

**RULE NO.: R161 – 23.03**

**NOTICE OF PROPOSED RULE**

**POSTING DATE: January 12, 2023**

The Director of the Department of Parks and Recreation proposes to adopt the following rule after February 13, 2023.

Comments on the proposed rule are requested from the public. Comments should be submitted to Tonja Walls-Davis, Cemetery Operations Division Manager; Department of Parks and Recreation at [cemeteries@austintexas.gov](mailto:cemeteries@austintexas.gov), or 2800 Hancock Drive, Austin, Texas 78731, (512) 978-2320. To be considered, comments must be submitted before February 13, 2023, the 32nd day after the date this notice is posted. A summary of the written comments received will be included in the notice of rule adoption that must be posted for the rule to become effective.

An affordability impact statement regarding the proposed rule has been obtained and is available for inspection or copying at the address noted in the preceding paragraph.

**EFFECTIVE DATE OF PROPOSED RULE**

A rule proposed in this notice may not become effective before the effective date established by a separate notice of rule adoption. A notice of rule adoption may not be posted before February 13, 2023 (the 32nd day after the date of this notice) or not after March 23, 2023 (the 70th day after the date of this notice).

If a proposed rule is not adopted on or before March 23, 2023, it is automatically withdrawn and cannot be adopted without first posting a new notice of a proposed rule.

**BRIEF EXPLANATION OF PROPOSED RULE**

Rule R161-23.03: Proposed addition to the Building Criteria Manual, Section 14.4.0  
**RULES FOR CEMETERIES OWNED AND OPERATED BY THE CITY OF AUSTIN**

- The proposal is to update and incorporate rules for City of Austin cemeteries adopted in 1978 pursuant to Resolution 780504-22, into the Building Criteria Manual where the Park Use Rules are posted.

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

Parks and Recreation Department Cemetery Operations Office located at 2800 Hancock Drive (Administrative Office by appointment only, call 512-978-2320);

Parks and Recreation Departments webpage [Cemeteries | AustinTexas.gov](#); and

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

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

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

## **CERTIFICATION BY CITY ATTORNEY**

By signing this Notice of Proposed Rule (R161- 23.03), the City Attorney certifies the City Attorney has reviewed the rule and finds that adoption of the rule is a valid exercise of the Director's administrative authority.

## **REVIEWED AND APPROVED**

Kimberly  
McNeeley

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McNeeley  
Date: 2023.01.10 16:09:22 -06'00'

Date: 1/10/23

Kimberly McNeeley, M.Ed., CPRP,  
Director, Parks and Recreation Department

Anne  
Morgan  
Anne L. Morgan  
City Attorney

Digitally signed by Anne Morgan  
DN: cn=Anne Morgan, o=City of  
Austin, ou=Law Department,  
email=anne.morgan@austintexas.gov, c=US  
Date: 2023.01.11 12:07:37 -06'00'

Date: 1/11/23

## **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 Rules are intended to show respect for those interred in the City's cemeteries and 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-Definitions**

(A) Unless otherwise provided, words and phrases in these Rules 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 area within a cemetery consisting of a systematic layout of spaces designated for interment.
- (2) "Cemetery" means an area designated as a municipal cemetery by the City.
- (3) "Cemetery Operations" means the Cemetery Division of the Parks and Recreation Department.
- (4) "Cleaning" means removing dirt or debris from a memorial or other structure within a space using soap and water. The use of any other cleaning material must be approved in advance and in writing by Cemetery Operations.
- (5) "Contractor" means an individual or business performing work in a City cemetery pursuant to a written contract with Cemetery Operations.
- (6) "Cremains" means the cremated remains of a deceased person.
- (7) "Director" means the director of the Parks and Recreation Department.
- (8) "Easement" means an aisle of land free of structures within a cemetery reserved to allow access for repairs, maintenance, and other cemetery-related tasks.

- (9) “Event” means an event in a cemetery that is commemorative, memorial, historical and/or focused on the natural environment of the cemetery. “Event” does not include a special event within the meaning of City Code Section 8-1-1.
- (10) “Interment” means the entombment or burial of the remains of a deceased person.
- (11) “Lot” means a subdivided area within a block or section of a cemetery consisting of a specified number of spaces designated for interment.
- (12) “Mausoleum” means a durable, fireproof structure used for the entombment of a deceased person.
- (13) “Memorial” means any monument, monument bench, headstone, tablet, ledger, or curbing on or in a space that identifies or memorializes the individual interred in the space.
- (14) “Owner” means the owner, or their designee, of a burial space as indicated by the deed and information on record with Cemetery Operations.
- (15) “Relevel” means to lift a memorial and bring it to ground level utilizing sand or gravel.
- (16) “Reset” means to set a memorial back into or onto its original base or foundation or to set it onto a new concrete foundation level to the ground.
- (17) “Sepulture” means the act of burying a deceased person.
- (18) “Space” means a subdivided area within a Lot designated for an interment.
- (19) “Tour” means a visit to one or more cemetery that is focused on the history of the cemetery and those interred there and/or or the natural environment of the cemetery. “Tour does not include a special event within the meaning of City Code Section 8-1-1.

#### **14.4.4-Use of Cemeteries Generally**

- (A) The operating hours of a cemetery are:
  - (1) Gate Access: Daily 7:00 a.m. – 7:00 p.m.
  - (2) Business Office: Monday-Friday 7:00 a.m. – 4:00 p.m., 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 and must use designated walkways and roadways to access memorials and spaces.
- (D) A person may not enter areas marked as reserved for the use of City employees.

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

(F) Peace and Quiet

(1) A person shall preserve the peace and quiet of a cemetery. Disorderly conduct as defined in Texas Penal Code Section 42.01 violates the obligation to preserve the peace and quiet of a cemetery.

(2) A person may not use offensive language or engage in gestures or conduct in a cemetery that would be offensive to a person of ordinary sensibility.

(3) A person may not consume alcohol in a cemetery except as authorized by the Cemetery Operations and subject to such further approval as may be necessary, as determined by Cemetery Operations in its sole discretion.

(4) A person may not bring a pet into a cemetery.

(5) A person may not build, start, or maintain a fire in a cemetery.

(6) A person may not set off fireworks in a cemetery.

(G) Weapons and Firearms

(1) A person may not carry or possess a weapon or firearm in a cemetery except as permitted by state or federal law.

(2) A person may not use an air gun, paintball gun, pellet or B.B. gun, bow and arrow, or projectile device capable of inflicting personal injury in a cemetery.

(H) Events and tours must be approved in advance by Cemetery Operations and are subject to such further approval as may be necessary, as determined by Cemetery Operations in its sole discretion.

(I) Commercial filming and photography must be approved in advance by Cemetery Operations.

#### **14.4.5-Cemetery Operations Rights and Responsibilities**

(A) Cemetery Operations reserves the right to perform the following activities within a cemetery to preserve the public health, safety, comfort, and welfare:

(1) Repair and maintain fences, walls, buildings, roads and other improvements;

(2) Level and straighten memorials;

(3) Maintain lawns, shrubbery, trees, and other plants; and

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(4) Open, close, and restore graves for interment services, disinterments, and reinterments.

(B) Cemetery Operations may correct interment errors or conveyance of property errors by relocating remains to:

(1) a space in the same cemetery; or

(2) a space in another cemetery if space is not available in the same cemetery.

#### **14.4.6-Space Holder Rights and Responsibilities**

(A) The owner of a space, or their heirs or assigns, has the exclusive right of sepulture in the space.

(B) The owner of a space is solely responsible for cleaning, maintaining, and repairing memorials and other structures within the space in compliance with Sections 14.4.7 (*Contractor Required for Memorial Work*) and 14.4.8 (*Memorial Specifications*) of these Rules.

(C) The owner, or their heir or assign, shall provide Cemetery Operations with their current contact information and the contact information of any person designated by the owner to receive communications. The owner shall update such information as necessary and Cemetery Operations is entitled to rely on the contact information on file in communicating with the owner.

(D) In the event a memorial or mausoleum is in disrepair, Cemetery Operations shall attempt to notify the owner to undertake repair or replacement. If the repair or replacement has not been completed within 180 days of the first attempt to notify the owner, Cemetery Operations may repair or replace the item and charge the expense to the owner.

(E) Upon the sale of a space, the purchaser must promptly provide evidence of the sale to Cemetery Operations.

(F) In the event of the death of an owner, the owner's rights shall pass according to the owner's will, if any, and applicable State law.

(G) A person other than the owner who claims ownership of a space or a right of sepulture must prove their ownership or right to the satisfaction of Cemetery Operations.

#### **14.4.7-Contractor Required for Memorial Work**

(A) Repair, installation, resetting, and releveling of a memorial or other structure within a cemetery must be performed by a contractor approved by Cemetery Operations, who must obtain written authorization from Cemetery Operations prior to commencing any work. Such work may be subject to an inspection fee and other fees as set forth in the fee schedule available from Cemetery Operations.

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(B) A contractor undertaking work described in (A) above shall procure and maintain in full force and effect the required insurance coverage and shall provide Cemetery Operations with acceptable proof of coverage prior to beginning work. A list of required coverage is available from Cemetery Operations.

(C) A contractor undertaking work described in (A) above shall not place tools or other work items on adjoining memorials, spaces, roads, or walkways and shall not leave such items on the ground once work is complete. The person undertaking such work shall be responsible for repairing, to the satisfaction of Cemetery Operations, any damage done to memorials, spaces, walkways, drives, trees, shrubs, or other property.

(D) Cemetery Operations may stop any work if:

- (1) proper approvals or proof of required insurance coverages have not been received;
- (2) necessary preparations have not been made;
- (3) the work poses danger to public health and safety or to property;
- (4) the work is not being carried out according to specifications approved by Cemetery Operations; or
- (5) the work or any person employed in the work violates these Rules.

#### **14.4.8-Memorial Specifications**

(A) Memorials, including their location, shall be approved by Cemetery Operations prior to installation and shall be installed and maintained at the owner's sole expense.

(B) Memorials shall be entirely contained within a space and shall not encroach on an easement, public area, or another owner's space or interfere with an interment or the setting or maintenance of another memorial.

(C) One memorial may be installed at the head and one at the foot of a space; provided, however, that a monument bench may be installed only at the head of a space. Memorials installed at the head of a space shall be centered and aligned with adjacent memorials. Memorials installed at the foot of a space shall be flush, centered, and aligned with adjacent memorials. A companion or family memorial may be installed on two or more spaces.

(D) Memorial specifications:

- (1) Memorials shall be made of:
  - (a) granite or marble and be at least 4 inches thick; or
  - (b) cast bronze of any thickness.

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- (2) Memorials shall be at least 10 inches less than the width of the space and the width of memorial bases shall not exceed 18 inches.
- (3) Except as provided in (7) below, upright and raised memorials shall be no more than 42 inches tall.
- (4) The top of a flush memorial shall not exceed two inches above ground level.
- (5) Memorials containing niches for cremains are prohibited.
- (6) For spaces designated for cremains and infants, memorials shall be no more than 24 inches tall, ten inches wide, and 20 inches long.
- (7) Space or lot corner markers shall be set within the boundaries of a space and shall be a maximum of eight inches by eight inches, with the top of the marker no more than two inches above ground level.

(E) Memorial foundation specifications:

- (1) Except as provided in (E)(2) below, memorial foundations shall adhere to the following specifications:
  - (a) The foundation shall be at least four inches thick, with perpendicular sides and made of concrete consisting of one part cement, two parts sand, and four parts gravel. At least one inch of sand shall be placed under the foundation.
  - (b) Excavations for foundations for memorials shall be at least seven inches below ground level and shall be one inch larger in length and width than the base of the memorial.
  - (c) The top of a foundation shall be one to two inches above ground level to allow for adding cement grout to level the memorial base.
- (2) Memorial foundations installed by Cemetery Operations may adhere to the specifications in (1) above or to those documented in the Standard Operations Procedures, a copy of which is available from Cemetery Operations upon request.

(F) The installation of mausoleums, tablets, ledgers, and curbing is prohibited; provided, however, that such items installed prior to the adoption of these Rules may remain in place.

(G) Benches installed prior to the adoption of these Rules may remain in place if they satisfy the requirements of (B) and (D)(1) above and are in a safe and stable condition as determined by Cemetery Operations in its sole discretion. Benches that do not meet these criteria may be removed without further notice.

#### **14.4.9-Interments**



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- (A) The owner of a space shall provide written authorization to Cemetery Operations to conduct an interment, disinterment, or reinterment at least working 12 hours prior to the service. Cemetery Operations is not liable for the accuracy of the information provided in an authorization, including the identity of the person to be interred, disinterred, or reinterred.
- (B) Interments, disinterments, and reinterments shall be performed by a funeral director or other qualified person as designated by state law.
- (C) Occupancy of Spaces:
  - (1) Only one casket is permitted in each space.
  - (2) In a space that contains a casket, only one interment of cremains is permitted.
  - (3) In a space that does not contain a casket, four interments of cremains are permitted.
- (D) A permanent container, such as a concrete liner or burial vault, is required for interment of remains that are more than 36 inches in length.
- (E) Burial vaults that are partially or entirely above ground are prohibited.

#### **14.4.10-Ornamentation and Decoration**

- (A) Only the items listed below are permitted within a space. All other items are prohibited.
  - (1) fresh and artificial flowers in an invertible vase or other non-breakable container;
  - (2) commemorative stones;
  - (3) stick flags of no more than 18 inches in length; and
  - (4) items made entirely of cloth.
- (B) The permitted items listed in (A) above may be placed only at the head of a space or to the immediate left, right, or on a memorial.
- (C) Cemetery Operations will not remove floral arrangements left at a space following an interment or memorial for at least 72 hours following the service.
- (D) The following items are prohibited, whether within or outside a space, and may be removed without further notice: trees, shrubs, and other plants, mounds, and holes.
- (E) Cemetery Operations in its sole discretion may, without notice, remove an item that presents a current or reasonably foreseeable threat to public health or safety or interferes with cemetery operations or maintenance.

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- (F) The City is not responsible for the theft or vandalism of ornamentation, decoration, or any other personal property left in a cemetery.

#### **14.4.11 Designated Cleanup Schedule**

- (A) In addition to routine cleaning and maintenance, Cemetery Operations may conduct cleanups of Sections and Lots after February 1, after August 1, and after November 1 (the “Scheduled Cleanups”). During Scheduled Cleanups, ornamentation and decorations may be removed and disposed of.
- (B) Signage providing notification of a Scheduled Cleanup will be posted at the cemetery at least 30 days prior to the start date.