

**AGENDA DESCRIPTION:**

Consideration and possible action to receive and file a report on the Inspiration Slope Mausoleum Waiver of Claims at Green Hills Memorial Park.

**RECOMMENDED COUNCIL ACTION:**

- (1) Receive and file a report on the Waiver of Claims between the City and Green Hills for the storage of rooftop vaults on the Inspiration Slope Mausoleum building at Green Hills Memorial Park.

**FISCAL IMPACT:** None

<b>Amount Budgeted:</b>	N/A
<b>Additional Appropriation:</b>	N/A
<b>Account Number(s):</b>	N/A

**ORIGINATED BY:** So Kim, Senior Planner 

**REVIEWED BY:** Ara Mhrianian, AICP, Director of Community Development 

**APPROVED BY:** Doug Willmore, City Manager 

**ATTACHED SUPPORTING DOCUMENTS:**

- A. Waiver of Claims for Inspiration Slope Rooftop Burials (page A-1)
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**BACKGROUND AND DISCUSSION:**

In 2013, the City approved and issued a building permit for the construction of the Inspiration Slope Mausoleum building. Construction of the mausoleum building began in June 2015 and the building permits for the structure are set to expire in December 2016 while the related grading permits are set to expire in November 2017, unless extensions are granted.

As the City Council is aware, the City and Green Hills reached an understanding that if Green Hills executed an agreeable waiver that Green Hills would be allowed to place and bury concrete vaults on the rooftop of the Inspiration Slope Mausoleum building, provided that they do not use the vaults for burials until first obtaining approval through a public hearing process. The City Manager decided that it was in the City's best interest to seek this arrangement for the benefit of the residents in the Peninsula Verde neighborhood. He determined that this arrangement benefits RPV residents for two reasons: (1) Storing the vaults on the rooftop meant that most residents could not see them (especially when compared to storing in Area 5 or on the surrounding hillside around Inspiration Slope); and, (2) Being able to backfill the rooftop area meant that the

construction and earth moving around Inspiration Slope could stop construction related activity leading to noise, dust, and neighbor complaints. The City Manager believed it was in the City's best interests to take steps to bring the construction to an end to the benefit of the surrounding neighbors. The City Attorney memorialized the written waiver between the City and Green Hills, in which Green Hills promises to not sue the City for damages if approval for rooftop burials is not granted.

A copy of the signed Waiver of Claims is provided (Attachment A). Among other things, the signed Waiver includes the following language:

1. That Condition 1k of the City Council-adopted conditions of approval provides for review of rooftop burials by the Director, or directs the referral to the Planning Commission, and that, given this Condition, Green Hills may not perform such rooftop burials without the prescribed administrative review and approval.
2. That without submitting its application and getting Director or Planning Commission approval, Green Hills is not permitted to perform rooftop burials on the Inspiration Slope Mausoleum.
3. That Green Hills has requested that it be permitted to place the rooftop vaults and bury them, and may do so, waiving any claims against City for damages should the City subsequently not approve the rooftop burials. "However, in the event that the City decides to deny any application to perform rooftop burials... Green Hills agrees not to utilize the buried concrete vaults for rooftop burials...and releases the City from any liability or damages to Green Hills related to the placement of the vaults arising from such decision, and assumes all risks therefore."
4. Green Hills agrees that the provisions of the Waiver are reasonable and do not impose an undue burden on Green Hills.
5. Green Hills agrees that requiring an application for approval of rooftop burials is within the City's police power, and that the City has the authority to exercise its police power or governmental authority, or take other appropriate actions to address issues of public health, safety, and welfare.
6. The City shall not be liable to Green Hills for any loss or damages related to the placement of the vaults whatsoever, and waives the right to future claims for damages arising out of the City's rejection of any application for rooftop burials, but Green Hills reserves the right that it has always had to challenge the validity of any such denial.
7. Green Hills agrees to indemnify and defend the City against third-party claims arising from the City's agreement to allow the placement of the vaults.

In summary, Green Hills agrees that they do not have the right to perform rooftop burials without first obtaining approval from the City through a public hearing process; that it is within the City's police power to require this process; that should the City deny their request even after the vaults are placed, they cannot seek damages against the City; that they have reserved the right to seek to overturn such denial by legal process; and that they agree to defend the City against third-party claims. With this Waiver, Green Hills may bury the vaults on the rooftop of the Inspiration Slope building. The executed agreement has been posted on the City's Green Hills webpage for public review (<http://www.rpvca.gov/376/Green-Hills-Memorial-Park-Master-Plan>) and a list-serve message linking to the agreement and this City Council agenda report was transmitted on July 12, 2016.