



City Council Agenda Item

City Council Meeting Date: July 6, 2021

TO: Mayor and City Council Members

FROM: Jim Throop, City Manager
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SUBJECT: Form Nonprofit Lompoc Community Foundation and Adopt Articles of Incorporation and Bylaws

Recommendation:

Staff recommends the City Council:

- 1) Review the draft articles of incorporation and bylaws (Attachments 1 and 2); and
- 2) Direct the City Manager to execute the articles of incorporation, to adopt the bylaws, and to take all other necessary actions to form and start operation of the nonprofit corporation, including applying for tax exemptions and complying with all other regulatory requirements; and
- 3) Appoint a City Councilmember to serve on the board of the directors of the nonprofit corporation; and
- 4) Request that the chairs of the Public Safety, Beautification and Appearance, Library, and Parks and Recreation Commissions either inform the City Manager of their willingness to serve on the board of directors of the nonprofit corporation, or, if they are unwilling to serve, place an item on the agenda of the next meeting of the relevant commissions for those commissions to nominate a commissioner to serve on the board of directors; and
- 5) Establish an application process and timeline for members of the Lompoc business community who wish to serve on the board of directors; and
- 6) Authorize and direct the City Manager to serve as the executive director of the nonprofit corporation in accordance with the bylaws; or

- 7) Decide not to form a nonprofit organization; or
- 8) Provide staff with other direction.

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 (i) to create an entity that could apply for grants from non-governmental organizations (NGOs), and (ii) 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.

On March 2, 2021, the City Council discussed various options for structuring a nonprofit and the potential purposes of a nonprofit and directed staff to prepare draft documents to form a nonprofit corporation. Staff has prepared draft Articles of Incorporation (Attachment 1) and Bylaws (Attachment 2) for the City Council's consideration. These documents and additional actions needed to establish a nonprofit corporation are discussed below.

Discussion:

Articles of Incorporation

A California nonprofit corporation comes into existence when Articles of Incorporation for the corporation are submitted to, and filed by, the California Secretary of State. Many provisions of the Articles are required by state law. The Articles also set, in very broad terms, what the purpose of the corporation will be. The provisions of the Articles include the following:

1. **Name.** The proposed name of the corporation is the "Lompoc Community Foundation." This name is currently available and meets legal naming requirements.
2. **Form of Corporation.** The corporation is proposed to be a nonprofit Public Benefit Corporation, as opposed to other nonprofit corporation options such a mutual benefit corporation (used for HOAs, social clubs, fraternal orders, etc.) or a religious corporation.
3. **General Purpose.** The proposed general purpose is: "to provide financial support for the programs and purposes of the City of Lompoc in order to benefit the Lompoc community."

4. Address and Initial Agent for Service of Process. The corporation's address would be Lompoc City Hall and the agent for service of process would be the City Clerk.
5. Nonprofit Requirements; No Political Activities. The Articles provide that the corporation can carry on activities and use its funds in ways that are consistent with tax-exempt corporations. Specifically, the corporation cannot attempt to influence legislation or participate in any political campaign.
6. Amendment Requires Approval of City Council. The Articles state that they may only be amended with the approval of the Lompoc City Council.
7. City Manager as Incorporator. The Incorporator – that is, the person who officially takes action to form the corporation – would be the City Manager.

Bylaws

The Bylaws lay out more details about the structure and operations of the corporation. The provisions in the Bylaws include the following:

1. Board of Directors.
 - (a) Seven-Member Board. The board of directors would have seven members: (i) one sitting member of the Lompoc City Council; (ii) the chairs of the Public Safety Commission, the Beautification and Appearance Commission, the Library Commission, and the Park and Recreation Commission; and (iii) two representatives of businesses located in the City of Lompoc, who shall not be employees, commissioners, or elected officials of the City of Lompoc, and who shall have their primary residence in the City of Lompoc.
 - (b) Commission Chairs. The Bylaws further provide that if the chair of one of the listed commissions does not wish to serve on the board of directors, or the chair of a commission is removed from the board of directors, or a commission does not have a chair, then the respective commission shall, by a majority vote of the commissioners, make a recommendation to the City Council of another commissioner from the same commission to serve on the board of directors. The City Council may then appoint the recommended commissioner to the board of directors by a majority vote. In the event the City Council votes not to appoint the recommended commissioner, or no member of the commission wishes to serve on the board of directors, the City Council may then appoint any commissioner from any City commission or any community member to fill that seat on the board of directors.
 - (c) Compensation. Board members would not be compensated.

2. Director Term, Removal, and Vacancy.
 - (a) Term. There are no limits on duration or number of terms of board members.
 - (b) Removal. The City Council may remove any member of the board of directors with or without cause.
 - (c) Vacancies. Vacancies shall occur immediately upon the following events:
 - (i) in the case of the City Council member, he or she ceases to be a member of the City Council;
 - (ii) in the case of a person holding a commissioner seat by virtue of being the chair of a designated commission, if he or she ceases to be the chair of the designated commission;
 - (iii) in the case of a person holding a commissioner seat who was nominated by a designated commission, if he or she ceases to be a member of the designated commission;
 - (iv) in the case of a person holding a commissioner seat neither by virtue of being chair of a designated commission nor following nomination by a designated commission, if he or she ceases to have his or her primary residence in Lompoc; and
 - (v) in the case of a business representative, if he or she becomes an employee of the City, a City commissioner, or elected official of the City, or ceases to work for a business located in Lompoc, or ceases to have his or her primary residence in Lompoc.
3. Leadership of the Board. The Council Member will be the chair of the board of directors. The vice chair will be one of the commissioners, chosen by the board. This will ensure that both the chair and the vice chair are familiar with the procedures of running a meeting and are familiar with the requirements of the Brown Act.
4. Meetings. Meetings of the corporation would be held in City Hall and would be subject to the Brown Act. Regular meetings would be held at least twice during the first year after creating the corporation, and would thereafter be held as often as needed, but at least once a year.
5. Officers. The City Manager would be the executive director, the City Clerk would be the secretary, and the Director of Management Services would be the treasurer. The City Manager would designate other people to assist the corporation as needed.
6. Annual Report. Within 120 days after the end of each of the corporation's fiscal years (June 30), the corporation will send a report to the City Council, including: the corporation's assets, the number of grants applied for and the number of grants received by the corporation, a list and description of all projects funded by the corporation, and the number of meetings held by the corporation.

7. Amendments. The Bylaws, whether in whole or in part, may not be amended, repealed, or otherwise made ineffective without the express written authorization of the Lompoc City Council. Any change(s) to the Bylaws shall be adopted by the board of directors subject to approval by the City Council, shall be transmitted to the City Council for its consideration, and shall only become effective upon approval of such change(s) by the City Council or else shall be void.
8. Dissolution. The corporation may not be dissolved without the express authorization of the City Council, and may submit a written request for dissolution to the City Council if it wishes to dissolve. Even in the absence of a request from the corporation, the City Council may dissolve the corporation by a majority vote of the full membership of the City Council.

Next Steps

If the City Council chooses to move forward with the creation of the nonprofit, then City staff will file the Articles of Incorporation with the California Secretary of State, and the City Manager will adopt the Bylaws in his capacity as Incorporator. Once the City receives confirmation that the Foundation has officially formed, City staff will prepare and file an application for a 501(c)(3) tax exemption.

It is unclear how long it will take the IRS to process the federal tax exemption application. The IRS website currently says that the IRS is experiencing delays in processing these applications. Although in previous years, the process may have taken approximately 6 months, it may take substantially longer now in light of current delays. The corporation may still meet and conduct business prior to receiving tax exempt status but it might not be eligible for certain grants until its tax-exempt status is approved.

Once the corporation is formed and board members are appointed, the corporation can hold its first meeting and begin conducting business.

Fiscal Impact:

Formation of the nonprofit corporation does not come without cost, though the initial setup is a relatively minor one-time cost, excluding staff time. 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 number¹ 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.

¹ An employer identification number is required even when there are no employees.

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 of directors, as needed.

Conclusion:

A nonprofit corporation may be a useful tool for applying for State and Federal grants that favor cities working with NGO's (non-governmental organizations), or raising funds to support civic projects currently outside the scope of the City's budget. City staff seeks direction from the City Council regarding whether to form the nonprofit corporation in accordance with the articles of incorporation and bylaws attached to this report.

Respectfully submitted,

Jim Throop, City Manager



Jeff Malawy, City Attorney

Attachments: 1) Draft Articles of Incorporation
2) Draft Bylaws