

**Agenda Item 4.A.
Action**

**Application for Participation by Quasi-Governmental Agency:
The Chino Hills Community Foundation**

**LIAB Regular Meeting
May 23, 2019**

ISSUE

Is The Chino Hills Community Foundation (the “Foundation”) a qualified “quasi-governmental agency” eligible to invest funds in the Local Agency Investment Fund (LAIF)?

RECOMMENDATION

Staff respectfully recommends that the Foundation be considered a quasi-governmental agency for purposes of investing in LAIF. On the basis of the information provided, the Foundation substantially meets the factors used to determine whether an entity qualifies as a quasi-governmental agency.

BACKGROUND

The purpose of the Foundation is to establish funding to assist the government of the City of Chino Hills, hereinafter referred to as the “City,” in improving the cultural, educational and recreational facilities and services for the citizens of the City. The primary responsibility of the Board of Directors will be fundraising for the cultural, educational and recreational facilities and services for the citizens of the City.

The Foundation is organized, and at all times shall be operated, exclusively for the benefit of, to perform the function of, and to carry out the purposes of the City, within the meaning of Sections 501(c)(3) and 509(a)(3)(A) of the Internal Revenue Code of 1954, as amended, the Regulation there under, and the corresponding provision of any applicable future United States Internal Revenue Law and Regulations hereinafter collectively referred to as the "Code."

Government Code section 16429.1(c) provides that “an officer of a qualified quasi-governmental agency, with the consent of the governing body of that agency, having money in its treasury not required for immediate needs, may remit the money to the Treasurer for deposit in the Local Agency Investment Fund for the purpose of investment.” Furthermore, section 16429.1(g) provides that the “Local Investment Advisory Board shall determine those quasi-governmental agencies which qualify to participate in the Local Agency Investment Fund.”

ANALYSIS

The LAIF staff, in consultation with the State Treasurer's Office legal counsel, use an implemented seven-factor test to assist in determining whether an entity is a quasi-governmental agency. The Academy's eligibility as a quasi-governmental agency is analyzed under this test as set forth below based on the information provided by the Academy.

1. *Does the statute, ordinance or resolution pursuant to which the entity is formed recognize a California state or California local governmental purpose?*

The bylaws state that the Foundation is a nonprofit public benefit corporation formed under California Nonprofit Public Benefit Corporation Law for charitable and public purposes. The Articles of Incorporation also state that the corporation is a nonprofit public benefit corporation, and is not organized for the private gain of any person. The specific purpose of the corporation is to receive contributions "to promote and support the cultural, educational and recreational needs of the City of Chino Hills."

2. *Do the net earnings of the entity inure to any private person or are they irrevocably dedicated to the State of California or a political subdivision of the State?*

The Articles of Incorporation state that the property of the corporation is irrevocably dedicated to charitable and public purposes and no part of the net income or assets shall ever inure to the benefit of any director, officer or member thereof or to the benefit of any private person. Upon dissolution, assets are to be distributed to a nonprofit fund, foundation or corporation which is organized and operated the benefit of Chino Hills and which has established under section 501(c)(3) of the Internal Revenue Code or to the City of Chino Hills for exclusively public purposes.

3. *Did the State of California or a political subdivision of the State approve the formation, articles, bylaws, members, directors, and officers of the entity?*

Vacancies on the Board are filled by appointment by the City Council. The Officers are chosen by the Board, and serve at the pleasure of the Board. There are no members of the corporation.

4. *Does the State of California or a political subdivision of the State approve the methods of financing or investment by the entity?*

There is no evidence that a governmental entity has approved the methods of financing or investments by the Foundation. Generally, the activities and affairs of the corporation are managed and all corporate powers are exercised by and under the direction of the Board of Directors, who are appointed by the City Council. The bylaws require that investments be made in accordance with the City Investment Policy.

5. *Are representatives of the State of California or a political subdivision of the State notified of meetings of directors or members and allowed to attend and make comments?*

The Articles of Incorporation provide that meetings shall be conducted in compliance with the Brown Act (Gov. Code, § 54950 et seq.). There is no specific requirement that notice of meetings be provided to any governmental entity.

6. *Does the State of California or a political subdivision of the State approve (or reserve right of disapproval) amendments to articles or bylaws and new officers and directors?*

The City of Chino Hills is responsible for approving amendments to the bylaws, as well as new officers and directors.

7. *Is the entity recognized by other government agencies (e.g., IRS, SEC) as an instrumentality of the State of California or a political subdivision of the State?*

It is not clear whether the Foundation is recognized by other government agencies as a political instrumentality. The bylaws state, however, that the Foundation is organized under California Nonprofit Public Benefit Corporation law for charitable and public purposes and all directors on the board are approved by the City Council.

It is apparent that the Foundation serves a public purpose by receiving contributions and paying them over to the City of Chino Hills for charitable, literary and educational purposes, as permitted under Section 501(c)(3) of the Internal Revenue Code. While net assets of the Foundation are not irrevocably dedicated to a political subdivision (upon dissolution, they are distributed to a nonprofit or to the City of Chino Hills), on balance, the seven factors have been satisfied. It is compelling that the City Council must consent to many of the actions of the Board of Directors, including the selection of the directors and officers, the removal of board members, and approve the investment policy that the Foundation follows. Because of the substantial involvement of the City of Chino Hills in the affairs of the Foundation, the Foundation's observance of the Brown Act, and the Foundation's public purpose, it is our recommendation that the Foundation be considered a quasi-governmental agency for purposes of investing in the Local Agency Investment Fund.