



City Council Agenda Item

City Council Meeting Date: March 2, 2021

TO: Mayor and City Council Members

FROM: Jim Throop, City Manager
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Jeff Malawy, City Attorney
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SUBJECT: Discussion Concerning Formation of a Nonprofit Organization to Benefit the City of Lompoc

Recommendation:

Staff recommends the City Council review the provided information and direct staff whether to proceed with forming a California nonprofit organization to fund City projects.

Background:

On March 19, 2019, the City Council considered and discussed a staff report regarding the potential formation of a nonprofit corporation by the City. The proposed purposes of the nonprofit were (1) to create an entity that could apply for grants from non-governmental organizations (NGOs), and (2) to make it easier for individuals and entities to donate money for City purposes by allowing them to donate to a 501(c)(3) tax-exempt organization. (Donors often prefer to donate to a 501(c)(3) organization rather than directly to the City, even though the IRS considers contributions made to the City for a public purpose as tax deductible.) All funds received by the nonprofit would be used to support City programs and purposes.

Staff presented a supplemental staff report to the City Council on August 20, 2019, providing further detail on how much it would cost for the City to start a nonprofit. The staff report estimated that it would cost the City approximately \$1,275 and would require approximately 15 hours of in-house staff time.

Following discussion, the City Council requested that staff bring back further information about the potential formation of a nonprofit organization, including: (a) options for the structure of the nonprofit Board, (b) how often the Board would meet, (c) the amount of staff time needed to staff the nonprofit on an ongoing basis (after formation), (d) the extent to which the City Attorney's office would need to be involved with the nonprofit and the

potential cost of City Attorney involvement, (e) whether other cities in Santa Barbara County and San Luis Obispo County have city-affiliated nonprofits and whether those nonprofits have been successful in getting grants from NGOs, and (f) examples of the kinds and amounts of grants that might be available to a nonprofit that would not otherwise be available to the City. Each of these issues is addressed in the discussion below.

Discussion:

Options for the Structure of the Nonprofit Board

Perhaps the single most important issue to consider when starting a nonprofit organization is who will be on the Board of Directors, as this has implications for the control of the Board, the public perception of the Board, the resources available to the Board, and whether the Board is subject to the Brown Act.

The Board may include any number of people that City Council deems appropriate, although it is recommended that the Board have an odd number of members to prevent tie votes, and have enough members to ensure a quorum can attend each meeting. A five-member or seven-member Board would fit these criteria.

There are three main options for Board members:

- (1) City Council members,
- (2) A mixture of City Council members and non-City Council members; or
- (3) Non-City Council members (this could include private citizens or City staff).

A nonprofit corporation is a separate legal entity from the City and is not inherently subject to the control of the City unless the City builds such control into the structure of the nonprofit. Since the City would be creating and supporting the nonprofit for the benefit of the City, the City will want to maintain a certain amount of control over the Board, which in turn controls the actions of the nonprofit. The City can exercise control over the Board either by:

- (1) Requiring that a certain number of City Council Members are on the Board,
- (2) Requiring that a certain number of City representatives (other than City Council Members) are on the Board, or
- (3) Requiring that a certain number of Board members are appointed by the City Council (both when the Board is formed and when the Board positions become vacant).

The following discussion analyzes the benefits and drawbacks of three different possible options for structuring the Board.

A. Option 1: City Council Serves As Board

Under this option, the City would have complete control of the nonprofit and the nonprofit would be perceived as an arm of the City. Although the Board could reach out to the private sector for support and donations, the private sector would not be represented on the Board. A benefit of this structure would be that nonprofit meetings could be held at the same time as City Council meetings, and could also be noticed simultaneously with the notice for City Council meetings. Any change in the makeup of the City Council (i.e. a City Council election) would automatically change the makeup of the Board. A drawback of this approach is that private entities may be hesitant to donate to an organization that is perceived as political, and the willingness of donors to donate to such a nonprofit might be influenced by whether the donor agrees or disagrees with the politics of specific Council Members at any given time.

A nonprofit with this Board structure will be subject to the Brown Act.

B. Option 2: One or Two Council Members Serve On The Board

A Board with this structure would include both City Council Members and non-City Council Members. The City's control over the Board would depend on the size of the Board, the number of City Council Members on the Board, the number of City representatives on the Board (other than City Council Members), and the number of Board members appointed by the City Council. A Board with both public and private members would likely be perceived as a public-private partnership. A Board with only City Council Members and City representatives would likely be perceived as an arm of the City. Including members of the private sector would likely increase the monetary, experiential, and networking resources available to the nonprofit.

A nonprofit with this Board structure will be subject to the Brown Act if (i) it is created by the City to exercise authority that may lawfully be delegated to the nonprofit by the City (Gov. Code § 54952(c)(1)(A)), or (ii) it receives "funds" from the City (Gov. Code § 54952(c)(1)(B)).

C. Option 3: No City Council Members Serve On Board

A Board with this structure would be made up solely of non-City Council Members. The City's control over the Board would depend on the size of the Board, the number of City representatives on the Board (other than City Council Members), and the number of Board members appointed by the City Council.

One option for structuring a Board of this kind would be to have a five-member Board and allow each Council Member to appoint a member of the Board and fill vacancies, similar to how City commissioners are appointed. If the City Council wants to have a more hands-off approach, the City Council could appoint the initial five-member Board but then allow the Board to fill its own vacancies by a majority vote.

A nonprofit with this Board structure will be subject to the Brown Act only if it is created by the City to exercise authority that may lawfully be delegated to the nonprofit by the City (Gov. Code § 54952(c)(1)(A)).

Frequency of Board Meetings

It is recommended the Board meet at least once a year to address any year-end issues with required filings, financial issues, appointment of officers, etc. However, beyond that, the Board could meet as often as needed or desired. For example, the Board might begin by meeting once every two months and then determine whether to meet more or less often depending on the amount of business items that the Board needs to address. Special meetings of the Board could also be called if unexpected issues arose.

Staff recommends the Board meet quarterly, and at any time they can decide to meet more or less frequently as may be needed.

Ongoing Staff Time Requirement

After the initial staff time needed to form the nonprofit, it is estimated that meeting the ongoing needs of the nonprofit would take approximately 5 to 10 hours of staff time per meeting, although the first few meetings may require some additional work as they often involve certain start-up issues as well as ongoing operations. This would include time for administrative support, financial services including accounting, applying for grants, preparing state and federal filings, and preparing staff reports and gathering other information to advise the Board, as needed. It is anticipated that the nonprofit would not have its own employees or staff, but instead would be fully staffed by City staff. This staff time would essentially be an in-kind donation to the nonprofit.

City Attorney Involvement

The nonprofit would likely require legal advice from time to time and this advice would be provided by the City Attorney's office. The City Attorney's involvement with the nonprofit would likely be similar to the City Attorney's involvement with City commissions, other than the Planning Commission (which is more intensive). The City Attorney would not attend meetings of the nonprofit, unless requested, but would be available to address any legal issues that arose in the course of the nonprofit's activities. The City Attorney's law firm works with other cities with nonprofit foundations and those cities have historically requested different levels of involvement by the City Attorney: some ask the City Attorney's office to provide an attorney for all meetings, some for no meetings, and some only for occasional meetings where legal issues will be discussed. So this can be handled in multiple ways, as desired by the City Council.

City Attorney costs would likely be highest during the start-up period when legal documents need to be drafted and reviewed, and if any complicated legal issues arise. However, it is anticipated that most activities of the nonprofit would not require attorney involvement.

Staff recommends the City Attorney's Office attend only occasional meetings of the nonprofit when legal issues will be discussed.

Nonprofits in Other Cities

A review of the listings of nonprofits in both Santa Barbara County and San Luis Obispo County revealed the following nonprofit organizations that may be tied to local governments¹:

Atascadero:

Atascadero Community Services Foundation

Grover Beach:

Grover Beach Community Foundation

Morro Bay:

Friends of the Morro Bay Fire Department
Friends of the Morro Bay Harbor Department
Friends of the Morro Bay Police Department
Morro Bay Community Pool Foundation
Pool at Morro Bay

Paso Robles:

Paso Robles Aquatic Complex
Paso Robles Police Department Community Patrol

Pismo Beach:

City of Pismo Beach Public Facilities Corporation
Pismo Beach Community Foundation
Pismo Beach Firefighting Foundation

San Luis Obispo (County):

Economic Vitality Corporation of San Luis Obispo County
Friends Outside In San Luis Obispo County
San Luis Obispo County Public Facilities Corporation

Santa Maria:

People for Leisure and Youth, Inc. (P.L.A.Y.)
Santa Maria Police Council Inc.
Santa Maria Valley Economic Development Association Inc.
Serve Santa Maria, Inc.

¹ Little information was found concerning the list of nonprofit corporations so they are listed for example purposes only.

Solvang:
Citizens for Solvang Inc.

Templeton:
Templeton CSD Parks and Recreation Corporation

In addition to the above, each library has “Friends” nonprofits and several employee groups have nonprofit corporations as well.

Examples of Potential Grants Available to a City Nonprofit²

- Grants to California Nonprofits for Arts Programming to Benefit the Local Community;
- Grants to California Nonprofit Arts Organizations to Support the Presentation of Public Arts;
- Grants to California Private and Public Entities for Technological Advancements that Increase Energy Efficiency;
- Grant to a California Public or Private Entity for Activities to Reduce Greenhouse Gas Emissions and Improve Air Quality;
- Grants to California Nonprofits in Eligible Counties for Programs that Benefit Local Communities;
- Grants to California Nonprofits and Agencies in Eligible Areas to Benefit Local Communities;
- And others.

Fiscal Impact:

Formation of the nonprofit corporation does not come without cost. The corporation must be formed and filed with the Secretary of State before applying for the nonprofit status and enjoying the cost savings that follow. Currently the filing fee for the Secretary of State nonprofit corporate filing is \$30.00. The more substantial cost however, is the IRS Form 1023 filing fee of \$600.00. In addition, an employer’s identification number³ must be obtained from the state; filing on the Registry of Charitable Trusts through the Attorney General is required (\$25.00 fee due to the Department of Justice), as well as other local registrations. Staff time will also be required to prepare all the initial paperwork.

Additionally, once the nonprofit corporation is formed, staff time will be required to provide administrative support, financial services including accounting, applying for grants, preparing state and federal filings, and preparing staff reports and gathering other information to advise the Board, as needed.

² Grants to California Nonprofits in Eligible Counties for Programs that Benefit Local Communities (grantwatch.com)

³ An employer identification number is required even when there are no employees.

Conclusion:

A nonprofit corporation may be a useful tool for raising funds to support civic projects currently outside the scope of the City's budget. The process, while it does have some costs attached, is not terribly complicated and can be accomplished without the use of a consultant.

Respectfully submitted,

Jim Throop, City Manager

A handwritten signature in blue ink, appearing to read "Jeff Malawy", is written over a horizontal line.

Jeff Malawy, City Attorney