

THE BOARD OF TRUSTEES OF THE TULARE PUBLIC CEMETERY DISTRICT

Adopted this Resolution on 07/07/21 by the following vote:

AYE: Avila, Presant, Ramos, Pennington

NO:

ABSENT:

ABSTAIN:

RECUSE: Aguilar

Resolution No. 2021- 60
2022

Censure of Alberto Aguilar, Trustee

WHEREAS, the Tulare Public Cemetery District is dedicated to safeguarding the District, its Trustees, employees, and agents. It is the duty of the Board of Trustees of the Public Cemetery District to ensure that the duties necessary for the protection of the District are carried out by all of the agents of the District.

WHEREAS, throughout the course of its business, the Board of Trustees of the Tulare Public Cemetery District engages in closed session in order to confer with its legal counsel. These closed sessions are subject to the attorney-client privilege, a legally recognized right of confidentiality between a client and their attorney.

WHEREAS, the Tulare Public Cemetery District, through its Board of Trustees, retained the office of the County Counsel of Tulare County as their general counsel.

WHEREAS, the client in this attorney-client relationship is the Tulare Public Cemetery District, a special district and political subdivision of the State of California. The privilege can only be waived by the Client, meaning the District by and through an action of the entirety of the Board of Trustees of the Tulare Public Cemetery District.

WHEREAS, no one individual Trustee, employee, or agent of the Tulare Public Cemetery District is authorized to waive the attorney-client privilege independent of a Board of Trustees action to waive the privilege regarding any specific subject discussed with legal counsel.

WHEREAS, on May 22, 2021 at 4:43 AM, Alberto Aguilar, Trustee of the Tulare Public Cemetery District caused to be sent an e-mail message to the following individuals, with corresponding e-mail addresses:

Catherine ValleyVoice <catherine@ourvalleyvoice.com>; Alex Gutierrez <alexg90@outlook.com>; Ruth Burcham <ruthburcham@icloud.com>; Vicki Gilson <sagewoman46@yahoo.com>; Michelle M Marquez <DMMarquez@tularecounty.ca.gov>; Geneva Philpot <philpot6677@comcast.net>; Luis Ojeda <lojeda@aclunc.org>; Claire Machado <cmachado@aclunc.org>; ACLUNorCal ChangeMakers <changemakers@aclunc.org>

WHEREAS, a copy of said e-mail is attached as Exhibit A to this Resolution and is hereby incorporated into this Resolution of the Tulare Public Cemetery District.

WHEREAS, within this e-mail message was information which was only ever disclosed to members of the Board of Trustees of the Tulare Public Cemetery District in an attorney-client confidential closed session meeting.

WHEREAS, the sending of this e-mail was thus an unauthorized breach of the attorney-client privilege of the Tulare Public Cemetery District by Trustee Alberto Aguilar.

WHEREAS, every member of the Board of Trustees has a duty to serve the constituents of the Tulare Public Cemetery District and to protect the privileges and rights of the Tulare Public Cemetery District, ensuring the functioning and wellbeing of the District for its continued service to the public.

WHEREAS, Government Code Section 1222 provides that "[e]very willful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment, where no special provision is made for the punishment of such delinquency, is punishable as a misdemeanor."

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WHEREAS, Labor Code section 1102.5, concerning whistleblowers exposing potential criminal activity does not include appointed officials, and specifically states in 1102.5(g) that “[t]his section does not apply to rules, regulations, or policies that implement, or to actions by employers against employees who violate, the confidentiality of the lawyer-client privilege...”

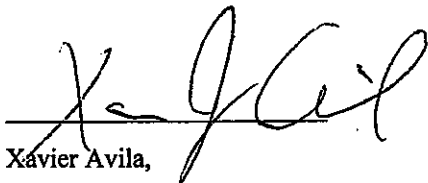
WHEREAS, The Board of Trustees, during its regular meeting on July 7, 2021 voted 4-0, with Alberto Aguilar recused, to Censure Alberto Aguilar for his actions and to recommend these actions to the Civil Grand Jury of the County of Tulare for investigation and potential recommendation to the District Attorney of the County of Tulare.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Board of Trustees of the Tulare Public Cemetery District does hereby censure Trustee Alberto Aguilar for engaging in the conduct described above and reminds Mr. Aguilar that, as a public official, it is his duty to provide zealous defense of the privileges and rights of the Tulare Public Cemetery District. The Board of Trustees disavows and hereby reprimands the actions taken by Mr. Aguilar. The Board, finally, recommends that the Tulare County Grand Jury investigate the actions taken by Alberto Aguilar to determine whether Mr. Aguilar has committed a misdemeanor and is fit to serve upon a public Board of Trustees.

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: July 22, 2021

TULARE PUBLIC CEMETERY DISTRICT

A handwritten signature in black ink, appearing to read 'X. Avila', is written over a horizontal line.

Xavier Avila,

Chair, Board of Trustees