

Response to Grand Jury Report Form

Report Title: City of Sonoma Cemeteries
Report Date: June 18, 2023
Response by: David Guhin Title: City Manager
Agency/Department Name: City of Sonoma – City Manager

FINDINGS:

F1, F2, F3, F4, F5, F7

I (we) agree with the findings numbered: F3, F4

I (we) disagree wholly or partially with the findings numbered: F1, F2, F5, F6, F7

(Attach a statement specifying any portions of the findings that are disputed with an explanation of the reasons.)

RECOMMENDATIONS:

R1, R2, R3, R4, R5

- Recommendations numbered: R1 have been implemented.
(Attach a summary describing the implemented actions.)
- Recommendations numbered: R2, R3, R4, R5 have not yet been implemented, but will be implemented in the future.
(Attach a timeframe for the implementation.)
- Recommendations numbered: _____ require(s) further analysis.
(Attach an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. ***This timeframe shall not exceed six months from the date of publication of the Grand Jury report.***)
- Recommendations numbered: _____ will not be implemented because they are not warranted or are not reasonable.
(Attach an explanation.)

Date: 8/2/2023 Signed: [Signature]

Number of pages attached: 4

(See attached PC Civil Grand Jury Response Requirements)

EXHIBIT A

RESPONSE TO GRAND JURY FINDINGS

- F1. *The City of Sonoma is seriously remiss in not charging, collecting, reporting, or paying sales tax on tangible items sold through the cemeteries, resulting in a liability for the City.*

Response: We disagree partially with the finding, see response to R1.

- F2. *Responsibility for managing collection and payment of sales tax on cemeteries' tangible items is not delegated to any staff member or department, which has contributed to the City's failure to meet its responsibility to report and pay the sales tax obligation.*

Response: We disagree partially with the finding, see response to R1.

- F3. *The cemeteries have been losing money for an undetermined number of years and the operation expenses must be subsidized annually by the Endowment Fund which is not invested to generate adequate income; \$50,000 has been transferred for each of the past seven years and presumably will continue, resulting in the eventual depletion of the Endowment Fund.*

Response: We agree with the finding.

- F4. *Sonoma is undercharging for lettering services and ring and vase sets, resulting in financial loss to the Cemetery Enterprise Fund.*

Response: We agree with the finding.

- F5. *The Cemetery Endowment Fund is shrinking since the cemeteries are nearly built out, therefore there are limited opportunities to assess endowment fees. The Fund does not appear to be invested based upon the financial statements.*

Response: We disagree partially with the finding.

Based on the November 2022 City of Sonoma Cemeteries Planning Study by EDA Land Planning, there is room for increasing capacity in all three City-owned cemeteries to generate additional revenue and increase the endowment fund. Further evaluation of the finances and investment strategy will help to assess the full extent of growth and revenue that can be anticipated.

- F6. *Recently, the City of Sonoma has had high turnover in several senior management positions. No evidence of a policies and procedures manual exists for any of the cemeteries, nor does the City publish information on cemetery fee schedules; all indicating neglect of cemetery operations.*

Response: We disagree partially with the finding.

Some procedures have been developed for sales and the process of working with customers. Additional policies and procedures are needed and will be developed as mentioned in response to R3.

- F7. *The cemetery invoice forms do not have a line item for calculating sales tax for tangible items therefore, the accounting software program used by Sonoma does not report on their sales tax liability, resulting in failure to charge, collect, report, or pay sales tax to the CDTFA.*

Response: We disagree partially with the finding, see response to R1.

EXHIBIT A

RESPONSE TO GRAND JURY RECOMMENDATIONS

- R1. *By July 31, 2023, The City of Sonoma contacts the California Department of Tax and Fee Administration to establish procedures to collect, report and pay sales tax on tangible items sold at the cemeteries (F1).*

Response: This recommendation has been implemented as follows.

The City of Sonoma examined financial transactions from the Cemetery Enterprise to determine if sales tax is being handled in accordance with California Department of Tax and Fee Administration (CDTFA) regulations.

The three cemeteries operated by the City of Sonoma provide space for interment of remains but, with minor exception, do not engage in the sale of tangible products used in funeral services. The City does not provide items such as caskets or grave markers but may provide associated goods and services, such as the provision of engraving or the addition of a ring and vase set to an existing memorial marker.

Sales and Use Tax Regulation 1505 makes a distinction between funeral directors as retailers and as consumers. An example from that section is included in the recent Grand Jury report. In this example, the funeral director, acting as a retailer, charges the customer sales tax on tangible items, such as the casket in the sample invoice, at the point of sale. In this case, the funeral director would purchase the casket under a seller permit and would not pay sales tax upon purchase from a wholesaler but would collect it at the time of sale to the purchaser of cemetery goods. The City does not act as a retailer and, as mentioned previously, does not sell caskets or other major items associated with burial, as these items are provided by the cemetery's customers. The City provides interment services, as can be seen by the price list.

The City's cemetery operation acts as a consumer of tangible, taxable products in the provision of cemetery services. As a consumer, the City should pay the sales tax liability when it purchases items but does not collect sales tax from its customers. To validate our understanding that the City is a consumer of goods in the provision of services, the Interim Finance Director contacted the Santa Rosa branch of the CDTFA on July 17, 2023. The representative confirmed that remitting sales tax when the City purchases taxable items is allowable. Alternatively, the City could obtain a sellers permit and act as a retailer, foregoing tax on items purchased and collecting and remitting sales tax at the point of sale to customers of the City cemeteries, but this would be a more cumbersome process.

To determine if sales & use tax are being paid by the City, we examined the trial balance for the fiscal year ended June 30, 2023. A trial balance provides a detailed list of all financial transactions in a period. We examined 21 invoices from 18 vendors who provide goods and services to the cemetery. The only vendors excluded were clearly not providers of tangible goods, such as the wireless provider. Invoices from three of the vendors examined indicated that sales & use tax was not being collected. All other invoices charged sales tax on the invoice.

The first vendor provides items that affix to memorial markers, such as ceramic opals surfaced with a picture of the deceased. This vendor is a wholesaler of cemetery products and does not ordinarily charge sales tax to its clients, as they are primarily retailers. However, the vendor agreed to apply sales tax to future purchases by the City.

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The second vendor is a provider of vaults and liners for use in the cemeteries. These materials are often purchased and installed when interment spaces are being created, often in advance of sale to customers. The vendor of these material is not willing to add sales tax at point of sale, however, the City identifies unpaid use tax on items held in the Public Works inventory and remits this use tax to the CDTFA following the end of each calendar year. Items purchased from this vendor will be treated in the same manner as these inventory items and use tax will be remitted to the state, annually.

The third vendor identified engraves and appoints existing monuments. As an example, when a preneed customer is interred in a niche, this vendor will create a template and provide engraving and, if requested, a ring and vase set on the memorial. Engraving is addressed by the CDTFA and appears to be taxable if added to a new memorial, but not to an existing memorial. An existing marker is an addition to real property and the engraving is not taxable, according to an opinion provided in a 1995 letter ruling from the State Board of Equalization (available on the CDTFA website). Conversely, if the City purchased a new monument with engraving, that engraving would be considered part of the new property, and therefore would be taxable. The additional engraving service provided to the City does not appear to be taxable, as engraving is added to existing real property. However, ring and vase sets and other tangible property are taxable. The vendor was notified to treat the City as a retail customer and add sales tax to tangible property, if applicable.

The City of Sonoma Finance staff will continue to monitor transactions for cemetery operations to ensure sales taxes are properly remitted. The Interim Finance Director also discussed retroactive treatment of sales and use taxes not remitted for taxable items procured from the vendors previously discussed. Following advice from the CDTFA, the City will amend use tax submissions for the previous three calendar years (CY 2020 -22) to correct those deficiencies.

- R2. *By December 31, 2023, The City of Sonoma conducts a thorough analysis of the systems, processes, and procedures related to cemeteries, to include the current software program used. The Grand Jury is aware that the City of Sonoma has cited their intention, in their fiscal year (2022-23) goals, to complete a financial analysis of the Cemetery Fund and develop a plan for resolution of the deficit in the Fund, and we encourage the City to include an operational analysis as well. (F1, F2, F3, F4, F7)*

Response: This recommendation has been partially implemented and remaining implementation will occur as outline below.

The City of Sonoma Cemeteries Monument Services Fee Form was updated in July 2023 to reflect the current actual costs incurred by the City for engraving services, Ring & Vase Sets, and Photographs. The revised form is in use for all service inquiries for the City Cemeteries.

On July 18, 2023 City staff and EDA Land Planning met to determine next steps based on findings included in the November 2022 City of Sonoma Cemeteries Planning Study including a financial analysis and development of a strategy to address the Cemetery Fund deficit. A proposed scope of work is being drafted and this analysis will be complete prior to December 31, 2023.

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- R3. *By December 31, 2023, the City of Sonoma develops a policies and procedures manual for the operations of the Cemetery Program. (F1, F2, F4, F5, F7)*

Response: The recommendation has not yet been implemented but will be implemented in the future.

The City of Sonoma staff will be updating existing and developing additional policies and procedures for operations of the Cemeteries by December 31, 2023.

- R4. *By December 31, 2023, the City of Sonoma designates a manager to oversee the cemetery day-to day operations. (F2)*

Response: This recommendation has been implemented as follows.

The City Manager has delegated the Cemetery Manager duties to the Assistant to the City Manager in the interim while an analysis of the program, budget and revenue projections are evaluated. Based on the outcome of this analysis, a recommendation to establish a new position dedicated to Cemetery Management will be brought to the City Council for consideration by December 31, 2023.

- R5. *By December 31, 2023, the City of Sonoma conducts a thorough review of the Cemetery Endowment Fund. The Grand Jury is aware that the City of Sonoma has cited their intention, in their fiscal year (2022-23) goals, to complete a financial analysis of the Cemetery Fund and develop a plan for resolution of the deficit in that fund and the Grand Jury recommends that the Endowment Fund is included in that analysis. (F3, F5)*

Response: The recommendation has not yet been implemented but will be implemented in the future.

On July 18, 2023 City staff and EDA Land Planning met to determine next steps based on findings included in the November 2022 City of Sonoma Cemeteries Planning Study including a financial analysis and development of a strategy to address the Cemetery Fund deficit. A proposed scope of work, including evaluation of the Endowment Fund, has been requested for consideration and this analysis will be complete prior to December 31, 2023.