

BRAD KILGER
City Manager

April 2, 2013

The Honorable Paul Beeman
Presiding Judge
Superior Court of California, County of Solano
Hall of Justice
600 Union Avenue
Fairfield, CA 94533

RE: City of Benicia Response to Findings and Recommendations of the 2012-2013
Grand Jury Report Titled "Benicia City Cemetery"

Dear Judge Beeman:

Pursuant to the provisions of Section 933 (c) of the California Penal Code, the governing body of any public agency subject to the Grand Jury's reviewing authority must respond to recommendations and findings pertaining to matters under their control no later than ninety (90) days of receipt of a grand jury report. Therefore, the purpose of this letter is to comply with the aforementioned law and to provide comment on the 2012-2013 Solano County Grand Jury Report titled "Benicia City Cemetery."

The Grand Jury report included the five following findings and recommendations:
Finding 1 – The Fee Schedule for the Benicia City Cemetery was last revised on September 6, 2005.

Recommendation 1– The Benicia City Council review the Fee Schedule to determine if any modifications are required due to present economic conditions and cost of operation of the cemetery.

City's Response: The City agrees. City of Benicia Parks & Community Services staff are currently surveying comparable public cemeteries' fee schedules. Staff is also preparing an updated cost estimate for cemetery services. This information will be used to update the Fee Schedule in conjunction with the City's annual budget process, which is currently underway and scheduled to be completed in June, 2013.

Finding 2– The City is not in compliance with Benicia City Cemetery Rules and Regulations in Section 2.3 when a burial site sale is made by other than the Parks and Community Services Department, specifically local funeral chapels.

ELIZABETH PATTERSON, *Mayor*
Members of the City Council
TOM CAMPBELL, *Vice Mayor*, ALAN M. SCHWARTZMAN, MARK C. HUGHES, CHRISTINA STRAWBRIDGE

BRAD KILGER, *City Manager*
H.R. AUTZ, *City Treasurer*
LISA WOLFE, *City Clerk*



Recommendation 2 – The City of Benicia require all sales of burial sites comply with Benicia City Cemetery Rules and Regulations Section 2.3 and be sold only by the Parks and Community Services Department. When a parcel is sold by an outside agency, the agency must comply with Section 2.3.

City's Response: The City agrees. Future sales of burial sites will only be made directly by the Parks and Community Services Department, in compliance with Benicia City Cemetery Rules and Regulations Section 2.3.

Finding 3 – The City of Benicia is a nonendowment care cemetery; therefore, no endowment fund is currently established for the maintenance and operation of the cemetery.

Recommendation 3 – The city establish an endowment fund for the maintenance and operation of the cemetery.

City's Response: The City disagrees wholly. The City of Benicia's cemetery is a public cemetery operating under the provisions of California Health and Safety Code Division 8, Parts 1 and 2. The endowment fund provisions are for private cemeteries under California Health and Safety Code Division 8, Part 3. Unlike the operators of private cemeteries that may abandon their cemeteries (See Health and Safety Code Section 8825 et seq.), the City cannot abandon its cemetery. Per Health and Safety Code Section 8130 the management and operation of the City's cemetery is under the jurisdiction and control of the City. An endowment fund is not required to operate the City cemetery.

Finding 4– There are no signs posted stating that this is a "NONENDOWMENT CARE" property at the entrance to the cemetery or at the office for sale of plots as required by Department of Consumer Affairs Cemetery and Funeral Bureau under Title 16, Professional and Vocational Regulations, Division 23, section 2337.

Recommendation 4 – Appropriate signage be posted.

City's Response: The City partially disagrees. The City agrees that no signs are posted but disagrees that such signs are required. As noted above, the California Health and Safety Code has different provisions for the regulation of public cemeteries and private cemeteries. The requirements for endowment funds and the related signage requirements are in the section of the Health and Safety Code that apply only to private cemeteries. The regulation cited does not apply to public cemeteries. In fact, the webpage for the Cemetery and Funeral Bureau specifically states under the FAQ that "The Cemetery Act specifically does not apply to cemeteries controlled or operated by religious corporations or entities, public cemeteries...."

Finding 5 –During the Parks, Recreation and Cemetery Commission meetings, issues related to the cemetery are not agendized on a recurring basis.

Recommendation 5 – The Parks, Recreation and Cemetery Commission have a specific agenda item of City Cemetery, for each meeting, to ensure that cemetery issues are addressed.


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City's Response: The City agrees. A specific agenda item of City Cemetery will be included on the agenda for all future Parks, Recreation and Cemetery Commission meetings.

This response, which was drafted by City staff, was approved by the City Council at their meeting of April 2, 2013.

Please let me know if you have any further questions.

Sincerely,



Brad Kilger
City Manager

cc: City Attorney
Morland McManigal, Foreperson 2012-2013 Solano County Grand Jury