



Form of Articles

California Nonprofit Public Benefit Corporation

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About This Form: Public Counsel’s Community Development Project has designed the attached form articles of incorporation for a California Nonprofit Public Benefit Corporation to assist nonprofit organizations that have chosen to incorporate in California and the *pro bono* attorneys who represent them. The form is specifically designed to be used by corporations that intend to seek tax exemption under section 501(c)(3) of the Internal Revenue Code and section 23701d of the California Revenue and Taxation Code.

The form is annotated with explanatory endnotes, including citations to applicable laws. For further instructions on how to use this form, how to determine whether your organization is ready to incorporate, and how to file the articles of incorporation to form a corporation, please see the first endnote. Public Counsel will update this form periodically for changes in law, recommended practices and available resources. For the latest version, see <https://publiccounsel.org/publications/annotated-form-of-articles-of-incorporation-for-a-california-nonprofit-public-benefit-corporation/>.

Important Notes: This form should be used only after carefully considering whether a corporation is the right entity for your organization and after making sure that you are ready to begin fundraising for and conducting the proposed charitable programs. Filing articles of incorporation starts the clock running on important deadlines. **If a corporation is formed before it is ready to apply for tax exemption or file other necessary paperwork, it may become subject to taxes and fines.** Please see the first endnote for more information.

This form should not be construed as legal advice. Please contact an attorney for legal advice about your organization’s specific situation. This form should not be used “as is” but should be modified after careful consideration of the explanations and alternative wording choices in the text of the articles and endnotes. Some corporations may need to include additional provisions not discussed in this form to qualify for certain grants or government funding.

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Public Counsel’s Community Development Project provides free legal assistance (including nonprofit incorporation) to qualifying nonprofit organizations that share our mission of serving low-income communities and addressing issues of poverty within Los Angeles County. For information about our legal services and the application process, please call (213) 385-2977, extension 200, or visit www.publiccounsel.org/practice_areas/community_development.

FORM OF ARTICLES OF INCORPORATION CALIFORNIA NONPROFIT PUBLIC BENEFIT CORPORATION

ARTICLES OF INCORPORATION¹

Article I

The name of this corporation is [Name of Corporation] (“Corporation”).²

Article 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.³ *The specific purpose of this Corporation is to [insert specific purpose].*⁴
- B. This Corporation is organized and operated exclusively for [insert one or more exempt purposes (e.g., charitable, educational, etc.)] purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”).⁵

Article III

The name and address in the State of California of this Corporation’s initial agent for service of process is [name and street address].⁶

Article IV

The initial street and mailing address of this Corporation is [address].⁷

[Alternative: The initial street address of this Corporation is [street address]. The initial mailing address of this Corporation is [mailing address].]

Article V

*This Corporation shall have no members.*⁸

Article VI

- A. No substantial part of the activities of this Corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation, and this Corporation shall not participate in or intervene in any political campaign (including the publishing or distribution of statements) on behalf of, or in opposition to, any candidate for public office.⁹

FORM OF ARTICLES OF INCORPORATION
CALIFORNIA NONPROFIT PUBLIC BENEFIT CORPORATION

- B. Notwithstanding any other provision of these articles of incorporation, this [Corporation shall not carry on any activities not permitted](#) to be carried on (i) by a corporation exempt from federal income tax under Section 501(c)(3) of the Code or (ii) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Code.¹⁰
- C. *Notwithstanding any other provision of these articles of incorporation or other governing instrument of this Corporation, during such period or periods, of time, if any, as this Corporation is treated as a “[private foundation](#)” pursuant to Section 509 of the Code: (i) the Corporation’s income must be distributed at such time and in such manner so as not to subject this Corporation to tax under Section 4942 of the Code and (ii) this Corporation is prohibited from (a) engaging in any act of self-dealing (as defined in Section 4941(d) of the Code); (b) retaining any excess business holdings (as defined in Section 4943(c) of the Code) which would subject this Corporation to tax under Section 4943 of the Code; (c) making any investments in such manner so as to subject this Corporation to tax under Section 4944 of the Code; and (d) making any taxable expenditures (as defined in Section 4945(d) of the Code).*¹¹

Article VII

- A. The property of this Corporation is [irrevocably dedicated](#) to **[insert one or more §501(c)(3) exempt purposes (e.g., charitable, educational, etc.)]** purposes. No part of the net income or assets of this Corporation shall ever inure to the benefit of any of its directors or officers, or to the benefit of any private person, except that this Corporation is authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article II hereof.¹²
- B. Upon the [dissolution or winding up](#) of this 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 corporation which is organized and operated exclusively for **[insert one or more §501(c)(3) exempt purposes (e.g., charitable, educational, etc.)]** purposes and which has established its tax-exempt status under Section 501(c)(3) of the Code.¹³

[Date](#): [Date]¹⁴

[Signature] _____
[Typed Name], [\[choose one: \[Incorporator\] OR \[Director\]\]](#)¹⁵

[NOTE: Insert additional signature blocks as needed. Insert acknowledgment and additional set of signature blocks only if [Directors are named](#) in the articles.¹⁶]

« ¹ **How To Use This Form:** For each section of the articles, the endnote indicates whether the provision is required to be included in the articles or is optional, and discusses the applicable law. Some of the form provisions contain **bold bracketed text** that indicates where the user is required to insert language (explained in the endnotes) to replace the bracketed terms. Other provisions contain *italicized text* that shows alternatives that may or may not be required, based on a nonprofit organization’s expected purposes and activities. In such cases, the notes explain under what circumstances an organization would choose to include the italicized language.

The endnotes discuss relevant provisions of the California Nonprofit Corporation Law (California Corporations Code sections 5000 *et seq.*) and provisions of the Internal Revenue Code of 1986, as amended (U.S. Code Title 26, referred to in these endnotes as the “Code”), in effect as of April 2021.

Important Note: Incorporation is not the first step in planning a new nonprofit program! Although this form is designed to meet the legal requirements to form a corporation that qualifies to apply for tax exemption under section 501(c)(3) of the Code and section 23701d of the California Revenue and Taxation Code, **Public Counsel’s Community Development Project cautions all users of this form that many planning steps to start a new nonprofit organization must precede filing of the articles.** This form should be used only after carefully considering whether a corporation is the right entity for your organization and after making sure that you are ready to begin fundraising for and conducting the proposed charitable programs. Before forming a corporation, for example, anyone interested in starting a new tax-exempt nonprofit organization should have a detailed description of the programs the new corporation will conduct and a detailed budget including a specific understanding of what funds are available to support the proposed programs and thorough research about the costs that will be involved in conducting the proposed programs. For further reading on this topic, see Public Counsel’s *Guide to Forming A Charitable, Tax-Exempt Nonprofit Organization* at <http://www.publiccounsel.org/publications?id=0077>. **Filing the articles starts the clock running on important deadlines! If a corporation is formed before it is ready to apply for tax exemption or file other necessary paperwork and too much time elapses, it may become subject to taxes and fines.**

Filing The Articles: A corporation is legally formed when the California Secretary of State accepts the articles for filing. After completing this form as appropriate for the corporation’s proposed activities, the user should be sure to remove all endnotes, brackets, and italicization before filing. Request a certified copy, which costs an additional \$5. Once the corporation receives a file-stamped, certified copy of its articles back from the Secretary of State, the corporation should keep this document in its permanent files. **Organizations incorporating outside of California should not use this form, and should consult the laws of the relevant state, as requirements often vary.**

« ² **REQUIRED.** California nonprofit corporation law requires the name of the corporation to be included in the articles. [*Cal. Corp. Code § 5130(a)*] California allows but does not require a nonprofit corporation to include the word “Corporation,” “Incorporated,” “Corp.” or “Inc.” in its name. The name inserted in Article I, including any punctuation or abbreviations, will be the legal name of the corporation, and should be used exactly as written here in all future government filings.

The name of a California corporation must adhere to the following guidelines in order to be approved by the Secretary of State. First, the name may not contain the words “bank,” “trust,” “trustee,” or related words without the approval of the Commissioner of Business Oversight. [*Cal. Corp. Code § 5122(a)*] Second, the name may not contain the word “cooperative,” or any abbreviation of, derivation of, or word similar to the word “cooperative,” unless an exception applies. [*Cal. Corp. Code § 12311(b)*] Finally, the name cannot be one that “is likely to mislead the public” and must be “distinguishable in the records of the Secretary of State”; the name cannot be: (i) a name that is already reserved with the Secretary of State or (ii) the name of a domestic corporation or foreign corporation qualified or registered in California. [*Cal. Corp. Code § 5122(b)*] Federal law also imposes restrictions on the use of the words “Olympic” and

“Olympiad,” [36 U.S.C. § 220506] and on certain terms associated with the federal government and its activities [18 U.S.C. §§ 709, 711-711a, 712].

When determining name availability, the California Secretary of State only checks the proposed name against names of like entities registered with it (e.g., a proposed nonprofit corporation name is checked for availability only against other nonprofit and for profit corporation names). Even if the desired name is available, the name may already be in use by another type of entity (e.g., an LLC) or contain a word or phrase that is protected by federal or state trademark or service mark registration or a fictitious business name filing. Therefore, it is a best practice to check the desired name against these sources before filing the articles and committing substantial efforts to developing public recognition of the name. For name availability information, see <https://www.sos.ca.gov/business-programs/business-entities/name-reservations>.

If the corporation wishes to change its legal name in the future, it may do so by amending its articles and filing the amendment with the Secretary of State. See <https://bpd.cdn.sos.ca.gov/corp/pdf/amendments/corp-amdtnp.pdf> for a sample certificate of amendment.

⌞³ **REQUIRED.** California nonprofit corporation law requires that the exact first sentence of Article II.A be included in the articles. The law further requires that at the end of the second sentence, the articles state one of the following three options: “public,” “charitable,” or “public and charitable.” [Cal. Corp. Code § 5130(b)]. However, corporations seeking to obtain tax exempt status under section 501(c)(3) of the Code should state that the corporation is organized for a “charitable purpose.” Although the law does not define the terms “charitable” or “public,” it is clear that the term “charitable” is broad and encompasses more than the relief of the poor. Moreover, the Secretary of State has indicated that a public benefit nonprofit corporation might be organized for “public” purposes if it is being organized for purposes other than those that qualify for exemption under section 501(c)(3) of the Code, such as, for example, a social welfare organization or a civic league that qualifies under section 23701(f) of the California Revenue and Taxation Code and section 501(c)(4) of the Code. Therefore, corporations seeking to qualify for tax-exempt status under section 501(c)(3) of the Code should state that the corporation is organized for charitable purposes. Further, corporations organized and operated for a public purpose will not qualify for a property tax exemption in California, as the exemption is limited to property owned by entities “organized and operated for religious, hospital, scientific or charitable purposes.” [Cal. Rev. & Tax. Code §214(a)]. See [Note 12](#) for more information on property tax exemption in California.

Note that the designation as “public,” “charitable,” or “public and charitable” required by California corporate law to be inserted in this provision may, but need not, exactly match the federal tax law 501(c)(3) purposes required to be inserted in Article II.B. Thus, a school or educational facility could state it is a public benefit corporation organized for “charitable” purposes in Article II.A. However, its section 501(c)(3) purposes in Article II.B could be “educational” or “charitable and educational,” depending on the type of school.

⌞⁴ **REQUIRED** if “public” purposes. If the second sentence of Article II.A states that the corporation’s general purposes include “public” purposes or “public and charitable” purposes, then the articles must include a further description of the corporation’s purposes. The description should be clear enough so the reader understands what the corporation’s specific public purposes are. However, as discussed in Note 3, corporations intending to obtain tax-exempt status under section 501(c)(3) of the Code should not include “public” in its general purpose statement. A corporation with solely charitable purposes is not required to (but may) include in its articles a further statement limiting the purposes of the corporation. [Cal. Corp. Code § 5130(b)] Note, however, that the Secretary of State and the Franchise Tax Board both suggest including a statement describing the specific purpose of the corporation even when the articles state that the corporation is formed solely for charitable purposes. See Recommended Practice below.

Limitations on the purposes of the corporation may be included in either its articles or bylaws. [Cal. Corp. Code §§ 5131, 5151(c)] If there is a conflict between the articles and bylaws, however, the articles control. Thus, if the purposes

and limitations in the articles are more restrictive than the ones stated in the bylaws, the language in Article II will define what activities the corporation may conduct.

Recommended Practice: The Secretary of State and the Franchise Tax Board both suggest including a statement describing the specific purpose even if it is not required (i.e., when the articles state the corporation is formed solely for charitable purposes).

It is advisable to state any specific purpose in broad and flexible terms since needs and objectives change over time and it may not be easy to eliminate a limitation once imposed even if its underlying reason no longer applies. If a specific purpose is described in the articles, the corporation may later change that purpose by amending its articles. However, any such amendment of articles of a nonprofit public benefit corporation will require notice to the Attorney General. If the corporation has assets at the time of the change of purpose, the Attorney General may require that the corporation use those existing assets only to serve its original purpose. If the founders want to ensure that the corporation's activities are limited to those purposes that they originally envisioned, and that the corporation's assets will be used only for those purposes, then specific limitations coupled with a clear statement of specific purposes would be appropriate. However, the founders should plan carefully to include some flexibility. By establishing specific limitations, the corporation permanently dedicates its assets to the limited stated purposes, so that even if the corporation's purposes change in the future, some of its assets may not be available for use in its new activities.

Sample Language Providing Flexibility

Sample 1: *“The specific purpose of this Corporation is primarily to [purpose]. Additionally, this Corporation may engage in any activities that are reasonably related to or in furtherance of its stated charitable purposes, or in any other charitable activities.”*

Sample 2: *“The specific purpose of this Corporation is primarily to [purpose], and to carry on other charitable activities associated with this purpose as allowed by law.”*

⏪ ⁵ **REQUIRED** for federal income tax exemption. This language must be included in the articles if the corporation seeks to qualify for federal income tax exemption under section 501(c)(3) of the Code. It is also necessary for state income tax exemption. [*Cal. Rev. & Tax. Code § 23701d*] **The corporation must include in place of the bracketed language at least one qualified “exempt purpose” within the meaning of section 501(c)(3) of the Code.** The qualified exempt purposes set forth in section 501(c)(3) of the Code are (i) charitable; (ii) religious; (iii) educational; (iv) scientific; (v) literary; (vi) testing for public safety; (vii) fostering national or international amateur sports competition; and (viii) preventing cruelty to children or animals. These are the same qualified exempt purposes set forth in section 23701(d) of the California Revenue and Taxation Code.

Most nonprofit public benefit corporations using this form will be organized and operated for purposes that meet the definition of “charitable” in the Code. The term “charitable” as defined in the Code is used in a broad sense and includes more than relief of the poor. For example, the IRS views all of the following activities as charitable: (i) relief of the poor, the distressed, or the underprivileged; (ii) advancement of religion; (iii) advancement of education or science; (iv) erection or maintenance of public buildings, monuments, or works; (v) lessening the burdens of government; (vi) lessening neighborhood tensions; (vii) elimination of prejudice and discrimination; (viii) defense of human and civil rights secured by law; and (ix) combating community deterioration and juvenile delinquency. If the corporation's purpose falls into any of these categories, it should list “charitable” as its purpose (or one of its purposes) in this provision.

Some nonprofit public benefit corporations using this form will be organized and operated for purposes that meet the definition of “educational” in the Code. Under the Code, the term “educational” is broad and includes instruction benefitting individuals and the community. For example, the following activities are considered educational: (i) publishing educational newsletters, books and other materials; (ii) conducting public discussion groups, workshops and lectures; (iii) operating a museum, zoo, orchestra, or performance group; (iv) operating a private school; and (v)

providing child care (under certain conditions). For information on the circumstances under which corporations organized and operated for educational purposes may qualify for a property tax exemption, please see [Note 12](#).

The articles often state one or more of these general categories rather than going into more specific detail (e.g., “The Corporation is organized and operated exclusively for charitable and educational purposes.”). If the corporation cannot determine into which category or categories its purposes fall, it may instead describe a more specific purpose such as, for example, “relief of the elderly within the meaning of section 501(c)(3) of the Code,” “relief of the poor,” or any other statement that describes the corporation’s proposed activities. See <http://www.irs.gov/pub/irs-tege/eotopicd04.pdf> for examples of qualifying and non-qualifying purposes. Note, however, that the description should not be very narrow, because a narrow definition will limit the scope of the corporation’s future activities. For a discussion on whether to limit the purposes of the corporation in the articles, see Note 4.

« ⁶ **REQUIRED.** The law requires that the articles include the name and California street address (a P.O. Box address is not acceptable) of the corporation’s initial agent for service of process. [*Cal. Corp. Code § 5130(c)*] The designated agent must agree to accept service of process on behalf of the corporation before being named in the articles. A corporation cannot designate itself as its own agent for service of process.

An agent is a person who resides in California and is designated by the corporation to accept service of legal process if the corporation is sued. Note that no liability attaches to the agent for merely being an agent. The corporation may change its agent for service of process at any time, by filing a new Form SI-100 completed in its entirety with the Secretary of State. [*Cal. Corp. Code § 6210(b)*] See <https://businesssearch.sos.ca.gov/?filing=corp> for information on how to file SI-100.

Recommended Practice: Although there are companies registered to serve this function for a fee, startup community-based nonprofits generally cannot afford to pay a company and instead choose an individual. The individual chosen is usually the incorporator, or a director or officer, but can also be any other person, whether or not affiliated with the corporation. The corporation should choose an agent who will stay in close contact with the board to ensure that he or she immediately forwards any information received. If the corporation is sued, it must promptly seek legal counsel and keep close track of the deadlines for any response.

« ⁷ **REQUIRED.** California nonprofit corporation law requires that the articles include the street address of the corporation. [*Cal. Corp. Code § 5130(d)*] The articles must also include the mailing address of the corporation, but only if it is different from the street address. [*Cal. Corp. Code § 5130(e)*] If no separate mailing address is stated, the Secretary of State will assume the corporation’s street address is also the mailing address. The name of the city indicated in the street or mailing address should not be abbreviated. The corporation may change its street and mailing address on file at any time by filing a new Form SI-100 completed in its entirety with the Secretary of State. See <https://businesssearch.sos.ca.gov/?filing=corp>.

« ⁸ **OPTIONAL.** The law permits the corporation to include optional provisions in the articles. [*See Section 5130 of the law for provisions that must be set forth in the articles and Sections 5131, 5132, 5151, 5310, 5513, 5812, 5911 and 6510 of the law for optional provisions*] In the absence of any provision in its articles or bylaws providing for members, a corporation has no legal members (members that have the right to vote on major corporate transactions and to elect the board of directors). [*Cal. Corp. Code § 5310(a)*] This optional form provision, if added, simply makes it clear that the corporation has no legal members. Even if the corporation has no legal members, it may still have a group of people it designates as “members” for fundraising purposes, but this group of people will not have the right to vote on corporate matters.

Recommended Practice: The statement that the corporation shall have no members should be included in the articles and/or bylaws to avoid any potential confusion.

⌌⁹ **REQUIRED** for federal income tax exemption. This language must be included in the articles if the corporation seeks to qualify for federal tax-exempt status under section 501(c)(3) of the Code. It is also necessary for state income tax exemption. [*Cal. Rev. & Tax. Code § 23701d*] Note that the prohibition on participation in candidate election activities is absolute, but the limitation on lobbying only prohibits the corporation from doing a substantial amount of lobbying. Corporations that expect to do any lobbying should discuss with counsel whether to make the election permitted by section 501(h) of the Code, which permits lobbying that does not exceed certain expenditure ceilings.

⌌¹⁰ **STRONGLY RECOMMENDED** for federal tax exemption. The IRS regulations interpreting section 501(c)(3) of the Code require the articles of a corporation seeking tax exempt status under section 501(c)(3) to limit the purposes of the corporation to one or more exempt purposes and to not “expressly empower the organization to engage . . . in activities which in themselves are not in furtherance of one or more exempt purposes.” However, the sample articles of incorporation published by the IRS include this exact statement and for this reason, it is recommended that a corporation include this statement. See IRS Publication 557 for more information. [*Treas. Reg. § 1.501(c)(3)-1(b); IRS Publication 557 (Rev. February 2021), Appendix*]

⌌¹¹ **OPTIONAL**, but will apply even if not included. The italicized language set forth in Article VI.C relates to tax rules that apply to 501(c)(3) corporations that are classified as “private foundations,” rather than “public charities.” Although most corporations using this form will intend to be classified as “public charities,” there is always a risk that a public charity may be reclassified as a private foundation if it does not generate enough broad public support. **As a result, all users of this form should review the following discussion of Article VI.C.** See below for a further description of public charities and private foundations.

Every private foundation must include this italicized language in its articles, unless state law requires these rules to apply to the corporation without such language appearing in its articles. [*Code § 508(e); Treas. Reg. § 1.508-3(d)*] California law provides that these private foundation tax rules apply to a nonprofit public benefit corporation during any period(s) that the corporation is deemed to be a private foundation, regardless of what is in the corporation’s articles. [*Cal. Corp. Code §5260*] Therefore, a California nonprofit public benefit corporation is not required to include this private foundation language in the articles, but the rules will apply if the corporation is ever deemed to be a private foundation. For this reason, a corporation may want to include this optional private foundation language in its articles or bylaws to remind its directors and officers of their increased responsibilities during any periods when the corporation is a private foundation. If the corporation is ever notified that it has been reclassified as a private foundation, the corporation should consult counsel about what these laws require and how to request reclassification as a public charity.

Public Charity vs. Private Foundation

All organizations that are tax exempt under Code section 501(c)(3) are classified as either “private foundations” or “public charities,” depending on where their revenues generally come from. A private foundation generally receives most of its revenue from one or a few private individuals or companies. A public charity generally receives support from the broad general public, the government and other public charities. Corporations using this form will generally apply to be recognized as a publicly supported charity, and will generally not intend to be treated by the IRS as a private foundation. However, a corporation may lose its public charity status and instead be deemed a private foundation if, for example, the corporation cannot prove that it has received general public support during the first 5 years of its existence. Visit the IRS website for more information on the requirements imposed on private foundations (<https://www.irs.gov/charities-non-profits/charitable-organizations/private-foundations>). For more information on how to qualify as a public charity under the public support test see Public Counsel’s *Public Support Test* (2020) at <http://www.publiccounsel.org/publications?id=0244>.

⌌¹² **REQUIRED** for state income tax and property tax exemption.

CA Income Tax: The corporation must include in place of the bracketed language at least one qualified “exempt purpose” within the meaning of section 501(c)(3) of the Code. The California Franchise Tax Board requires that the

property of the corporation be irrevocably dedicated to one or more purposes (i.e., charitable, scientific, religious, literary, educational, etc.) as described in section 501(c)(3) of the Code in order to grant state income tax exemption. [Cal. Rev. & Tax. Code § 23701d(a)] If the corporation has inserted a narrower purpose in Article II.B, and wants to ensure that the assets are irrevocably dedicated to serving that narrower purpose, the corporation may include that same narrower purpose in place of the bracketed language in the form. If this purpose is educational, see the comment on CA property tax below. The purposes listed in this provision must match the purposes listed in Article VII.B. See Note 5 for a discussion on exempt purposes.

CA Property Tax: The California Board of Equalization requires that the property of the corporation be irrevocably dedicated to one or more of four qualifying purposes (religious, scientific, charitable, and hospital) described in Section 214 of the California Revenue and Taxation Code in order for the corporation to qualify for the welfare exemption to property taxes (“property tax exemption”). Because the qualifying purposes for property tax exemption are more limited than for federal and state income tax exemption, not all nonprofit tax-exempt purposes may qualify.

Although “educational” purposes are not explicitly included in the qualifying purposes for property tax exemption, some educational purposes described in Section 214(j) of the California Revenue and Taxation Code are treated as “charitable.” Thus, if the corporation intends to dedicate its assets to educational purposes, then Article VII.A must state that the purposes are “educational purposes meeting the requirements of Section 214 of the California Revenue and Taxation Code” (rather than merely including the word “educational”) in order for the corporation to qualify for a California property tax exemption.

Corporations that irrevocably dedicate their property to purposes other than qualifying purposes (e.g., public purposes, non-qualifying educational purposes, etc.) do not qualify for the welfare exemption from property tax. See Section 214 of the California Revenue and Taxation Code and California Board of Equalization Property Tax Rule 143 (<https://www.boe.ca.gov/proptaxes/pdf/rules/Rule143.pdf>) for requirements and examples of irrevocable dedication clauses.

Recommended Practice: Property tax exemption is significant only when the corporation intends to own real property in California or to rent/lease real property from another nonprofit in California.

«¹³ **REQUIRED** for state income tax and property tax exemption. Generally also required for federal tax exemption. [Treas. Reg. § 1.501(c)(3)-1(b)(4)] The IRS does not require this express provision in the articles of a California corporation to qualify for exemption under section 501(c)(3) of the Code, because California law satisfies the IRS requirements whether or not this is stated in the articles. [Treas. Reg. § 1.501(c)(3)-1(b)(4); Rev. Proc. 82-2, at http://www.irs.gov/pub/irs-tege/rp1982_2.pdf] The IRS recommends, however, that articles include the language to facilitate processing the application for federal tax-exempt status. [IRS Publication 557 (Rev. February 2021), p. 25]

CA Income Tax: The corporation must include in place of the bracketed language at least one qualified “exempt purpose” within the meaning of section 501(c)(3) of the Code. In order to grant state income tax exemption the California Franchise Tax Board requires that, upon the liquidation, dissolution or abandonment of the corporation, the property of the corporation be distributed to another corporation which qualifies under one or more purposes (i.e., charitable, scientific, religious, literary, educational, etc.) described in section 501(c)(3) of the Code. [Cal. Rev. & Tax. Code § 23701d] If the corporation has inserted a narrower purpose in Article II.B, and wants to ensure that the assets will be distributed on dissolution only to another organization serving that narrower purpose, the corporation may include that same narrower purpose in place of the bracketed language in the form. If this purpose is educational, see the comment on California property tax below. The purposes listed in this provision should match the purposes listed in Article VII.A. See Note 5 for a discussion on exempt purposes.

CA Property Tax: In order to grant property tax exemption, the California Board of Equalization requires that, upon the liquidation, dissolution or abandonment of the corporation, the property of the corporation be distributed to another corporation which qualifies under one or more of the four qualifying purposes (religious, scientific, charitable, and

hospital) described in Section 214 of the California Revenue and Taxation Code. Because the qualifying purposes for property tax exemption are more limited than for federal and state income tax exemption, not all nonprofit tax-exempt purposes may qualify.

Although “educational” purposes are not explicitly included in the qualifying purposes for property tax exemption, some educational purposes described in Section 214(j) of the California Revenue and Taxation Code are treated as “charitable.” Thus, if the articles require that the corporation’s property be distributed upon dissolution to a corporation with educational purposes, then Article VII.B must state that the purposes are “educational purposes meeting the requirements of Section 214 of the California Revenue and Taxation Code” (rather than merely including the word “educational”) in order for the corporation to qualify for a California property tax exemption.

Corporations that may distribute their property upon dissolution to corporations with purposes other than qualifying purposes recognized by the California Board of Equalization (e.g., public purposes, non-qualifying educational purposes, etc.) do not qualify for the welfare exemption from property tax. See Section 214 of the California Revenue and Taxation Code and California Board of Equalization Property Tax Rule 143 (<https://www.boe.ca.gov/proptaxes/pdf/rules/Rule143.pdf>) for requirements and examples of dissolution clauses.

Recommended Practice: Property tax exemption is significant only when the corporation intends to own real property in California or to rent/lease real property from another nonprofit in California. The property tax exemption is not automatic for nonprofit corporations and requires a separate application to the State Board of Equalization and the county in which the property is located.

« ¹⁴ **OPTIONAL.** The law does not require the articles to be dated. Note that the corporation does not exist until the articles are accepted for filing by the Secretary of State. The Secretary of State will stamp the articles with the date of incorporation and return a stamped copy to the incorporator. That stamped date (and not the date written on the articles by the incorporator(s)) will be the corporation’s date of formation.

Recommended Practice: It is generally good practice to date the execution of the articles. However, this date would only indicate when the articles were actually signed and not when the corporation came into existence under the law.

« ¹⁵ **REQUIRED.** The articles must be signed by an incorporator, or if the initial directors have been named in the document, must be signed instead by all of the directors. If directors are named in the articles, each director must both sign and acknowledge the articles (see Note 16 for language that can be used for the acknowledgment). [*Cal. Corp. Code §§ 5120(b), 5030*] The names of incorporator or directors must be typed beneath their signatures, with the appropriate title next to the names. The Secretary of State will not accept an electronic or digital signature.

Incorporator(s): The form articles provide for a sole incorporator. If there are multiple incorporators, simply insert additional signature blocks at the end of the document. After the corporation is in existence, the incorporator(s) should appoint the initial directors and call an initial board of directors meeting. From then on, the board of directors is the governing body of the corporation.

Initial Directors: Alternatively, the articles could name the first board of directors. If the articles name directors, each director must both sign and acknowledge the articles. These directors are the governing body of the corporation from the date that the articles are filed by the Secretary of State.

If initial directors have been named, an additional article must be added listing each Director’s name and address:

“Article VIII

The names and addresses of the initial directors of the Corporation are as follows:

Name

Address”

Recommended Practice: It is common, and easiest, for an incorporator to form the corporation and then appoint directors. This avoids having the initial directors’ names and addresses on public file with the state forever. Note that in order to ensure a quick and efficient transfer of authority, incorporators should know who the initial directors will be before signing the articles.

«¹⁶ If initial directors are named in the articles, as discussed more fully in Note 15, then the initial directors listed in the articles must both sign and acknowledge (with a second signature) the articles. In that case, insert the following language (with the appropriate number of signature blocks) at the end of the articles, after the directors’ signatures:

“Acknowledgement

The undersigned declare that they are the persons who have executed these Articles of Incorporation and declare that this instrument is their act and deed.

[signature]
[Name], Director”

ADDITIONAL RESOURCES:

California Secretary of State	Sample Articles of Incorporation of a Nonprofit Public Benefit Corporation and Filing Instructions https://bpd.cdn.sos.ca.gov/corp/pdf/articles/arts-pb.pdf Filing Tips https://www.sos.ca.gov/business-programs/business-entities/filing-tips
California Attorney General	Charities https://oag.ca.gov/charities
California Franchise Tax Board	Publication 927 – Introduction to Tax Exempt Status https://www.ftb.ca.gov/forms/misc/927.html
Internal Revenue Service	Publication 557 – Tax Exempt Status For Your Organization https://www.irs.gov/pub/irs-pdf/p557.pdf Organizational Test – 501(c)(3) https://www.irs.gov/pub/irs-tege/eotopicd04.pdf Life Cycle of a Public Charity https://www.irs.gov/charities/charitable/article/0,,id=122670,00.html
California Corporations Code	https://leginfo.legislature.ca.gov/faces/codesTOCSelected.xhtml?tocCode=CORP
Internal Revenue Code U.S. Code Title 26	https://www.law.cornell.edu/uscode/text/26
Public Counsel	Annotated Form of Bylaws http://www.publiccounsel.org/tools/publications/files/Annotated_Bylaws.pdf Guide to Formation of a Tax-Exempt California Nonprofit Corporation http://www.publiccounsel.org/tools/publications/files/npincorp_guide.pdf