

MEMORANDUM

DATE: February 20, 2015
TO: Jon Elam, General Manager
Tamalpais Community Services District
FROM: Lauren E. Quint, Associate Attorney
RE: **Transfer of Property from a Non-Profit to a Public Agency**

The Tamalpais Valley Improvement District (TVIC) is interested in transferring property located at 203 Marin Avenue, Mill Valley to the Tamalpais Community Services District (TCSD). This property houses the Tam Valley Community Center (the "Community Center") and is owned by TVIC, but leased to TCSD, which currently manages recreational and community events taking place at the Community Center as well as rentals of the hall for other community events.

I. Question

Can TVIC, a California non-profit benefit corporation legally transfer the Community Center to TCDS, a California government agency?

II. Short Answer

Yes. In general, a California non-profit benefit corporation can make donations for the public welfare, consistent with their corporate purposes and any other restrictions on the donated property. The contemplated transfer is proper, given that transferred property will be utilized in a manner that is consistent with the TVIC's purpose, as set forth in its Articles of Incorporation.

III. Background

On December 1, 1994, TVIC entered into a lease agreement with TCSD whereby it leased the Community Center to TCSD for nominal rent of One Dollar (\$1.00) per year. The lease was amended once in 2003 and again in 2006. As amended, the lease has a fifty (50) year

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term, expiring on December 1, 2044. By the terms of the lease agreement, the Community Center must be used as a community center for the enjoyment and benefit of the community. The lease also specified that priority use would be given to the residents of Tamalpais Valley. (Lease Agreement, page 1).

IV. Analysis

A. A Non-Profit Corporation Can Convey Property to Carry Out its Public Purpose

Section 5140 of the California Corporations Code provides that, subject to limitations in the articles or bylaws, “a corporation, in carrying out its activities, shall have all of the powers of a natural person” The corporation specifically has the power to “(h) make donations for the public welfare or for community funds, hospital, charitable, educational, scientific, civic, religious, or similar purposes.”

From this provision, we can conclude that the TVIC has the power to convey property and, specifically, it can donate property to carry out its civic purposes.

B. TCSD’s Proposed Use of the Community Center is Consistent with TVIC’s Civic Purpose

The TVIC Articles of Incorporation, as amended in 1968 state that “The specific and primary purpose for which the corporation is formed is to promote the welfare of the community generally, and to engage in activities of which are humanitarian in nature and rendered for the general improvement and betterment of mankind, including but not limited to, holding informational meetings, forums, discussion programs and seminars, to inform the public as to matters of community interest, and to provide educational and recreational program open to the public generally, and to engage in activities designed to help the needy without regard to race, religion, or national origin.”

In addition, as amended in 1969, the Articles of Incorporation state that “[t]he property of this corporation is irrevocably dedicated to charitable purposes.”

It is well settled that providing or maintaining recreation facilities for an entire community is a charitable activity. (*Isabel Peters*, 21 T.C. 55 (1953)(holding that maintaining public parks, public monuments, and other kinds of public works, and the providing community recreational facilities for the entire community furthers charitable purposes.) Indeed the Internal Revenue Service has determined that nonprofit corporations that operate swimming

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pools or playgrounds for all members of the community, as well as organizations to preserve or beautify a public park were exempt from taxation under IRC 501(c)(3) based on the fact that the facilities were open to the general public and used by all residents. (Rev. Rul. 59-310, 1959-2 C.B. 146; Rev. Rul. 78-85, 1978-1 C.B. 150)

Given that TCSD's planned use of the Community Center continues TVIC's charitable purpose without interruption, the transfer is valid under the California Corporations Code.

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