

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: Hugh R. Riley, Assistant City Manager 

DATE: January 23, 2009 (CC Meeting of 2/04/2009)

SUBJECT: Consider Recommended Bylaws for the Moorpark Community Foundation for the Arts

BACKGROUND

On January 16, 2008, the City Council directed staff to begin the research activity necessary to establish a Moorpark Community Foundation for the Arts. The mission of the Foundation is to raise funds from private sources and private or public grants to support the advancement of the arts in Moorpark including supporting the ongoing operating expense of the High Street Arts Center. In March 2008, staff completed the required Articles of Incorporation (Attached) which were filed with the California Secretary of State's Office on June 5, 2008 to establish the foundation.

FOUNDATION STRUCTURE

Because the circumstances surrounding the City of Simi Valley's acquisition of the Simi Valley Cultural Arts Center and subsequent formation of an arts foundation closely parallel the situation in Moorpark, staff patterned the steps to form the Moorpark Foundation after the effort in Simi Valley as well as several other examples.

In September of 1994, the Simi Valley City Council appointed five members to serve as both the Simi Valley Cultural Arts Center Foundation and an Arts Commission. The Commission was tasked to oversee the operation and management of the Center. The Foundation was charged with managing a fund raising campaign. The City also agreed to provide clerical support to the Foundation. Private donations to the Foundation were made through the City of Simi Valley. The Foundation acquired an IRS designation as a 501 (c) (3) Non-Profit entity separate from the City of Simi Valley.

The Foundation pledges an annual cash donation of about \$25,000 per year. This amount is raised through various fundraisers (which take place outside of theater walls), such as individual donors and corporate donations as well as two major yearly functions: The Spotlight Awards and the Vino Jazz Festival. The Foundation has also started an endowment fund for the theater, which has a current principal balance of approximately \$350,000.

In February 1996, the City Council dissolved the Commission to allow the Foundation to concentrate solely on fundraising and expanded its membership to 21 members, 14 appointed by the Foundation Board and 7 appointed by the City Council. The City Council also expanded an Ad Hoc Cultural Center Committee to five members.

In June 1997, the City Council changed the name of the Ad Hoc Cultural Center Committee to the Simi Valley Arts Commission to reflect the permanent nature of the Committee. The current membership of the Commission includes two members of the City Council, four public members appointed by the City Council, one member of the Cultural Arts Center Foundation Board of Directors, and one public member alternate appointed by the City Council. The Cultural Arts Commission became the policy body for the Center and approves an annual budget and operating plan.

The 501 (c) (3) designation was obtained in 1996 after the Foundation was split off from the Commission. The CEO and the Board of the Foundation prepared and submitted the application.

The High Street Arts Center Operating Costs

The Redevelopment Agency of the City of Moorpark provided funding in the 2007/08 operating budget for the third theatrical season at the High Street Arts Center ("HSAC"). The total amount budgeted for the HSAC is \$230,820. Revenue for the HSAC is estimated at \$91,000. The Agency absorbs the \$139,820 gap between revenue and expenses.

Relationship Between the City and the Proposed Foundation

The City has options as to how it would like to work with and through the proposed Foundation. The City's legal staff has examined both the Foundation model used by Simi Valley and a model used in the City of Lompoc for that City's well-known mural program. Obviously, the Simi Valley model includes some level of direct control of the Foundation by the City. In Lompoc, the City helped initiate the Foundation, but it now operates without City control. In both cases, the Cities are a source of financing for the Foundations, but the Foundations operate as separate entities from the Cities. To ensure that the Moorpark Foundation is not viewed legally as a subsidiary body of the City of Moorpark, it

is best to limit the City's control of the Foundation and to have the Foundation open and keep financial accounts separate from those maintained by the City. However the City would be copied on all meeting agendas and minutes, receive periodic financial reports and maintain final approval authority for the Arts Center Operating and Production Budget. This separation is important particularly if the Foundation is a recipient of grant funding from other Arts Foundations including the National Endowment for the Arts and others.

The City would review the progress of the Foundation within three years and, at that time would have the option of amending the Foundation's Bylaws to provide for more independent operation or maintaining the existing relationship. In the case of Simi Valley Cultural Arts Center Foundation described in this report, after five years, the City of Simi Valley decided to continue its relationship with the Foundation.

The proposed bylaws have been developed to meet the following short term and intermediate term objectives:

1. Establish a Foundation Board of 7 members appointed by the Mayor and City Council.
2. Establish operating parameters for the Foundation and relationships with the City including compliance with the Ralph M Brown Act with regard to meetings and Public Records Act with regard to meeting minutes, and financial records.
3. Provide for the eventual operation of the foundation independent of the City at a time to be determined at the sole discretion of the City.

FISCAL IMPACT

No fiscal impact at this time. Approximately \$2,600 of the \$5,000 budgeted for the formation of the Foundation has been expended to date. Staff will present a report regarding any additional costs associated with establishing the foundation at a future City Council Meeting. Such costs may include additional legal services and City staff time for the preparation of required state and federal reports and the keeping of records required to acquire tax exempt status. Additional out of pocket costs are not expected to exceed \$5,000.

STAFF RECOMMENDATION

Direct staff as deemed appropriate.

Honorable City Council
January 23, 2009
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Attachment: Articles of Incorporation
Draft Bylaws

State of California
Secretary of State



I, DEBRA BOWEN, Secretary of State of the State of California, hereby certify:

That the attached transcript of 2 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.



IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

JUN 2 6 2008

A handwritten signature in black ink that reads "Debra Bowen".

DEBRA BOWEN
Secretary of State

ATTACHMENT I

000128

JUN 09 2008

**ARTICLES OF INCORPORATION
OF
MOORPARK COMMUNITY FOUNDATION FOR THE ARTS**

I

The name of this corporation is MOORPARK COMMUNITY FOUNDATION FOR THE ARTS

II

- A. This corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for charitable purposes.
- B. The specific purpose of this corporation is to provide and promote the arts to the public through the operation of the High Street Arts Center in the City of Moorpark.

III

The name and address in the State of California of this corporation's initial agent for service process is:

Hugh R. Riley, Assistant City Manager
City of Moorpark
799 Moorpark Avenue
Moorpark, CA 93021

IV

- A. This corporation is organized and operated exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.
- B. No substantial part of the activities of this corporation shall consist of carrying on propaganda or otherwise attempting to influence legislation, and the corporation shall not participate or intervene in any political campaign (including the publishing or distribution of statements) on behalf of any candidate for public office.

V

The property of this corporation is irrevocably dedicated to charitable purposes and no part of the net income or assets of this organization shall ever inure to the benefit of any director, officer or member thereof or to the benefit of private persons. Upon the dissolution of the corporation its assets remaining after payment or provision for

payment of all debts and liabilities of this corporation shall be distributed to a nonprofit fund, foundation, or municipal corporation which has established its tax exempt status under Section 501(c)(3) of the Internal Revenue Code.

6/5/08
Date

Hugh R. Riley
Incorporator: Hugh R. Riley



**MOORPARK COMMUNITY FOUNDATION FOR THE ARTS
BYLAWS**

Article I - Name

The name of this corporation shall be the Moorpark Community Foundation for the Arts.

Article II - Principal Office

The principal office of this corporation for transaction of business is located in the City of Moorpark and the County of Ventura, California at 799 Moorpark Avenue. The Board of Directors has the full power and authority to change the principal office of this corporation from one location to another in the City of Moorpark, California. Any such change shall be noted by the Secretary in these bylaws but shall not be considered an amendment to these bylaws.

Article III - Purpose

The specific purpose of this corporation is to provide and promote the arts to the public through the operation of the High Street Arts Center in the City of Moorpark.

Article IV - Members

Section 1 Class and Voting Rights: The Corporation shall have one class of non-voting members. No person shall hold more than one membership in the Corporation.

Section 2 Qualification of Members: Members shall be those persons duly appointed in accordance with this Section. Any person dedicated to the purpose of the corporation, shall be eligible for membership upon approval of the membership application by the Board of Directors and upon timely payment of such dues and fees the board may fix from time to time.

Section 3 Dues, Fees and Assessments: Each Member must pay, within the time and on the conditions set by the Board of Directors, the dues, fees and assessments in amounts to be fixed from time to time by the Board. The dues, fees, and assessments shall be equal for all members.

Section 4 Members in Good Standing: Members who have paid the required dues, fees, and assessments in accordance with these bylaws and who are not suspended shall be members in good standing.

Section 5 Grounds for Suspension of Membership: A member may be suspended under Article IV, Section 7 of these bylaws, based on the good faith determination by the board, or a committee or person authorized by the board to make such a determination, that the member has failed in a material and serious degree to observe the corporation's rules of conduct, or has engaged in conduct materially and seriously prejudicial to the corporation's purposes and interests. During the period of suspension, the person shall not be a member.

Section 6 Grounds for Termination of Membership: A membership shall terminate on the occurrence of any of the following events:

- A. Resignation of the member;
- B. Expiration of the period of membership, unless the membership is renewed on the renewal terms fixed by the board;
- C. The member's failure to pay dues, fees, or assessments as set by the board within 30 days after they are due and payable;
- D. Any event that renders the member ineligible for membership, or failure to satisfy membership qualifications; or
- E. A good faith determination under Article IV, Section 7 by the board, or a committee or person authorized by the board to make such a determination, that the member has failed in a material and serious degree to observe the rules of conduct of the corporation, or has engaged in conduct materially and seriously prejudicial to the corporation's purposes and interests.

Section 7 Procedures for Suspension or Terminating Membership: If grounds appear to exist for suspending or terminating a member under Article IV, Section 5 or 6 of these bylaws, the following procedure shall be followed:

- A. The board shall give the member at least 15 days' prior notice of the proposed suspension or termination and the reasons for the proposed suspension or termination. Notice shall be given by any method reasonably calculated to provide actual notice. Notice given by mail shall be sent by first-class or registered mail to the member's last address as shown on the corporation's records.
- B. The member shall be given an opportunity to be heard, either orally or in writing, at least five days before the effective date of the proposed suspension or termination. The hearing shall be held, or the written statement considered, by the board or by a committee or person authorized by the board to determine whether the suspension or termination should occur.
- C. The board, committee, or person shall decide whether the person should be suspended, expelled, or sanctioned in any way. The decision of the board, committee, or person shall be final.
- D. Any action challenging an expulsion, suspension, or termination of membership, including a claim alleging defective notice must be commenced within one year after the date of the expulsion, suspension, or termination.

Section 8 Transfer of Membership: Membership Not Permitted: No membership or right arising from membership may be transferred. All membership rights cease on the member's termination, death or dissolution.

Section 9 Annual Meeting: Subject to and in full accordance with The Ralph M. Brown Act (CA Gov. Code Section 54950 et seq.) ("Act"), the Membership shall meet annually on ___ at ___:00 p.m.; provided, however, that should said day fall upon a legal holiday, then said meeting shall be held at the same time on the next business day thereafter ensuing which is not a legal holiday. Annual meetings of the Members shall be governed by Robert's Rules of Order, including such revisions thereof as may from time to time be published, except insofar as such rules are inconsistent with these bylaws, with the Articles of Incorporation, with the Act, or with applicable laws.

Article V - Board of Directors

Section 1 Appointment of Directors: The initial Board of Directors shall be comprised of five (5) Directors, three of whom shall be appointed by the Mayor of the City of Moorpark with the approval of the Moorpark City Council and two of whom shall be appointed by the other three Mayor-appointed Directors. The term of each Director of the initial Board is four years. Recruitment for City Council appointments to the Foundation will be conducted by the City Clerk, consistent with the City Council's adopted Advertising and Appointment Policy for Citizen Appointments.

On or about the conclusion of the second full year of the initial Board, the size of the Board shall increase from five Directors to seven Directors with the appointment of two more Directors by the Mayor of the City of Moorpark with the approval of the Moorpark City Council. The term of each of the two additional Directors is four years.

Thereafter, upon the conclusion of a term of one or more of the five Mayor-appointed Directors, the Mayor with the approval of the Moorpark City Council shall appoint the successor Director(s).

Upon the conclusion of a term of one or both of the Director-appointed Directors, the immediate past president of the Board shall be the successor Director or if he or she is already a Director, then the remaining Directors shall appoint a successor Director. The term of the successor Directors shall be four years.

Section 2 Powers of Directors: Subject to the provisions and limitations of the California Non-Profit Public Benefit Corporation Law and any other applicable laws and subject to any limitations in the Articles of Incorporation or these bylaws, the business and affairs of this corporation shall be managed, and all corporate powers shall be exercised by or under the direction of the Board of Directors.

The Board of Directors may delegate the performance of any duties or the exercise of any powers to such officers or agents as may from time to time, by resolution, be so designated provided that the activities and affairs of this corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board.

Section 3 Honorary Membership: An individual or business entity (corporation), based on interest or service to the High Street Arts Center, may, by a majority vote of the Board, be awarded Honorary Membership to the Board. Such membership shall be non-voting.

Section 4 Vacancies: A vacancy in any Mayor appointed Director position because of removal, death, resignation, or otherwise, shall be filled with an appointment by the Mayor with approval by the Moorpark City Council . A vacancy occurring in a Board appointed position because of removal, death, resignation, or otherwise, shall be filled with an appointment by the President with the approval of the Board of Directors.

- A. Events Causing Vacancy: A vacancy on the Board of Directors shall be deemed to exist at the occurrence of any of the following:
 - 1. The death, resignation or removal of any Director.
 - 2. A Director has three or more consecutive absences from duly called meetings that are not excused in writing by the President.
- B. Resignation: Except as provided in this paragraph, any Director may resign, which resignation shall be effective on giving written notice to the President or Secretary of the Board, unless the notice specifies a later time for the resignation to become effective. No Director may resign when the corporation would be left without a duly elected Director or Directors in charge of its affairs.
- C. Removal of Directors: Directors appointed by the Mayor may be removed at any time, with or without cause, by a majority vote of the Moorpark City Council. Directors appointed by the Board, may be removed, with or without cause, by a majority vote of Board of Directors at a special meeting called for that purpose, or at a regular meeting, provided notice of that meeting and of the removal questions are given.

Section 5 Voting: Each Director other than honorary members of the Board shall have one vote. There shall be no proxy voting permitted for the transaction of any of the business of this corporation.

Section 6 Regular Board Meetings: Subject to and in full accordance with the Act, the regular meetings of the Board of Directors shall be held on the ____ of each month at __:00 p.m.; provided, however, that should said day fall upon a legal holiday, then said meeting shall be held at the same time on the next business day thereafter ensuing which is not a legal holiday. At the first regular meeting of the year the Directors shall elect the officers specified in Article VI. All regular meetings of the Board of Directors shall be governed by Robert's Rules of Order, including such revisions thereof as may from time to time be published, except insofar as such rules are inconsistent with these bylaws, with the Articles of Incorporation, with the Act, or with applicable laws.

Section 7 Special Meetings: Subject to and in full accordance with the Act, special meetings of the Board may be called by the President, any Vice President, the Secretary or any two (2) Directors. Special meetings shall be held on four (4) days' notice by first-class mail, postage prepaid, or on forty-eight hours' notice delivered personally or by telephone or e-mail. Notice of the special meeting need not be given to any Director who signs a waiver of notice or a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of such notice to such Director. All such waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

Section 8 Place of Meetings: Regular and Special meetings of the Board of Directors shall be held at any place within the City of Moorpark which has been designated from time to time by resolution of the Board or by written consent of all the Directors of the Board and which location meets the accessibility requirements of the Act. In the absence of such designation, meetings shall be held at the High Street Arts Center.

Section 9 Open Meetings: All meetings of the Board of Directors shall be open and public and all persons shall be permitted to attend any meeting of the Board; provided, however, that the Board may hold a noticed, closed session during any meeting to consider those matters that may lawfully be considered in such sessions under the Act.

Section 10 Quorum: A majority of the authorized number of voting Directors shall constitute a quorum for the transaction of business at every meeting. If a quorum is present at the beginning of a meeting, that meeting remains a valid meeting, despite the withdrawal of directors leaving less than a quorum. However, if any action is to be taken, no less than one-third (1/3) of the authorized number of voting Directors must be present and the action must be approved by a majority of those remaining. Every act or decision made by a majority of the Directors present at a meeting at which a quorum is present shall be an act of the Board of Directors, subject to any more stringent provisions of the California Non-Profit Public Benefit Corporation Law.

Section 11 Compensation: The Board of Directors shall serve without compensation. Directors may be reimbursed for expenses related to the purpose of the corporation. Expenditures for which reimbursement is requested must receive prior approval by a majority vote of the Board at a regular or special meeting.

Section 12 Committees of Directors: The Board of Directors may create one or more committees to serve at the pleasure of the Board. Members of committees need not be Directors unless the Committee. At least one Board member shall serve on each committee. Any member of any committee may be removed, with or without cause, at any time by the Board. Any committee, to the extent provided in a resolution of the Board, shall have all or a portion of the authority of the Board, except that no Committee, regardless of the Board resolution, may:

- A. Fill vacancies on the Board of Directors or on any committee;

- B. Amend or repeal the Articles of Incorporation or bylaws or adopt new bylaws;
- C. Amend or repeal any resolution of the Board;
- D. Create any other committee of the Board or appoint the members of any committee;
- E. Approve any transaction to which the corporation is a party and as to which one or more Directors has a material or financial interest or between the corporation or firm in which one or more of its Directors has a material or financial interest.

Section 13 Meeting and Action of Committees: Subject to and in full accordance with the Act, meetings and actions of committees of the Board shall be governed by these bylaws. The Board of Directors may adopt rules for any committee not inconsistent with the provisions of these bylaws or the Act.

Section 14 Executive Committee: Pursuant to Article V, Section 13, the Board may appoint two (2) Directors and the President of the Board to serve as the Executive Committee of the Board. The President of the Board shall serve as the Chair of the Executive Committee. The Executive Committee, unless limited by a resolution of the Board, shall have and may exercise all the authority of the Board in the management of the business and affairs of the corporation between meetings of the Board; provided, however, that the Executive Committee shall not have the authority of the Board in reference to those matters enumerated in Article V, Section 13, nor may the Executive Committee bind the corporation to any contract or agreements which way create liability for, an amount in excess of \$5,000.00.

Article VI - Officers

Section 1 Officers: The Officers of this corporation shall be President, Vice President, Secretary, and Treasurer.

Section 2 Elections: The Board of Directors shall elect all Officers of this corporation for terms of one year, or until their successors are elected and seated. The annual election shall be held at the annual meeting held on or about October 1 each year or on the next available business day following October 1. Officers shall be seated at the next subsequent meeting or not later than sixty (60) days from the date of the election. All Officers shall be drawn from the Board of Directors. Officers may be assisted by staff members of the City of Moorpark or by any person or persons so authorized by the Board of Directors.

Section 3 President: Subject to the control of the Board of Directors, the President shall preside at all meetings of the members and of the Board, and shall have such other powers and duties as may be prescribed from time to time by the Board of Directors, law, Articles of Incorporation and Bylaws. The President shall have a vote on all matters.

Section 4 Vice President: In the absence or disability of the President, the Vice President shall perform all the duties of the President. The Vice President shall have such other powers and perform such other duties as may be prescribed from time to time by the Board of Directors, law, Articles of Incorporation and Bylaws.

Section 5 Secretary: The Secretary shall assist the President in the preparation of the agendas for the meetings, shall provide such notices as may be necessary and proper, shall keep full and complete records of the proceedings of all meetings of the Board of Directors and maintain such records at the principal place of business or other place designated by the Board, and shall discharge such other duties as pertain to the office or as prescribed by the Board of Directors.

Section 6 Treasurer: The Treasurer shall be the Chief Financial Officer of this corporation, and if required by the Board of Directors, shall give a bond for the faithful discharge of his or her duties in such sums and with such surety as the Board of Directors shall deem appropriate. The Treasurer shall submit an annual report to the Board on or about October 1st of each year, shall supervise the keeping of the books of this corporation, and shall discharge such other duties as pertain to the office or as presented by the Board of Directors.

Section 7 Removal of Officers: Officers serving on the Board as appointees of Mayor may be removed at any time, with or without cause, by a majority vote of the Moorpark City Council. Officers serving on the board as appointees of the President of the Board, may be removed, with or without cause by a majority vote of the members of the entire Board of Directors at a special meeting called for that purpose, or at a regular meeting, provided notice of that meeting and of the removal questions are given.

Article VII - Defense, Indemnification and Insurance

This corporation shall defend any Director who is a party or is threatened to be made a party to any proceedings, other than a proceeding by or in the right of the corporation, by reason of the fact that such Director is or was an agent of this corporation and will indemnify such Director against expenses, judgments, fines, settlements and any other amounts actually and reasonably incurred in connection with such proceedings if such Director acted in good faith and in a manner such Director reasonably believed to be in the best interest of this corporation, and in the case of a criminal proceeding, if such Director had no reasonable cause to believe the conduct was unlawful.

The corporation shall have the right, and shall use reasonable efforts, to purchase and maintain insurance to the full extent permitted by law on behalf of the Directors to cover any liability asserted against or incurred by any Director in such capacity or arising from the Director's status.

Article VIII - Records and reports

The corporation shall keep at its principal office the original or a copy of the Articles of Incorporation and bylaws, as amended to date. The accounting year of the corporation shall be July 1 to June 30.

The accounting books, records and minutes of the proceedings of the Board of Directors and any committee(s) of the Board of Directors shall be kept at such place or places designated by the Board of Directors, or, in the absence of such designation, at the principal office of the corporation. The minutes shall be kept in written or typed form, and the accounting books and records shall be kept in either written or typed form or in any other form capable of being converted into written, typed or printed form. Copies of all meeting agendas and approved minutes shall be provided to the City Clerk of the City of Moorpark. A quarterly report of general business shall be submitted to the City in a form to be determined by the City Manager.

Every Member and Director shall have the absolute right, at any reasonable time, upon written request, to inspect all books, records and documents of every kind and the physical properties of the corporation and each of its subsidiary corporations. This inspection by a Director may be made in person or by agent or attorney, and the right of inspection includes the right to copy and make extracts of documents.

Article IX - Conflict of Interest

No member of the Board of Directors shall be financially interested in any contract or other transaction entered into by the Board of Directors, and any contract or transaction entered into in violation of this prohibition is void. No Director may utilize information obtained by reason of Board membership for personal gain, and the Board of Directors may recover any such gain realized.

Article X - Amendment of Bylaws

Amendments to these bylaws may be approved by a two-thirds vote of the entire Board of Directors.