



## MEMORANDUM

**TO:** Mayor and Council  
**FROM:** Spencer Cronk, City Manager *sc*  
**DATE:** August 31, 2018  
**SUBJECT:** Parks and Recreation Department (PAR) Cemetery Appeals Process

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The purpose of this memo is to address the appeals process as outlined under rule adoption R161-18.08: Section 14.4.0, regarding rules for Cemeteries and Operations by the City of Austin.

The Cemetery rules and regulations revision process was initiated on October 17, 2013. On this date, City Council approved Resolution 20131017-042 directing the City Manager and, by extension, PAR to conduct a public engagement process to evaluate the rules, which were originally adopted in 1978. One of the main goals was to find common ground between public desire and feasibility. Also, it's important to note that many of the existing conditions in the cemeteries are out of compliance with these rules.

On January 26, 2018, PAR submitted a memo to Mayor and Council to provide an update on the number of community engagement meetings that had been held in response to the resolution referenced above, which included the following:

- **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 separate locations: the Yarbrough Library and the 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 received from these facilitated conversations and Speak-Up Austin discussions was shared with stakeholders.
- **June 2017** – The draft rules were completed. The initial draft incorporated recommendations from the 2015 Cemetery Rules Project Report, stakeholder feedback, as well as safety and maintenance challenges. PAR considered the issues surrounding ornamentation carefully in order to determine best practices that could be permitted, but are currently restricted in the adopted rules. The draft rules were subsequently being reviewed by the City of Austin Law Department through the entire process.

- **October 2017** – The draft rules were presented to stakeholders during two public engagement meetings and the additional input and feedback received 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 who wishes to appeal a decision made by the Cemetery Administrator under the rules.

The revised Cemetery Rules were adopted on August 2, 2018, by Acting Director Kimberley McNeeley, in accordance with Chapter 1-2 Adoption of Rules. In accordance with Section 1-2.10 (Appeal of Adopted Rule to City Manager) of the City Code, citizens can appeal the adoption of the Rule and under the discretion of the City Manager’s Office, the City Manager may affirm, modify or withdraw the Adopted Rule. The Rule is automatically withdrawn if no decision is provided on or before the 60<sup>th</sup> day after the date the notice of rule adoption is posted.

## APPEAL

Community members have appealed adopted rules associated with grave decorations/ornamentation. Typical appeal language included:

1. The existing rules prohibiting grave decorations should be enforced, and limited or no decorations should be allowed.
  - *“The proposed rules violate federal law by prohibiting ethnic or religious groups from engaging in certain religious practices or traditions. For example, it is a Jewish tradition to 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 the Austin Memorial Park stones have been left by mourners and visitors for decades; there is even a receptacle holding stones for visitors to use. However, under a strict interpretation of the proposed rules, not only would the placement of the stones be prohibited, all other stones 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. Title II of the U.S. 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 clearly discriminates against the Jewish citizens of Austin.”*
2. The existing rules are overreaching; stakeholders should be able to place anything they want on the space that they have purchased.
  - *“PARD’s demands that long-established gardens and memorial be removed, even though such removal would cause significant damage to grave sites, as well as emotional distress to families and friends of the deceased, resulted in stakeholders appealing to the city council and the city council enacting the October 17, 2013, Resolution.”*

Community members also appealed the process of implementing the rules and how decisions could be appealed. Specifically, stakeholders expressed that:

- *“The City needs to have a process for notifying stakeholders in advance before removing items from graves.”*
- *“The City should provide a process by which stakeholders can request exemptions from a rule, based on religious or traditional cultural practices, and appeal the decision of the Cemetery Administrator.”*

After communications with PARD leadership, it is my recommendation to fully withdraw **Rule No. R161-18.08**. PARD will be afforded additional time to continue its engagement activities with community members and key stakeholders in an effort to refine the rules to reach consensus between public desire and operational feasibility without compromising health and safety. PARD will hold additional community engagement meetings with a final proposed rule implementation process to be completed by the end of calendar year 2018. At the time PARD deems appropriate, but no later than March of 2019, PARD is directed to officially adopt the Administrative Rules in accordance with Chapter 1-2 Adoption of Rule.

cc: Sara L. Hensley, Interim Assistant City Manager  
Kimberly A McNeeley, Acting Director, PARD