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Memorandum

January 22, 2016

To Ordinance and License Committee
From Brian Running

Re: Proposed Revision of Municipal Code §3.08

The Cemetery Commission and Cemetery Manager are proposing changes to the Cemetery Commission ordinance, §3.08. These proposed changes have been reviewed and approved by the Mayor and City Administrator.

As with other recent revisions to ordinances, this began with a request by the Cemetery Manager to me, to help figure out exactly what the ordinance means. In its current form, the ordinance creates conflicting chains of authority, is unnecessarily restrictive in its oversight, and doesn't meet the requirements of state statutes for maintenance of trust accounts. There are also a few minor points that can be cleaned up.

This memo outlines the problems with the current ordinance, and explains how the proposed revision will address them. It will be helpful to have the current ordinance before you as you read this.

Current Ordinance

§(1)(a) requires six commission members, any voting body should consist of an odd number of members, to help avoid deadlocks.

§(1)(c) says the Commission shall operate and manage the cemetery, under the "direction of" the Common Council. An efficient organizational structure should have a policy-making body that sets the rules, and then assign the responsibility for carrying out the policy to an executive. The Commission should not "operate and manage" the cemetery, and the Common Council should not "direct" the operation and management of the cemetery by the Commission. The Commission should set the rules for operation

of the cemetery, and the rules should be subject to the approval of the Council. Then, the actual operation and management, according to the rules set by the Commission and approved by the Council, should be carried out by the Cemetery Manager and staff.

§(2) has a number of issues:

- It says the “administrative staff” of the Commission shall consist of one person, the Cemetery Manager. The Cemetery Manager should be an executive, implementing the rules set by the Commission. The Cemetery Manager should not be the Commission’s administrative staff.
- The Cemetery Manager is appointed by the Mayor and approved by the Common Council, but this conflicts with Human Resources Policy B-2, which provides for a selection process for the filling of vacancies.
- The Manager’s duties are described as “The manager shall be responsible to the Mayor and Common Council under the direction of the Commission for the operation of the Cemetery.” I do not know exactly what this means, and the Manager should have a clear statement of duties and authority.

§(3) requires all withdrawals from the Cemetery Development Fund to be approved by the Council. This is unnecessarily restrictive. Reporting should be required.

§(5) requires a Perpetual Care Fund, which is good, but there should also be a “mausoleum care fund,” as required by Wis. Stats. §157.12(3).

§(10) requires Council approval of all investments and transfers of cemetery funds. This is unnecessarily restrictive. Reporting should be required.

§(13) is really a problem. This is how it currently reads:

Subject to (10) above, the City Treasurer is delegated the authority by the Common Council to make the final determination on investment decisions of Cemetery funds. The Commission shall recommend to the Mayor, with the approval of the Common Council, the appointment of an institution to assist the Commission with the administration of Cemetery funds. The institution, acting in accordance with Chapter 881, Wisconsin Statutes, shall make recommendations as to the investment of cemetery funds to the Commission and City Treasurer. The Commission shall request bids from interested financial institutions which are subject to Section 221.036 or Chapter 223, Wisconsin Statutes. A contract shall be awarded on the basis of the bid which is most advantageous to the City. The institution shall enter into an agreement with the City for a period of two years.

- The *Treasurer* makes final investment decisions, but that authority is *delegated* by the Council.
- Even though the Treasurer makes the final investment decisions, the *Commission* recommends to the *Mayor* an investment firm to manage funds, subject to approval by the *Council*.

- Then, that firm gives its advice to the *Commission and Treasurer*.

Questions raised by this: If the Treasurer makes the final decisions, why doesn't the Treasurer select an adviser? The Treasurer's authority to make final investment decisions is delegated by the Council, which means that the Council has the authority in the first place – can the Council override the Treasurer's decisions? Can the Treasurer ignore the advice of the adviser selected by the Commission, Mayor, and Council – or go ahead and invest while the Commission, Mayor and Council disagree about the selection of an adviser? What does the Commission do with the advice they're required to receive from the adviser? I don't know the answers, either.

§(14) prohibits the Cemetery from selling headstones, urns, and outer burial containers, yet the Cemetery is expected to sustain itself financially. This is contradictory.

Proposed Revised Ordinance

§(1)(a) puts the Commission membership at five, and requires consideration of business experience in appointment of at least one member.

§(1)(d) clarifies that the Commission sets the policies controlling cemetery operations, and that the Council has to ratify those policies.

§(1)(e) clarifies that the Commission and the cemetery are not independent of the City and cannot enter into contracts on its own, and must follow City financial policies when contracting.

§(2) requires vacancies in the Cemetery Manager position to be filled according to HR policy, not appointment by the Mayor.

§(3) clarifies that the Cemetery Manager is subordinate to the City Administrator. This means that although the Cemetery Manager must implement the policies that the Commission sets and the Council ratifies, the Manager is subject to the City Administrator's policies and procedures, just as any other department head is. The City Administrator then accounts to the Council.

§(4) requires all Commission financial policies to be in compliance with Wisconsin Statutes that control cemeteries. Municipal cemeteries are not subject to all of the requirements of the statutes, but the statutes provide a "safe harbor" for us – if we follow them, we know that our policies cannot be found unreasonable by a court.

§(4)(c) describes the accounts that must be maintained. The trust funds are required by law, and a mausoleum care fund is added. Currently, the cemetery reserve fund is a trust account, but that's not required by law. The revised ordinance makes the reserve fund a simple deposit account.

§(5) requires periodic reporting to the Council. Instead of the Council having control over day-to-day operations and having to authorize ordinary business transactions, the Council maintains its oversight of cemetery operations by receiving detailed reports on a

regular basis. In this way, the Council does not get tied up in ordinary business, but can keep a meaningful eye on cemetery operations.

§(6) requires approval of investment advisers by the finance committee. Previously, finance had no role in investments.

Summary

These proposed revisions are in line with a general approach to making ordinances more understandable and City government more efficient, by making all parties responsible for things they should be and not responsible for things they shouldn't be, and by making clear lines of authority and accountability.

The draft can serve as a starting point for discussions. Please consider these revisions carefully, and contact me if you have any questions, comments or concerns.

-- BER