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REPORT TO THE COMMITTEE ON RULES, OPEN GOVERNMENT AND
INTERGOVERNMENTAL RELATIONS

PROPOSED REVISION OF SAN DIEGO CHARTER SECTION 55 CONCERNING
CEMETERY FUNDS

INTRODUCTION

San Diego Charter section 41(a) establishes the Funds Commission (Commission). The Commission has “supervision and control over all trust, perpetuity, and investment funds of the City and such pension funds as shall be placed in its custody,” and administers these funds “subject to the laws of the State and ordinances of the Council.” The Commission is currently managing six trust funds, including the Mt. Hope Cemetery Perpetuity Fund (Cemetery Fund), under Charter section 55. “At least twenty percent of the net proceeds from the sale of all cemetery lots” are placed into the Cemetery Fund. San Diego Charter § 55. The Commission is required to invest these assets into “income producing securities,” which the Commission interprets to mean bonds and dividend-paying stocks.

On March 21, 2012, the Commission provided an update to the Committee on Rules, Open Government and Intergovernmental Relations (Rules Committee) as required under Council Policy 000-26, concerning the status of funds being supervised by the Commission. Rules Committee members expressed concern that restricting investments to income-producing securities was too limiting, and directed the City Attorney and the Commission to work together to determine if the Charter could be amended to allow the Commission more flexibility in their investment authority.

DISCUSSION

Amendments to the Charter may be proposed by the governing body, but must be approved by the electorate. *Birkenfeld v. City of Berkeley*, 17 Cal. 3d 129, 143-45 (1976); Cal. Const. art. XI, § 3. Council Policy 000-21 establishes the procedure for submittal of ballot proposals. To be considered for placement on the November 6, 2012 ballot, the public, departments, and agencies must submit their ballot proposals to the City Clerk for review by the Rules Committee no later than June 8, 2012. The Rules Committee reviews all ballot proposals at its meeting on June 13, 2012, and the City Council will adopt propositions for the November ballot at its meeting on June 25, 2012.

On June 5, 2012, the Commission approved a proposal to revise the Charter so that the Commission would have more flexibility when investing Cemetery Funds. Charter section 55 would be amended to state, in pertinent part, as follows:

The City Manager shall also have charge of the management, control, preservation, regulation, improvement and embellishment of all public burial grounds and cemeteries belonging to the City, and the sale of lots therein. At least twentypercent of the net proceeds from the sale of all cemetery lots shall be deposited with the City Treasurer and be kept in a fund to be known as the Cemetery Perpetuity Fund. This fund shall be administered by the Funds Commission ~~and shall be invested in such income producing securities as the Funds Commission may decide~~ The principal of the perpetuity fund (subject to such accretion or diminution as may result from investing the same) shall not be available for meeting expenses for maintenance or upkeep of the cemeteries in any manner whatsoever. All income derived from the investment of the moneys in said perpetuity fund, together with the balance of the sale price of said lots not placed in the perpetuity fund, shall be expended in the maintenance and upkeep of the cemeteries and the perpetual care and upkeep of all graves and lots in said cemeteries; provided, however, that if in any one year such income is more than needed for the purpose of such maintenance, upkeep and perpetual care the Council may direct that the excess over and above that needed as above provided may be used for any other municipal purpose. If the income from said investments of said perpetuity fund and the balance of the sale price of said lots each year are not sufficient to maintain the cemeteries and to provide perpetual care and upkeep of all graves and lots in said cemeteries the Council shall annually appropriate from other revenues an amount sufficient to enable the City to provide perpetual care and upkeep of all graves and lots in the cemeteries.

If the voters approve the proposed change in November, the Commission could invest in any manner it deems fit that is consistent with its fiduciary responsibilities for purposes of providing income to the Cemetery Fund. The Funds Commission cautioned, however, that the change in language will not guarantee an increase in returns.

CONCLUSION

As in this Report, the Charter could be amended by a vote of the electorate to provide the Commission more flexibility in their investment authority.

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