



# Form of Articles

## California Public Charter Schools

**About This Form:** Public Counsel’s Community Development Project in collaboration with the California Charter Schools Association (“CCSA”) has designed the attached form articles of incorporation for charter schools that choose to incorporate in California as nonprofit public benefit corporations and the *pro bono* attorneys who represent them.

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 charter school 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.

**Important Notes:** California Education Code Section 47604(a) allows charter schools to “operate as, or be operated by, a nonprofit public benefit corporation.” Incorporating as a nonprofit corporation enables a charter school to obtain legal independence from its charter granting agency and limits the potential personal liability of directors for any debts or wrongful acts of the school. Nonprofit incorporation also serves as a well-established platform for seeking federal and state tax exemption, and CCSA strongly recommends that charter schools incorporate as nonprofit corporations. While these are all good reasons to support a decision to incorporate, many charter schools have no practical choice in the matter because their selected charter granting agencies require proof of nonprofit incorporation before the schools’ charter petitions will be approved.

However, serious operational planning should long precede incorporation as the initial step in organizing a new charter school. The act of incorporation starts the clock running on important deadlines (e.g. an organization only has 27 months from its date of incorporation to file for tax-exempt status in order for this status to be retroactive to the date of incorporation). **If a corporation is formed too many months before the founders have invested the substantial time necessary to develop a board of directors, budget, curriculum, and the other elements necessary to create a successful school, and too much time passes before the school has finalized all these necessary steps to apply for tax exemption, it may become subject to the California minimum franchise tax and federal income tax.** Please see CCSA’s Knowledge Brief on “Incorporating Your Charter School” and 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 nonprofit charter schools 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 and tax exemption application) 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](http://www.publiccounsel.org/practice_areas/community_development).

CCSA is a nonprofit, membership organization which advances the charter school movement through state and local advocacy, leadership on accountability, and resources for member schools. CCSA is a trusted source of data and information on California’s charter schools for parents, authorizers, legislators, the press and other interested groups. Learn more about CCSA at [www.ccsa.org](http://www.ccsa.org). Please note, all CCSA Knowledge Briefs referenced in this document are available to CCSA members only. For more information about becoming a CCSA member, please visit <http://www.ccsa.org/services/membership/>.

# FORM OF ARTICLES OF INCORPORATION CALIFORNIA PUBLIC CHARTER SCHOOLS

## ARTICLES OF INCORPORATION<sup>1</sup>

### Article I

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

### 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 [choose one: [charitable] OR [public] OR [charitable and public]] purposes.<sup>3</sup> The specific purpose of this Corporation is to *[insert specific purpose]*.<sup>4</sup>
- 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").<sup>5</sup>

### 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].<sup>6</sup>

### Article IV

The initial street and mailing address of this Corporation is [address].<sup>7</sup>

*[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.<sup>8</sup>

### 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.<sup>9</sup>

- 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.<sup>10</sup>

## 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.<sup>11</sup>
- 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.<sup>12</sup>

[Date](#): [Date]<sup>13</sup>

[Signature] \_\_\_\_\_

[Typed Name], [\[choose one: \[Incorporator\] OR \[Director\]\]](#)<sup>14</sup>

*[NOTE: This form has been designed for a corporation formed by a sole incorporator. Insert additional signature blocks as needed if there are multiple incorporators. If initial directors are named in the articles, then all the named directors are required to sign and separately acknowledge the articles of incorporation. Insert acknowledgment and additional set of director signature blocks only if [initial directors are named](#) in the articles. A sample is included in the endnotes.<sup>15</sup>]*

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<sup>1</sup> **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., referred to in these endnotes as the "law"), provisions of the Internal Revenue Code of 1986, as amended (U.S. Code Title 26, referred to in these endnotes as the "Code"), provisions of the California Revenue and Taxation Code (Cal. Rev & Tax Code Section 23701d), provisions of the California Education Code (Educ. Code Sections 47600 et seq.), and provisions of the California Government Code (Gov. Code Section 1090) in effect as of February 2016.

**Important Note:** California law permits charter schools to operate as, or be operated by, a nonprofit public benefit corporation. [*Cal. Ed. Code § 47604(a)*]. The California Charter Schools Association ("CCSA") recommends as a best practice that charter schools form nonprofit public benefit corporations to operate their schools. This option provides the school with the opportunity to be legally independent and autonomous. It is also the case that many charter granting agencies require the developers of a charter school to submit proof that the school has been incorporated before a charter petition is approved. It is important to keep in mind, however, that **incorporation should not be the first step in planning a new nonprofit charter school!** For more information, please see CCSA's Knowledge Brief "Incorporating Your Charter School" at <http://www.ccsa.org/2010/05/incorporating-your-charter-school.html>.

Although this form is designed to meet the legal requirements to form a nonprofit public benefit corporation that operates as a charter school and 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 and the CCSA caution all users of this form that many planning steps to start a new nonprofit charter school should precede filing of the articles.** Far more important for the future success of a new charter school than formal incorporation is the development of the substantive program: identification of the student population to be served, design of the educational program and curriculum, identification of the governing board and development of a detailed budget and source of funds. **Further, filing the articles starts the clock running on important and mandatory charitable compliance and tax exemption deadlines!** Filing these form articles creates a nonprofit public benefit corporation, but the corporation is not tax-exempt under state and federal law until it has filed and received approval of its respective state and federal tax exemption applications. Under federal law, a nonprofit corporation must file a tax-exemption application with the IRS within 27 months of incorporating (i.e. filing its articles of incorporation) in order for the tax-exempt status to be retroactive to the date of incorporation—this is important because a corporation's income is subject to taxes and donors will not be able claim a tax-deduction for their donations until tax-exempt status is effective. **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 state and federal taxes and fines.** For more information, please see CCSA's Knowledge Brief "Incorporating Your Charter School" at <http://www.ccsa.org/2010/05/incorporating-your-charter-school.html>.

**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. For instructions on filing the articles, see [http://www.publiccounsel.org/tools/publications/files/npincorp\\_guide.pdf](http://www.publiccounsel.org/tools/publications/files/npincorp_guide.pdf). Once the corporation receives a file-stamped copy of its articles back from the Secretary of State, the corporation should keep this document in its permanent files and likely will need to submit a stamped copy of this document with its charter petition and application for tax exemption. Charter schools incorporating outside of California should not use this form, and should consult the laws of the relevant state, as requirements often vary. However, if a charter school that previously incorporated **outside of** California plans to operate as a charter school **in** California, CCSA cautions that the chartering authority may require the entity to reincorporate or create as a subsidiary a California nonprofit public benefit corporation during the petitioning process.

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<sup>2</sup> **REQUIRED.** The 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 the corporation will usually be the same name as the proposed charter school.

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 Financial Institutions. [*Cal. Corp. Code § 5122(a)*] Second, the name may not contain the word “cooperative” or any abbreviation of it unless an exception applies. [*Cal. Corp. Code § 12311(b)*] Finally, the Secretary of State will not accept a name that “is likely to mislead the public” or that is the same as, or “resembles so closely as to tend to deceive” either (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, unless the existing corporation or the holder of the name reservation consents. [*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 all these sources before filing the articles and committing substantial efforts to developing public recognition of the name. For additional guidelines and general name availability information, see <http://bpd.cdn.sos.ca.gov/be/forms/name-guidelines-restrictions.pdf> and <http://www.sos.ca.gov/business-programs/business-entities/name-availability>.

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 <http://bpd.cdn.sos.ca.gov/corp/pdf/amendments/corp-amdmp.pdf> for a sample certificate of amendment.

<sup>3</sup> **REQUIRED.** The law requires that this **exact** statement (the first two sentences of Article II.A) be included in the articles. At the end of the second sentence, the articles **must state that the corporation is organized for one** of the following three bracketed exempt purposes: *[public] OR [charitable] OR [public and charitable]*. [*Cal. Corp. Code § 5130(b)*] See Note 4 for additional language that is required if one of the alternatives that includes “public” purposes is selected. While charter schools are “public” schools [*Educ. Code § 47615*], it is completely at the discretion of the incorporator to describe the school as being organized for public, charitable or both purposes under California corporate law. The law does not define the terms “charitable” or “public.” Legislative history does give some hint as to the intended meaning of these terms by indicating that public benefit corporations are not operated for the mutual benefit of their members “but for some broader good” and that public benefit corporations “include but are not limited to the traditional ‘charitable’ corporations.” Report of the Assembly Select Committee on Revision of the Nonprofit Corporations Code, undated but issued in 1979, p. 5; Henry W. Ballantine & Graham L. Sterling, Ballantine & Sterling: California Corporation Laws § 404 3-19 (R. Bradbury Clark ed., Matthew Bender & Company 4<sup>th</sup> ed. 2014) (1976).

**Recommended Practice:** Corporations seeking to qualify for state tax exemption usually organize for one of the specified exempt purposes under section 501(c)(3) of the Code (e.g., charitable, scientific, literary, educational, etc.). All of these section 501(c)(3) purposes are considered “charitable” purposes under the law (i.e., for purposes of Article II.A). **As a result, it would generally not be necessary to include the designation “public” purposes in the articles of a corporation that expects to otherwise qualify as tax exempt under section 501(c)(3) of the**

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**Code.** 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. Charter schools are public schools, but as it relates to **California corporate law** they can choose to be organized for public, charitable, or both purposes. See Note 4 for additional considerations when making this determination. CCSA is aware of charter school corporations obtaining tax-exempt status with all three different designations of “public and charitable”, “public” or “charitable”.

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.

<sup>4</sup> **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. See Note 3 for a discussion of public vs. charitable purposes. 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 nonprofit corporation is required to be registered with the Registry of Charitable Trusts. Though educational institutions per se are not required to register, it is possible that a nonprofit organization that changes its original charitable purpose to later operate a school, or an agency with different charitable programs within the same corporation would be impacted by these regulations. 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.

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## Sample Charter School Language Providing Flexibility

Sample 1: *“The specific purpose of this Corporation is to manage, operate, guide, direct and promote one or more California public charter schools, and to perform and undertake any and all activities and functions, including soliciting contributions of money and property from the general public, as may be proper in connection with the Corporation’s general and specific purposes.”*

Sample 2: *“The specific purpose of this Corporation is to operate one or more California public charter schools, and to carry on other charitable activities associated with this purpose as allowed by law.”*

<sup>5</sup> **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 charter schools using this form will be organized and operated for purposes that meet the definitions of “charitable” and “educational” 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.

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 school; and (v) providing child care (under certain conditions).

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”). See [www.irs.gov/pub/irs-tege/eotopicd04.pdf](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.

<sup>6</sup> **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), 6210(b)] 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. See [http://bpd.cdn.sos.ca.gov/corp/pdf/so/corp\\_so100.pdf](http://bpd.cdn.sos.ca.gov/corp/pdf/so/corp_so100.pdf).



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**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.

<sup>7</sup> **REQUIRED.** Starting January 1, 2013, the 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 [http://bpd.cdn.sos.ca.gov/corp/pdf/so/corp\\_so100.pdf](http://bpd.cdn.sos.ca.gov/corp/pdf/so/corp_so100.pdf)

<sup>8</sup> **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. But even if the corporation has no legal members, it may still have a group of stakeholders (e.g. parents, teachers, community members) that it specifically designates or thinks of as its "members" for fundraising or other support purposes. For example, a group of community volunteers may support the operation of the school by serving on an advisory committee created by the board of directors to assist with information-gathering, researching, planning, and making recommendations to the board. However, these stakeholders will not have the right to vote on corporate matters unless admitted to legal membership if provided for in the corporation's articles or the bylaws.

**Recommended Practice:** There are valid reasons to have legal members in some nonprofit corporations. For example, a residents' advisory council in a public housing development might be required to grant membership to all residents of the development. In fact, CCSA is aware that some charter school groups in California are incorporated with a central nonprofit corporation as the legal member of the charter schools the group operates. However, members add an additional layer of bureaucracy that may be difficult to manage. For example, if a corporation has members who are specific named individuals, and the corporation can no longer locate them, corporate action may be prevented or delayed because no membership vote can occur. Additionally, some charter granting agencies are confused by the concept of legal membership and see it as an unnecessary or hidden layer of the school's governance structure. Therefore, in the absence of a specific reason to do so, we do not recommend that new independent charter schools establish legal memberships.

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

<sup>9</sup> **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.

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<sup>10</sup> **REQUIRED** for federal tax exemption. This language limiting the corporation’s activities 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. See IRS Publication 557 for more information. [*IRS Publication 557 (Rev. June 2008), p. 69*]

<sup>11</sup> **REQUIRED** for state income 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*] 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. 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:** A charter school, including a charter school operating as or by a nonprofit public benefit corporation, is exempt from property tax as a “public school” pursuant to the California Constitution and Revenue and Taxation Code section 202 (a)(3). See [https://www.boe.ca.gov/proptaxes/pdf/690\\_0003.pdf](https://www.boe.ca.gov/proptaxes/pdf/690_0003.pdf). No additional language in the Articles of Incorporation is required to ensure that a nonprofit public benefit corporation operating a charter school is eligible for this tax exemption. See CCSA’s Knowledge Brief “Facilities Tax Exemption” at <http://www.ccsa.org/2010/06/facilities-tax-exemption.html>.

**Charter School Law:** If the charter school plans to participate in a public employees’ retirement program such as CalSTRS or CalPERS, as allowed under California Education Code section 47611, the language in Article VII must meet those programs’ requirements for the disposition of assets as well. We note, however, that a charter school could amend the language of Article VII if later required by a retirement plan or chartering authority. For the most current information on this issue, please contact CCSA’s Legal Team at [legal@ccsa.org](mailto:legal@ccsa.org).

<sup>12</sup> **REQUIRED** for state income 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 https://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. June 2008), p. 22*]

**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. The purposes listed in this provision should match the purposes listed in Article VII.A. See Note 5 for a discussion on exempt purposes.

**Charter School Law:** Please note that according to California Education Code section 47605(b)(5)(P), the charter petition should include a description of the procedures to be used if the charter school closes. The procedures shall ensure a final audit of the school to determine the disposition of all assets and liabilities of the charter school,

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including plans for disposing of any net assets. Charter granting agencies may have different rules regarding distribution of assets upon dissolution—thus, the dissolution clause of the articles (Article VII.B) should be consistent with the “Disposition of Liabilities and Assets” requirements (in Charter School Closure Procedures) of the charter granting agency and the charter school petition. If the charter school plans to participate in a public employees’ retirement program such as CalSTRS or CalPERS, as allowed under California Education Code section 47611, the language in Article VII must meet those programs’ requirements for the disposition of assets as well. We note, however, that a charter school could amend the language of Article VII if later required by a retirement plan or chartering authority. For the most current information on this issue, please contact CCSA’s Legal Team at [legal@ccsa.org](mailto:legal@ccsa.org).

<sup>13</sup> **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.

<sup>14</sup> **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 15 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.

**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. When selecting individuals for the school’s board of directors, please be mindful of the conflict of interest rules that apply. For example, under California Corporations Code section 5227, **no more than 49 percent of the persons serving on the board may be “interested persons.”** Additionally, if the school’s chartering authority requires compliance with Government Code section 1090 (as is the case with Los Angeles Unified School District and Los Angeles County Office of Education), **no compensated employees** (such as the principal, executive director or teachers) will be allowed to serve on the board. Please see CCSA’s Knowledge Brief “Charter School Governance” at <http://www.ccsa.org/2010/05/charter-school-governance.html>. In those cases when Government Code section 1090 applies, if someone named as an initial director of the corporation in the articles later expects to become an employee of the charter school, the individual will need to resign as director after the charter petition is approved. However, this resignation will not impact the validity of incorporation or initial organization of the corporation.

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:*

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Name  
Address”

**Recommended Practice:** It is common, and easiest, for an incorporator to form the corporation and then later appoint directors. This avoids having the initial directors’ names and addresses on public file with the state forever, and permits the incorporator to take some of the more perfunctory initial organizational steps without the need for a directors’ meeting. 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.

<sup>15</sup> If initial directors are named in the articles, as discussed more fully in Note 14, 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”