rules grant the Cemetery Administration extensive powers without any checks or balances. Proposed Section 14.4.12-Ornamentation and Decoration, Subsection (A) authorizes the Cemetery Administrator to 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. This gives the Cemetery Administration complete and unchecked power to remove objects from grave sites based solely upon his or her discretion and without any notice or review. Further, there is nothing in the rules requiring that the removal be done in a careful and caring manner or providing for the repair or remediation of any damage or injury to a grave site resulting from removal of the object. I recommend the addition of the following revisions to Subsection (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 if:(1) the Cemetery Administrator gives no less than sixty (60) days written notice to the space holder, sent certified mail, return receipt requested, to the space holder's last known address. Such notice shall set out in detail why said object is not specifically permitted under these rules and provide the space holder the option to remove the object or to bring the object in compliance with the rules. The notice period begins upon the date the space holder receives such notice. This subsection does not apply if the object presents a reasonable current, immediate, and significant risk to the public's health or safety or the notice is returned as undeliverable; and(2) any removal of an object must from a lot or space must be performed in a caring and considerate manner and in the least intrusive way possible. Any and all damage or injury to the lot and space resulting from such removal must be immediately and completely repaired.

Under Subsection (E) of this same section, the Cemetery Administrator may grant written approval for trees, shrubs, or other live plants. However, there is nothing requiring that any refusal by the Cemetery Administrator be reasonable. Further, considering issues regarding increasingly hot summers, continuing drought conditions, and watering restrictions, it would be in PARD's and the public's best interest for PARD to actively encourage the planting of native or adapted drought-resistant plantings. Ms. Huckabee is a master gardener who specializes in native and xeriscape plants. In 2006, with the implicit permission of PARD, she planted a memorial garden on her daughter's grave incorporating a number of native or nativized plants, including oxblood lilies and purple coneflowers. These plants have continued to thrive and bloom, adding color and greenery even during the summer when, because of drought and watering restrictions, the surrounding grounds were dead, brown, or bare. I have planted a garden on my parents' graves using plants recommended by Ms. Huckabee, which included hardy and drought-resistant

Engelmann's daisies with bright yellow blooms and beautiful evergreen leaves, pink and purple skullcaps, and a blue twist leaf yucca. Not only did these plants remain green all summer, the daises and skullcaps have brightened the area with their flowers. The plants were specifically selected to be compact and will not spread or grow outside of the boundaries of the graves. Encouraging the public to become involved in beautifying the cemeteries with such hardy and attractive plants will greatly improve the cemeteries' appearance and appeal, limit the need for water-hungry grass, and cut back on the need for regular mowing and other maintenance. Therefore, I recommend adding the following sentences to Subsection (E): Such approval shall not be unreasonably withheld. The Cemetery Administrator shall encourage the planting of trees, shrubs, and live plants that are drought- and freeze-resistant, native or adapted, low- or no-maintenance, and that do not spread through a rhizome or root system. Under Subsection (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 the rules. Again, this gives the Cemetery Administrator unlimited power and discretion. I recommend the following sentence be added to Subsection (F):Any removal of a tree, shrub, or other plant within a space or grave site, other than a plant that is dead, must be in compliance with (A) of this Section.

Necessary Rule Revisions: 14.4.2-Applicability: These rules apply to, and in, all cemeteries managed by the Parks and Recreation Department. These rules and regulation take effect upon the date of adoption and are solely prospective. All existing uses of and modifications to lots, spaces, memorials, and memorial spaces by space holders are expressly grandfathered, except as otherwise provided herein.14.4.7-Instructions for Space Holders and Space Holder's Rights (F) The City of Austin has implemented the Perpetual Care Trust Fund pursuant to Section 713.002 (Local Trust for Cemetery), Texas Health and Safety Code, to assure the perpetual maintenance of the city cemeteries. Participation in the trust fund is wholly voluntary. A person may submit an application to act as trustee and pay a deposit into the trust fund. The deposit is invested in interest-bearing bonds or governmental securities and the interest, revenue, or other accrual or increase in the funds deposited for a specific cemetery lot, grave, or burial space must be used to maintain that specific lot, grave, or burial space. Any revenue in excess of the amount necessary to accomplish the trust for a specific lot, grave, or space may then be applied to beautify the cemetery where the lot, grave, or space is located. For more information, contact the Cemetery Administrator or the City Clerk.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 if: (1) the Cemetery Administrator gives no less than sixty (60) days written notice to the space holder, sent certified mail, return receipt requested, to the space holder's last known address. Such notice shall set out in detail why said object is not specifically permitted under these rules and provide the space holder the option to remove the object or to bring the object in compliance with the rules. The notice period begins upon the date the space holder receives such notice. This subsection does not apply if the object presents a reasonable current, immediate, and significant risk to the public's health or safety or the notice is returned as undeliverable; and(2) any removal of an object must from a lot or space must be performed in a caring and considerate manner and in the least intrusive way possible. Any and all damage or injury to the lot and space resulting from such removal must be immediately and completely repaired. E) Trees, shrubs, or other live plants are permitted with the written approval of the Cemetery Administrator. Such approval shall not be unreasonably withheld. The Cemetery Administrator shall encourage the planting of trees, shrubs, and live plants that are drought- and freeze-resistant, native or adapted, low- or no-maintenance, and that do not spread through a rhizome or root systems. (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. Any removal of a tree, shrub, or other plant within a space or grave site, other than a plant that is dead, must be in compliance with (A) of this Section.

14.4.15-Notice and Publication of Rules The Parks and Recreation Department shall ensure that rules, and any proposed or adopted revisions or changes, are published and readily available to the public, including,

but not limited to, prominently posting these rules on its website and making copies of the rules available at all cemeteries under its management. Further, the Parks and Recreation Department must provide a written copy of the rules to any and all persons who inquire about purchasing or who purchase a lot or space within any cemetery managed by the Parks and Recreation Department.

PARD Response: Thank you for your feedback on the proposed cemetery rules amendment. Your input is valuable to us and helps Cemetery Operations understand the features, functional concerns, and questions that are most important to you. We carefully review all feedback to determine how to best accommodate both current and new customers. The community input on the rules has been extensive and dates back to 2013. The Parks and Recreation Department adheres to the City of Austin's Public Participation Principles. We believe that those impacted by the decisions we make as public servants have the right to participate in that decision making process. City Council set out the process for the adoption of rules under City Code Chapter 1-2. Council directed staff to create cemetery rules under that process in Section 10-1-2 (B). PARD is acting within its authority outlined in the City Code and Council Resolution. Chapter 1-2 outlines the need for both stakeholder input and the opportunity for a rule to be appealed to the City Manager.

The current proposed rules are a result of all of that feedback; however, due to the omission of an email address contact in the posting and issues with links provided, the Director decided to extend the comment period by reposting the proposed rules with revisions based on the public feedback received in the last posting which was previously listed at R161-17.17. This means PARD has extended the rules process implementation more than once. The intent of rules in a public setting is to protect the rights of all customers while providing a safe and accessible environment. The proposed rules are less restrictive and more safety oriented than the current rules adopted in 1978. The current rules were not consistently enforced which resulted in safety hazards, constrained maintenance, and inconsistent practices. Before implementing equal enforcement we have taken the opportunity to update the language and incorporate current needs and practices. Special considerations were made to accommodate as many of the grieving practices as possible in a safe and fair manner.

As reported to Mayor and Council under the January 26, 2018 Memorandum, PARD has engaged in several citizen community meetings. These include:

- October 27, 2016- The first community meeting was held, and public feedback was accepted via Speak- Up Austin;
- February to April, 2017- Conversation Corps led guided discussions in two locations, Yarbrough Library and Botton, Durst, Howard, and Spence Building. The conversations focused on grave ornamentation, associated religious and cultural practices, and the maintenance requirements that restrict ornamentation placement and materials. The goal was to gather input from stakeholders of many different professions, ethnic backgrounds, and religious communities. A summary of input through the facilitated conversations, and Speak-Up Austin discussion was shared with stakeholders.
- June 2017-The draft Rules were completed. This draft incorporated recommendations from the 2015Cemetery Rules Project Report, stakeholder feedback, as well as safety and maintenance challenges. PARD considered carefully ornamentation to determine practices that could be permitted that are now restricted in the currently adopted Rules. The draft Rules were subsequently reviewed by the City of Austin Law Department.
- October 2017- The updated Rules were presented to stakeholders during two public engagement meetings. Additional input and feedback was received and was incorporated into the final draft of the Rules. Following the two community meetings in October, PARD added section 14.4.12-General Regulations, (F) Appeals that outlines the process for anyone wishing to appeal a decision made by the Cemetery Administrator under the Rules.

We greatly appreciate the in-depth questions that you have proposed and I would like to relay that the department will continue to take them into consideration. PARD would like to address and answer these questions:

1. PARD is working on refining our internal processes in relation to the Perpetual Care Fund (PCF) and henceforth working with the Controller's office and the Legal Department to ensure that we can utilize the fund accordingly. As Acting Director McNeeley referenced in her Memorandum on May 8, 2018, PARD is working on challenges and recommended actions associated with the PCF. This will require continued cooperation with multiple departments to resolve these issues and I can assure you we are working as diligently as possible to remedy these challenges.

2. "Memorialization Space", as defined in 14.4.3(10) and 14.4.12- ornamentation will be permitted with restrictions to ensure the safety of individuals coping with a loss, the visitors, and the staff tasked with maintaining the cemeteries. The intent is to allow for cultural and religious expression. Stones, flowers, and memorabilia may be placed at the head of a space or on the headstone. As outlined under 14.4.12 (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.

   Native vegetation will be allowed as long as it does not impede on the space of other monuments with the written approval of the Cemetery Administrator, 14.4.12 (E).

3. Unfortunately, PARD is not able to "Grandfather In" preexisting ornamentation if it impedes on the space of other monuments or presents a health and or safety issue. As outlined in 14.4.12 (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. Please be advised however that under 14.4.13 (E)-(2), (3), (4) A person may appeal a decision made by the Cemetery Administrator under these rules to the Director. An appeal must be made in writing within 30 calendar days of the date of the Cemetery Administrator's decision. The Director shall render a written decision on an appeal within 30 calendar days of receiving the appeal.

4. PARD has recently hired an architectural conservator to fill the position of Environmental Program Coordinator and will be responsible for developing and implementing a cemetery monument conservation program, based on recommendations in the City of Austin Cemeteries Master Plan.

5. A complete and thorough examination of the regulations associated with the Perpetual Care Fund and the impacts related to sustainable cemetery maintenance are being done to evaluate legally allowable funding mechanisms related to the long-term cemetery maintenance. As outlined to Mayor and Council in the May 8, 2018 Memorandum, PARD is currently working on challenges and recommended actions to formulate a better means for administering the Perpetual Care Fund

and as PARD continues to work with multiple departments anticipate a resolution in the near future.

We understand implementing these rules pose challenges and we are more than willing to discuss individual needs with the understanding that we must preserve the rights of all customers and provide overall safety. We will take your suggestion into consideration as we look to first adopt the rules as outlined under the Note of Proposed rule, R161-18.08. With the updated rules and a continuous open line of communication, we hope to be able to better serve our community.

Name: Kimberly Kissoyan
Date: 06/24/18
Submitted by: Email **Rules Section:** 14.4.3, 14.4.12

Comment: My nephew, Wiley Cooper, is buried at Austin Memorial Park. For us, his grave is a vital link to a life cut way too short. We go there to remember him, to feel close to him, to think about what might have been. We leave gifts and memories, symbols of an imagined life that never got to be. For almost ten years, we have kept him alive in our hearts, in part through the memorabilia that we have collected at his gravesite. We have done this in accordance with the rules that were in place when the plot was purchased, and we have done this with open, loving, broken hearts. To change the rules now, to label our shrine as unfit, to force us to remove our offerings and memories, would be cruel. At the very least, Austin Parks & Recreation needs to grandfather in the plots that already exist, so that they can remain the warm and beautiful and deeply personal places that they are. Austin Memorial Park is a beautiful place. It displays the creativity of many broken hearts. It shows all the special and unique ways that people remember each other. It honors memories and religious traditions. It should be protected, as-is, not changed into something sterile and uniform. Please, do not change the rules on us. Our hearts were broken when Wiley died, and we will never be the same. Do not break them again. Do not make us unravel this sacred spot.

PARD Response: Thank you for your feedback on the proposed cemetery rules amendment. Your input is valuable to us and helps Cemetery Operations understand the features, functional concerns, and questions that are most important to you. We carefully review all feedback to determine how to best accommodate both current and new customers. We agree that people should be able to grieve in the manner of their choosing. The intent of rules in a public setting is to protect the rights of all customers while providing a safe and accessible environment. The proposed rules are less restrictive and more safety oriented than the current rules adopted in 1978. The current rules have not been consistently enforced so before implementing equal enforcement we have taken the opportunity to update the language and incorporate current needs and practices. We understand implementing these rules pose challenges and we are more than willing to discuss individual needs with the understanding that we must preserve the rights of all customers and provide overall safety to everyone.

"Memorialization Space", as defined in 14.4.3(10) and 14.4.12- ornamentation will be permitted with restrictions to ensure the safety of individuals coping with a loss, the visitors, and the staff tasked with maintaining the cemeteries. The intent is to allow for cultural and religious expression. Stones, flowers, and memorabilia may be placed at the head of a space or on the headstone. With the updated rules and a continuous open line of communication, we hope to be able to better serve our community.

Unfortunately, PARD is not able to "Grandfather In" preexisting ornamentation if it impedes on the space of other monuments or presents a health and or safety issue. As outlined in 14.4.12 (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. Please be advised however that under 14.4.13 (E)-(2), (3), (4) A person may appeal a decision

made by the Cemetery Administrator under these rules to the Director. An appeal must be made in writing within 30 calendar days of the date of the Cemetery Administrator's decision. The Director shall render a written decision on an appeal within 30 calendar days of receiving the appeal.

Name: Laura DeGuire Cooper
Date: 06/24/18
Submitted by: Email **Rules Section:** 14.4.3; 14.4.11; 14.4.12; 14.4.13; Ch. 1-2 City Code

Comment: Hello again. I am writing to express my official comments on the revised cemetery rules. I am copying all of City Council, the mayor, and the City Manager. I have been in touch with Kathie Tovo's Staff-person, Ashley Richardson, who has been very helpful at communicating with me about this issue in the past. Unfortunately, I stand by much of what I had to say in my initial comment during the first round of this, which I am happy to provide to you again if needed. I have also exhausted my resources since the last comment period and have been unable to get those who commented last time to comment again because of the amount of energy it is taking everyone to work hard to show their outrage over other human and political issues right now. Please do not take this to mean that the new rules have more support. They do not. They just aren't going to get the attention they deserve this go round due to other issues. I personally have felt like asking others to fight for the rights of the dead might be a little inappropriate right now. So I will do my best to speak on their behalf. Know that I still have many, many people behind me. First, I want to express my disappointment in the kinds of problems with communication you continue to have. There have been two different dates given for the end of the comment period. I am glad you are honoring the later date, but I can't help but wonder if there are people who thought the comment period ended on the 22nd who were not able to submit their comments. Also, rather than email those who submitted comments last time to let them know about the new comment period and revised rules, the only people who were notified were those on your email list. Luckily I am one of those people, but attempts to announce the rules and comment period should have been sent to all those who sent comments previously. I know many people who are very angry that they never received notice. Also, it was only in the last couple of weeks that you even created the note on your website about the comment period and rules. For anyone who did happen to find out about the comment period or revised rules, I don't know how they could have hunted this information down. When did you put that on the website? It must have been 2-3 weeks after the comment period opened. This process has been continually lacking in organizational skills and transparency. And this is just from the position of the process, not even touching on the content of the rules. This comment period has been just as bumbled as the last one.

Are you aware that there are many concerned stakeholders who speak to each other and share information? I am in touch with a group of people I met at the last "community meeting/divide and conquer presentation." They have been investigating the perpetual care trust. I will admit that though I can see that has been mismanaged and will certainly bring a ton of legal and ethical problems for you, this fund is not my current concern. I was told of a meeting they were able to have with Ms. McNeely and a man named Anthony Segura. It looks like maybe he is some new part of the cemetery staff now. They expressed their concerns about their plot, the perpetual care trust, and the general illegality and immorality of the proposed rules. They report that they were told that existing ornamentation would be grandfathered in, yet there is nothing about this written into the current draft of the rules. What are you grandfathering? Is it on a case-by-case basis? Where is it in the rules that the possibility of grandfathering exists? Are you trying to quiet some squeaky wheels or will you be offering this option to everyone? How do I go about getting my plot grandfathered in and what about the poor folks who are not privy to all of this? Do they just have to deal with the removal of their ornamentation? There is nothing in the rules that says that you will contact individuals before removing and digging up their memorials. Why would you not do your due diligence to contact individual stakeholders who don't know about the changes? A sign at the cemetery is not good enough. They need a chance to be contacted as human beings with a stake in your changes. You have to

know that that level of communication is worthy of your time. This is not a park, this is a sacred space. You have to get that by now. Treat this as a sacred process and give it the dignity it deserves. As to the content of the rules, I can see that you made a change here or there. Still, the rules are impossibly vague and confusing and I can't imagine how you expect people to follow them. I'll need to take this section by section. Are you still reading? In the Definitions section: I assume the word "Lot" to mean the same as "plot" and to be the exact measured space of the purchased land for each owner. For example, when our son died, we purchased 3 side by side plots in the infant/cremation section and buried him in the middle with space for us to go to later. We had spoken with the cemetery staff member who showed us different areas of the cemetery and assured us that the area we chose, the infant/cremation section in the northwest area of Memorial Park Cemetery, was the area where the most freedoms were afforded. We were told that that area allowed us to do whatever we wanted.

We then purchased a headstone (one of the words you use under the term "Memorial" along with many others) that spans all three plots. I assume that this means that our 3 plots are what you would call a "lot" based on the definition you provide. When we made this purchase and the burial (interment) was complete, we were left with a large patch of dirt. We ordered our large 3 person family headstone and a smaller rectangular "flush" memorial with an inscription that we could place directly over the spot where our son was buried. I wanted to always know exactly where he was. All of this was to code and permissioned. We also got started in conceptualizing what our memorial space would look like in addition to the two monuments. We walked around the cemetery and noted what we liked and didn't like and listened to our own grieving parent hearts and knew that we wanted a way to mark our space, to encircle our son, and to hold this space as sacred to us. We contacted the cemetery staff and told them of our plan. We told them that we wanted to frame the lot in bricks with two rows on the outside edges to plant bulbs and to put a rock garden over the space in the middle, around the smaller flush marker. They not only approved our design, they offered to come out and put flag markers at the four corners for us so that we knew the boundary lines of our lot and would not encroach on other lots or on the easement. We told them that we wanted a bench and asked them whether we needed to keep it out of the easement, and they said that our bench was welcome on the easement between two trees that had been planted there by other stakeholders. My husband enlisted a friend and they worked their tails off to create the most beautiful and meaningful space we could have imagined. We bought and planted the bulbs, we brought in river rocks, we built our bench on the easement, and we did all of this with the permission of the cemetery staff in 2008 and 2009.

It wasn't until 2017 that I even became aware of the history of unenforced rules and the efforts to enforce the old rules. I joined this fight late. I didn't even know there was an email list for the cemetery department. I had no idea of the tumult. I can remember the first time that we showed up to have all of our baby toys and statues missing. I can remember crying and wondering why someone would steal our mementos and then finding out that the cemetery had started removing "deteriorating" items from graves. I was told that I should have read the sign that was posted. By the way, though some of the items were sun-damaged, some, like a cast-iron frog statue, should never have been removed. I learned my lesson the hard way at that time and it hurt like hell, but I didn't say anything. The grief was too fresh. I can't stand the thought that this is going to happen in even bigger ways to other people. That they will show up to visit a loved-one's grave to find that they have no bench to sit on, no statue that they left on the one year anniversary, no rocks from their travels or from the well-wishers of the Jewish faith for whom those rocks are a part of their religious tradition. You can't just decide to do this to people. You have got to make a good faith effort to contact someone if you have a problem with their memorial. Never mind the immorality of such an action, but you cannot decide to change the rules and hope everyone gets wind of it somehow. How do you contend with the Jewish population who carry out their religious tradition of leaving rocks at the grave site? Do you tell them they can no longer practice this aspect of their religion? Do you remove this history? You can bet you will see lawsuits over that. I ask again, what are you trying to accomplish? What is the reason you want to undo what has been done? Is it expediency? Is it because your budget is too low to have workers work more carefully? Is it because of a handful of people whose sites have become dangerous due to glass containers?

Or a handful of people who are offended by the way others choose to memorialize and think things "look trashy?" This is such a large scale sweep. You have to use a little more finesse here. It is just the nature of this "park."

Next, you are calling a "Memorial" "any marker, monument, headstone, tablet, or monument bench on or in any space for identification or in memory of the individual interred there. That is a pretty broad definition, but I am with you so far. But you go on in the section on Memorials (14.4.9) to say that only one memorial is permitted at the head of the space. All memorials not at the head are supposed to be flush with the ground. How is a bench supposed to be flush with the ground? You give size dimensions for all memorials (again with no reference to benches), but how on earth can you justify not allowing anything that has already been done outside of those parameters to be removed? You simply must grandfather these in. There needs to be something in the rules that says that from this date forward, lots will be created with these rules. You can't go back in time. This section also mentions that "space or lot corner markers" will be allowed and must be set flush with the turf inside the space. We all know how the earth shifts and there is no provision for how to keep these markers flush. Also, are you saying we need to go in and rip up all but the corner markers that surround our lot? And what about the river rocks? It sounds like you have allowed the folks I have been talking to to keep their garden and rocks at their plot. Are you offering this to us as well? What about everyone else? Where is the language to let us know whether you plan to come in and remove all of our history? And for the new people beginning to envision their lots, will you provide each person with a copy of the rules? Will you advise them that they need to contact the CA before doing anything? And will the CA actually take the time to have these meetings? How will you explain to them that they can't have a rock garden or a second memorial or a bench like their neighbor's? You might want to ask yourself where the lines really need to be drawn and whether there are better ways to get the things you really need.

The section on Ornamentation and Decoration gives too much power to the cemetery administrator and gives stakeholders zero chance to advocate for themselves. They "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? Can you give some examples of this? Can you tell us what you are seeing as dangerous? Is it glass? Because "don't bring glass to the cemetery" would be something really easy to understand and follow. "I'll remove what I want, when I want" is unacceptable. Part B in this section allows for "an ornament, potted plant, floral piece, basket, or other decoration." This is incredibly vague. How are we supposed to know what you will and won't allow or deem dangerous? So this vague ornament needs to be "located entirely within the memorialization space and firmly anchored and secured using means other than concrete or chain..." I honestly have no idea what this means. Is a rock an ornament? Is a teddy bear an ornament? How exactly do you suggest that we anchor a rock or a teddy bear? If a "floral piece" is an ornament, how does that get anchored? And in section C, are you saying that flowers in vases should be in something unbreakable? Again, couldn't you just say "no glass or breakable items?" In section E, are these live plants that you reference within the memorial space? It is listed under the ornamentation section, so I assume so. Are you saying that anyone with any kind of live plant in their memorial space needs to get written approval from the CA? If so, what is the process for this? What about those that have been around for years? If they don't contact you, will it be removed? Will you reach out to people about this? Again, I can see how you might want this rule for new lots, but what about those of us who have been here for years? I know to get in touch, but what about everyone else? Section F says that you can pull people's plants up if they are dead, deteriorated, or interfere with mowing. First of all, do your staff have horticulture knowledge? Do they know the difference between dead and dormant? Do they understand what an annual is? Who gets to make this decision? And interfering with mowing- how do we know what might interfere with your mowing? Will you contact people before you dig up their thriving plants that interfere with your mowing? What is the process for this? If I have permission to keep my bulbs growing will you want to pull them when they die each year?

Also, the section on Decisions and Appeals- who is this written for? Is this for people requesting to do something (plant a shrub, etc.) in the future? Is this the procedure for people to follow who are denied what they are asking to do ahead of time? Or are you saying that in order to not have our gravesites desecrated because of non-compliance we all need to come to you to ask to keep our memorials? Because that is important to know. Assuming it means that I need to come to you and ask your permission, how will you let me and all of the others know that we need to come to you to ask your permission? Will you reach out to everyone individually? I am glad to know that there is a process in place if you deny me what has already been granted to me, but I need a clearer description of who needs to be coming to you. Also, who is "The Director?" Can you identify a job title in this section? Lastly, section G. I appreciate you realizing the importance of benches at the cemetery and changing the rules to include them. I am even willing to move our bench out of the easement we were told we could use, even though it crowds it right up to the flush marker in the middle of our lot and I never would have designed it this way had I known that we would lose use of the easement. Where I get lost and confused is in section G5. You are saying that you will remove any bench that you deem to be deteriorating. You say the bench should be in "safe and stable condition." If there comes a point where you feel like a bench does not meet your criteria for "maintained," do you not think it would be right to at least reach out to the lot owner and let them know before removing their bench? And if you do remove it (without ever contacting the owner) what exactly are you saying it must be replaced with? You say it "may only be replaced by the space owner in accordance with the standards in 14.4.9 of these rules. There is not a single reference to benches in this section. What are you referencing in this section? The rules cannot go forward without an explanation and elaboration. Lastly, and mostly because of a true and earned lack of trust with this department and the way it has handled communication and transparency in the past, I am going to need to see some elaboration on 14.4.14 D. It states, "The City may revise these rules as authorized by City Code." Please tell me what this means. Are you saying you can revise these rules in the future? Are you justifying the current change? Are you saying you have the power to make these changes without input from stakeholders or the City Manager or City Council? I need you to be very clear what this means.

In closing, I need you to know that this draft of the rules is unacceptable in its current format. It is vague, confusing, and unenforceable. It may even be illegal. You cannot expect us to understand what this means. You need to go back to the drawing board and address the issues brought up here and in the comments of others. I am exhausted from this process, and I am sure you are too, but that doesn't mean that either one of us gives up. Keep trying. This is important enough to get right. I will not let this slip through just because it is hard. You will have to reckon with me and all the others with a vested interest in this outcome. I'm hoping that in the midst of all of the other pressing issues in this city, we do not lose sight of this sacred issue. The directive was that PARD would work with the community, and the City Manager and Council to collaborate on these rules. This has not happened. We are still waiting. My husband was recently contacted by Spectrum news to do an interview on Father's Day about this issue. I'd like you to watch this brave, private man share his emotions on camera. This means so much to us. Please keep fighting for us. *http://spectrumlocalnews.com/tx/austin/news/2018/06/17/austin-seeks-feedback-on-proposed-cemetery-rules*

PARD Response: Thank you for your feedback on the proposed cemetery rules amendment. Your input is valuable to us and helps Cemetery Operations understand the features, functional concerns, and questions that are most important to you. We carefully review all feedback to determine how to best accommodate both current and new customers. The community input on the rules has been extensive and dates back to 2013. The Parks and Recreation Department adheres to the City of Austin's Public Participation Principles. We believe that those impacted by the decisions we make as public servants have the right to participate in that decision making process. City Council set out the process for the adoption of rules under City Code Chapter 1-2. Council directed staff to create cemetery rules under that process in Section 10-1-2 (B).PARD is acting within its authority outlined in the City Code and Council Resolution. Chapter 1-2 outlines the need for both stakeholder input and the opportunity for a rule to be appealed to the City Manager.

The current proposed rules are a result of all of that feedback; however, due to the omission of an email address contact in the posting and issues with links provided, the Director decided to extend the comment period by reposting the proposed rules with revisions based on the public feedback received in the last posting which was previously listed at R161-17.17. This means PARD has extended the rules process implementation more than once. The intent of rules in a public setting is to protect the rights of all customers while providing a safe and accessible environment. The proposed rules are less restrictive and more safety oriented than the current rules adopted in 1978. The current rules were not consistently enforced which resulted in safety hazards, constrained maintenance, and inconsistent practices. Before implementing equal enforcement we have taken the opportunity to update the language and incorporate current needs and practices. Special considerations were made to accommodate as many of the grieving practices as possible in a safe and fair manner.

As reported to Mayor and Council under the January 26, 2018 Memorandum, PARD has engaged in several citizen community meetings. These include:

- October 27, 2016- The first community meeting was held, and public feedback was accepted via Speak- Up Austin;
- February to April; 2017- Conversation Corps led guided discussions in two locations, Yarbrough Library and Botton, Durst, Howard, and Spence Building. The conversations focused on grave ornamentation, associated religious and cultural practices, and the maintenance requirements that restrict ornamentation placement and materials. The goal was to gather input from stakeholders of many different professions, ethnic backgrounds, and religious communities. A summary of input through the facilitated conversations, and Speak-Up Austin discussion was shared with stakeholders.
- June 2017-The draft Rules were completed. This draft incorporated recommendations from the 2015Cemetery Rules Project Report, stakeholder feedback, as well as safety and maintenance challenges. PARD considered carefully ornamentation to determine practices that could be permitted that are now restricted in the currently adopted Rules. The draft Rules were subsequently reviewed by the City of Austin Law Department.
- October 2017- The updated Rules were presented to stakeholders during two public engagement meetings. Additional input and feedback was received and was incorporated into the final draft of the Rules. Following the two community meetings in October, PARD added section 14.4.12-General Regulations, (F) Appeals that outlines the process for anyone wishing to appeal a decision made by the Cemetery Administrator under the Rules.

Based on the feedback, we have revised rules to include "Memorialization Space", as outlined in 14.4.3 (10) and 14.4.12. Ornamentation will be permitted with restrictions to ensure the safety of individuals coping with a loss, the visitors, and the staff tasked with maintaining the cemeteries. The intent is to allow for cultural and religious expression; stones, flowers, and memorabilia may be placed at the head of a space or on the headstone.

PARD does recognize religious events and is culturally sensitive to respecting those customs such as cultural ceremonial ornamentation. PARD asks that adequate notification of proposed cultural ceremonial ornamentation is provided to the Cemetery Administrator in advance to ensure all requests are reviewed and responded to within a timely manner. We are doing this as a pre-cautionary step toward greater diversification and inclusion, particularly in light of hate crimes, cemetery vandalism, etc. that have increased over the past couple of years. It is not intended to exclude people from freedom of expression, but to simply support the changing times and to insure that all of the requirements are met in 14.4.9-11.

We have revised the proposed rules to accommodate existing benches with restrictions, as outlined in 14.4.12 (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.

New benches will only be allowed if they are monument benches that are at the head of the space as outlined in 14.4.9(B). The City is also considering a memorial bench program.

Unfortunately, PARD is not able to "Grandfather In" preexisting ornamentation if it impedes on the space of other monuments or presents a health and or safety issue. As outlined in 14.4.12 (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. Please be advised however that under 14.4.13 (E)-(2), (3), (4) A person may appeal a decision made by the Cemetery Administrator under these rules to the Director. An appeal must be made in writing within 30 calendar days of the date of the Cemetery Administrator's decision. The Director shall render a written decision on an appeal within 30 calendar days of receiving the appeal.

We understand implementing these rules pose challenges and we are more than willing to discuss individual needs with the understanding that we must preserve the rights of all customers and provide overall safety. We will take your suggestion into consideration as we looking to first adopt the rules as outlined under the Note of Proposed rule, R161-18.08. With the updated rules and a continuous open line of communication, we hope to be able to better serve our community.

Name: Cindy Ikard
Date: 06/24/18
Submitted by: Email **Rules Section:** 14.4.9, 14.4.11, 14.4.12, 14.4.13

Comment: I have a vested interest in the proposed cemetery rules because my daughter is buried at Austin Memorial Park Cemetery, and the cemetery will be my final resting place as well since I own the plot next to my daughter's. My family specifically chose Austin Memorial Park because of the personalized nature of the gravesites at the cemetery. It is important to me and other members of the public that an adequate form of personalization continue to be allowed at the burial spaces. It is also important to me that appropriate language exist in the rules to allow the City to address renovation of tilting monuments, since this is such a widespread problem at the cemetery, and to ensure that memorials are properly centered to preventing crowding of nearby gravesites. Below are my specific comments.1. 14.4.3(B) (10)-Terms; Definitions--Memorialization Space: I am pleased that the City has reinstated the concept of a memorialization space at the head of a gravesite. This shows the City has been responsive to public comment. I do, however, feel that the City needs to be somewhat more generous with the definition of the memorialization space. For spaces other than for cremains, the memorization space is designated as extending 24 inches from the top of the space and 42 inches above the horizontal plane of the space. Since a monument may be up to 18 inches wide, that would leave only 6 inches of space to add personal decorations for those graves that have monuments of maximum width. That is just too limited. I would suggest that there be at least 12 inches beyond the maximum allowed width of a monument. To do this, the

definition should be changed to say: "The memorialization space is designated as extending 30 inches from the top of the space..."

In addition, the height of the memorialization space appears to be arbitrarily designated as no higher than the maximum height of a monument – 42 inches. People should be able to use shepherd's hooks to install decorations in the small memorialization space if they want to. Shepherd's hooks of the most commonly available size should be allowed so people can conveniently buy the hook at their local stores. I have checked the local stores and the 64 inch shepherd hook can be purchased at most locations. After installation into the ground, an item hanging from this size hook is elevated to 54 inches, which is an attractive height placed next to a monument – not too high and not too low. I think it would be good public relations for the City to allow this by changing the height definition of the memorialization space to be 54 inches above the horizontal plane of the space. These changes would give the public a little bit more flexibility while still maintaining a limited size for the memorialization space. The City can afford to be more generous in this matter without impacting the beautification of the cemetery or maintenance concerns. The City has little to lose and a lot to gain in terms of public opinion by making these changes. I therefore highly recommend that the definition be revised to read: "For other spaces, the memorialization space extends 30 inches from the top of the space and 54 inches above the horizontal plane of the space." 2. 14.4.9(B)-Memorials: I commented previously on this provision and received no written response from the City regarding my comment. My specific concern is that there needs to be a requirement that a memorial placed at the head of a single plot has to be centered. Currently the proposed language only requires centering of memorials placed at the foot of a space. When I contacted City staff to discuss this matter, I was told there might be some reservations for requiring centering of memorials at the head of a family plot. For single plots, though, it is absolutely essential that memorials be centered at the head of a grave to prevent crowding of nearby gravesites. The existing rules require this, and I see no reason to omit it from these new rules. I have had to invoke this requirement under the existing rules to prevent crowding of my grave space from an adjacent marker that was not centered but shifted closer over to my the space. The adjacent marker was reset to be centered. New grave owners should have this same protection under the proposed rules. To address this I would suggest that the language be changed to read: "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. A memorial placed at the head of a single space will be flush, centered and in alignment with adjacent memorials. Memorials paced 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."

Rule 14.4.9 (K)-Memorials: The City has an obligation under the Texas Health and Safety Code (Section 713.011) to not only address memorials that are unsafe but also those that affect the comfort and welfare of the public by being not level or in need of straightening. By only addressing unsafe memorials in this provision, the City appears to be limiting its right to correct an unlevelled or un-straightened memorial and charge the expense to the space owner. This provision should be reworded to say: "Should any existing memorial or mausoleum become unsafe, not level or in need of straightening, 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." This change would maintain consistency with the Texas Health and Safety Code requirements as well as state the City's rights specifically enough to address all problems with memorials. This is important because the problem of tilting memorials is so pervasive at Austin Memorial Cemetery.4. 14.4.11(A): To be comprehensive this provision should be revised to say: "A person may not place a memorial in a cemetery until the Cemetery Administrator has approved the memorial's size, craftsmanship, quality, inscription, foundation and location." This would maintain consistency with 14.4.9(B) which requires that the Cemetery Administrator approve the final location for memorials.5. 14.4.11(D)-Rules for Memorial Work: This provision should be reworded to include an owner and owner's heirs responsibility for repairing tilting memorials: "Owner and owner's heirs are responsible for cleaning and repairing damaged, unlevelled or un-straightened memorials, monuments, markers, coping, mausoleums, and vaults. These activities require the approval of

the Cemetery Administrator. "I would be most happy if all of the changes recommended by my comments were incorporated into the proposed rules. As a cemetery customer, I feel very strongly about each recommendation. Gravesites are very emotional pieces of property for loved ones and their families. Families need to be able to add items to the gravesite that show their love for the deceased. And they deserve the right as stated in the Texas Health and Safety Code to have the surrounding memorials maintained in a manner that makes the overall atmosphere of the gravesite not only safe but also comforting.

PARD Response: Thank you for your feedback on the proposed cemetery rules amendment. Your input is valuable to us and helps Cemetery Operations understand the features, functional concerns, and questions that are most important to you. The intent of rules in a public setting is to protect the rights of all customers while providing a safe and accessible environment. Before implementing equal enforcement we have taken the opportunity to update the language and incorporate current needs and practices.

Ornamentation will be permitted with restrictions to ensure the safety of individuals coping with a loss, the visitors, and the staff tasked with maintaining the cemeteries. The City of Austin continues to review the Texas Health and Safety Code (Section 713.011) and has worked extensively with our Legal Department in drafting 14.4.0 Rules for Cemeteries owned and operated by the City of Austin. The intent is to allow for cultural and religious expression; stones, flowers, and memorabilia may be placed at the head of a space or on the headstone. The reason for the restriction for cremation spaces are because they are only 24 inches wide and 5 feet long. 14.4.9-Memorials (F) The length of memorials shall be a minimum of 10 inches less than the width of a full sized space, this allows for a 5 inch or equal variance on both sides which will center the monument at the head. We greatly appreciate your recommendations and will take that into future consideration if we seek modifications to the current proposed lengths as we will always seek continuous improvements to better serve our citizens.

As outlined in 14.4.11 (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. Under provision 14.4.12 (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. Please be advised however, that under 14.4.13 (2), (3), (4) a person may appeal a decision made by the Cemetery Administrator under these rules to the Director. An appeal must be made in writing within 30 calendar days of the date of the Cemetery Administrator's decision. The Director shall render a written decision on an appeal within 30 calendar days of receiving the appeal.

We understand implementing these rules pose challenges and we are more than willing to discuss individual needs with the understanding that we must preserve the rights of all customers and provide overall safety. We will take your suggestion into consideration as we looking to first adopt the rules as outlined under the Note of Proposed rule, R161-18.08. With the updated rules and a continuous open line of communication, we hope to be able to better serve our community.

Name: Leslie Inman
Date: 06/24/18
Submitted by: Email **Rules Section:** 14.4.3, 14.4.12

Comment: I am writing to comment on the proposed city rule changes for the Cemeteries under the Parks Department. As I mentioned in the first letter I wrote, I have strong concerns with the lack of public

notice. We have many people who visit the cemetery from out of town and have no way of realizing there a proposed changes or a chance form them to comment on these proposed rules. Many who visit loved ones are also elderly with no access to a city website. A notice should have been posted at the gates to each cemetery at the very least. Austin Memorial so large, that notices could have also been posted through-out, with copies of the proposed rules available for viewing at the cemetery office. My specific concerns are once again with the benches. My bench was approved when I visited the cemetery office of May 2016, three months after my daughter's death. I had already been given approval for one bench and requested that I be given permission to place a bench given to me for mother's day. I stopped at the office and was told yes, as long as it was metal and would not go into disrepair. I was also instructed to secure the bench and when I asked for details I was told if a tree was near, to chain it, which I did. I would be happy to remove the chain if requested and if needed replace the metal bench with the original granite bench I was given written permission for. (see photo of bench below as my granddaughter waters my daughter's grave)There is one other item I would like to be addressed in any proposed rules. Religious Holidays should be addressed and accounted for. One in particular, Day of the Dead. This is a very important day in the Mexican culture. Many in this ethnic group are working two and three jobs and can't always get off and go honor their loved once by 7:00. While the cemetery may not be able to stay open till Midnight (or beyond), at least staying till 9 or 10 would seem reasonable. If you would like more information/education on this I am sure someone from Mexican American Culture Center would be glad to help with this. I would also like to stress that overturned headstones which pose a safety hazard should be the number on priority. In the same row as my daughters grave (she is in section two Marissa Michelle Rodriquez), there is an over turned monument. It appears to have broken off its base.

PARD Response: Thank you for your feedback on the proposed cemetery rules amendment. Your input is valuable to us and helps Cemetery Operations understand the features, functional concerns, and questions that are most important to you. We carefully review all feedback to determine how to best accommodate both current and new customers. We agree that people should be able to grieve in the manner of their choosing. The intent of rules in a public setting is to protect the rights of all customers while providing a safe and accessible environment. The current rules were not consistently enforced which resulted in safety hazards, constrained maintenance, and inconsistent practices. Before implementing equal enforcement we have taken the opportunity to update the language and incorporate current needs and practices. Special considerations were made to accommodate as many of the grieving practices as possible in a safe and fair manner.

Based on the feedback we have revised rules to include "Memorialization Space", as outlined in 14.4.3 (10) and 14.4.12. Ornamentation will be permitted with restrictions to ensure the safety of individuals coping with a loss, the visitors, and the staff tasked with maintaining the cemeteries. The intent is to allow for cultural and religious expression; stones, flowers, and memorabilia may be placed at the head of a space or on the headstone. We have revised the proposed rules to accommodate existing benches with restrictions, as outlined in 14.4.12 (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.

To answer your question, PARD asks that you please place the bench that you were given permission for and remove any items that could be deemed a safety hazard.

PARD has recently hired an architectural conservator to fill the position of Environmental Program Coordinator and will be responsible for developing and implementing a cemetery monument conservation program, based on recommendations in the City of Austin Cemeteries Master Plan. This includes maintaining monuments as well as working on revising those monuments that have broken or damaged over time. We understand implementing these rules pose challenges and we are more than willing to discuss individual needs with the understanding that we must preserve the rights of all customers and provide overall safety. With the updated rules and a continuous open line of communication, we hope to be able to better serve our community.

Name: Danny DeGuire
Date: 06/24/18
Submitted by: Email **Rules Section:** 14.4.3, 14.4.12

Comment: I am writing to you this evening with a heavy heart. You see, I love my daughter very much, and it brings me great joy when she smiles and is happy. But I know that she will smile less often if you proceed with the implementation of the proposed Cemetery rules because she will no longer have the comfort and joy she now has when visiting her son's grave site—his home. It is his home because my daughter makes it so. His name is Wiley. She brings him gifts on his birthday and on holidays. She celebrates this life we all enjoy with him by sitting on the precious bench she bought for his visitors to rest upon while they visit with him at his home. Some of his visitors are growing older, like myself, and need his graveside bench for our visits. And we also need to know that our daughter and her family are free to express their love for Wiley by bringing him gifts and fresh decorations for his home. I don't know if proposed Cemetery rules are an over-reach of your authority or not. I don't know whether this is all just about finding an easier way to cut grass. I don't care. What I care about is the prospect of my daughter once again experiencing a loss of contact with my grandson that is not necessary and defies reason. And by the way, it is fundamentally wrong and a bad thing to do. It is within your power to prevent this loss, I implore you to think of my daughter and her family before approving this rule. And then make the right decision to vote it down. As an aging grandfather who loves his daughter and wants to protect her from further grief, please listen to those of us imploring you to do the right thing, instead of just doing things right, according to the bureaucratic rules.

PARD Response: Thank you for your feedback on the proposed cemetery rules amendment. Your input is valuable to us and helps Cemetery Operations understand the features, functional concerns, and questions that are most important to you. We agree that people should be able to grieve in the manner of their choosing but in a public setting there must be rules to protect the rights of all customers while providing a safe and accessible environment.

Decorations are allowed on memorials with restrictions to ensure the safety of individuals coping with a loss, the visitors, and the staff tasked with maintaining the cemeteries. The proposed rules are less restrictive and more safety oriented than the current rules adopted in 1978. We have revised the proposed rules to accommodate existing benches, as outlined in 14.4.12 (G) and to include "Memorialization Space", as outlined in 14.4.3 and 14.4.12. The intent is to allow for cultural and religious expression. Stones, flowers, and memorabilia may be placed at the head of a space or on the headstone.

Native vegetation will be allowed as long as it does not impede on the space of other monuments with the written approval of the Cemetery Administrator, 14.4.12 (E) and stone boarders will be reviewed on a case by case basis by the Cemetery Administrator for approval. Under provision 14.4.12 (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. Please be advised however that under 14.4.13 (E)-(2), (3), (4) A person may appeal a decision

made by the Cemetery Administrator under these rules to the Director. An appeal must be made in writing within 30 calendar days of the date of the Cemetery Administrator's decision. The Director shall render a written decision on an appeal within 30 calendar days of receiving the appeal.

We understand implementing these rules pose challenges and we are more than willing to discuss individual needs with the understanding that we must preserve the rights of all customers and provide overall safety. With the updated rules and a continuous open line of communication, we hope to be able to better serve our community.

Name: Madison Cooper
Date: 06/24/18
Submitted by: Email **Rules Section:** 14.4.3, 14.4.11, 14.4.12

Comment: I am writing in response to the proposed 14.4.0 Rules for Cemeteries. I provided extensive feedback to the previously proposed version of these rules, and that feedback remains largely unchanged for the new version. In summary, my son was stillborn on Thanksgiving Day and is buried at Austin Memorial Park. We selected the park because we were drawn to the character and flexibility in ornamentation and sacred offerings. Cemetery personnel approved our plan for a permanent brick enclosure with river stones, and they participated directly in preparing the installation. The new proposed rules threaten to rescind the approval of this permanent marking honoring my son. Section 14.4.7, prohibits construction or installation of enclosures of any kind, including curbing. I assume this applies to bricks, which are used in my plot. I request that my plot be grandfathered and not impacted by 14.4.7 moving forward. The city already approved my installation, and ripping it up will be a sacrilege. 14.4.12. A grants undue authority to the administrator to remove any object not specifically permitted. This may be appropriate for a playground, athletic facility, or community center, but it is wildly inappropriate to grant one person unilateral authorization to decide the disposition of religious, ceremonial, or otherwise spiritual objects in a sacred space such as a cemetery. I request this section be revised to remove this authority and place the burden upon the cemetery administrator to notify plot owners of any violations prior to removal of any object, with sufficient advance notice and good faith effort to allow time for the owner to either a) correct the violation or b) appeal to the PARD Director. 14.4.12.F grants authority to the administrator to remove vegetation that was planted in violation of the rules. This should apply only to vegetation planted after the rules go into effect. For vegetation planted prior to the new effective date, again the burden should be upon the cemetery administrator to notify plot owners of any violations prior to removal of any vegetation, with sufficient advance notice and good faith effort to allow time for the owner to appeal to the PARD Director.14.4.12.G is an attempt to grandfather existing benches, which I acknowledge is a compromise from the previous version, and I appreciate the intent. However the solution offered is problematic for three reasons: 1) the bench is required to be placed within a space at the foot or head; 2) it cannot encroach on an easement; and 3) benches that deteriorate may not be replaced with another bench; they must be replaced with a stone memorial per14.4.9. Placing a bench within a space means visitors must walk over the grave, which can be considered disrespectful to the person buried there. Countless benches are already in an easement, and cemetery personnel advised us to place our bench in an easement. Last, there is no allowance for owners to take a bench away, repair it, and return it to the park restored over time, benches will slowly disappear from our cemeteries until they are all gone. I request a formal appeals process be included in the next version of the rules, explicitly protecting the right of owners of existing plots to enter a formal appeal of any proposed action the cemetery administrator attempts to initiate with respect to that plot, before the action occurs. Thank you for your consideration.

PARD Response: Thank you for your feedback on the proposed cemetery rules amendment. Your input is valuable to us and helps Cemetery Operations understand the features, functional concerns, and questions that are most important to you. We carefully review all feedback to determine how to best accommodate

both current and new customers. The community input on the rules has been extensive and dates back to 2013. The current proposed rules are a result of all of that feedback based on the public feedback received in the last posting. We agree that people should be able to grieve in the manner of their choosing. The intent of rules in a public setting is to protect the rights of all customers while providing a safe and accessible environment. The proposed rules are less restrictive and more safety oriented than the current rules adopted in 1978. The current rules were not consistently enforced which resulted in safety hazards, constrained maintenance, and inconsistent practices. Before implementing equal enforcement we have taken the opportunity to update the language and incorporate current needs and practices. Special considerations were made to accommodate as many of the grieving practices as possible in a safe and fair manner.

Based on the feedback we have revised rules to include "Memorialization Space", as outlined in 14.4.3 (10) and 14.4.12. Ornamentation will be permitted with restrictions to ensure the safety of individuals coping with a loss, the visitors, and the staff tasked with maintaining the cemeteries. The intent is to allow for cultural and religious expression; stones, flowers, and memorabilia may be placed at the head of a space or on the headstone. Special considerations were made to accommodate as many of the grieving practices as possible in a safe and fair manner. We have revised the proposed rules to accommodate existing benches with restrictions, as outlined in 14.4.12 (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.

New benches will only be allowed if they are monument benches that are at the head of the space as outlined in 14.4.9(B). The City is also considering a memorial bench program.

Unfortunately, PARD is not able to "Grandfather In" preexisting ornamentation if it impedes on the space of other monuments or presents a health and or safety issue. Native vegetation will be allowed as long as it does not impede on the space of other monuments with the written approval of the Cemetery Administrator, 14.4.12 (E). The Cemetery Administrator will also attempt to notify space owners should any existing monuments require removal of items and or vegetation that impedes on other monuments or is deemed a safety and or health issue.

Under provision 14.4.12 (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. Please be advised however that under 14.4.13 (E)-(2), (3), (4) A person may appeal a decision made by the Cemetery Administrator under these rules to the Director. An appeal must be made in writing within 30 calendar days of the date of the Cemetery Administrator's decision. The Director shall render a written decision on an appeal within 30 calendar days of receiving the appeal.

We understand implementing these rules pose challenges and we are more than willing to discuss individual needs with the understanding that we must preserve the rights of all customers and provide overall safety. With the updated rules and a continuous open line of communication, we hope to be able to better serve our community.