

November 4, 2011

VIA E-MAIL – jeff.hbw@comcast.net

Jeff Crawford, President
Members, Board of Directors
Chico Equestrian Association

Re: Revision of Bylaws

Gentlepersons:

I have reviewed the revised bylaws and offer the following comments:

Your bylaws set forth the rules and procedures governing and operating the Association's activities and conduct. Accordingly, while complying with the requirements of the California Corporations Code, your bylaws should reflect how your Association works. They should be a ready reference for directors, officers, and members as to the governing rules of the corporation.

The bylaws should be a broad, general statement of governing procedures. In this manner, whenever a specific practice or procedure needs to be changed, you need not change the bylaws.

Articles II and III of your bylaws are required for your Internal Revenue Code Section 501 (c) (3) tax exempt status. To obtain and maintain such status, the Association cannot be substantially involved in partisan activities seeking to influence legislation or to support a candidate for public office or a measure to be submitted to a public vote, and its assets must be irrevocably dedicated to public, charitable purposes. These provisions are usually set forth in the articles of incorporation of a non-profit, public benefit corporation, sometimes in the bylaws, and sometimes in both.

Article IV discusses membership. As we discussed at the board meeting I attended this past summer, there are two types of members of non-profit, public benefit corporations under the California Corporations Code. Statutory members are members who have the right to vote on amendments to the articles and bylaws of the corporation, the election of directors, or the disposition of all or substantially all the assets of the corporation or any merger or dissolution of the corporation. By providing that "members" do not have these rights, a corporation has non-statutory members, and thus is a non-membership organization. A non-membership organization has no statutory obligation to its "members," since its members are not statutory members. This increases the flexibility for government and management of the corporation by the board of directors.

As we discussed this past summer, most "members" of non-profit, public benefit corporation are members because they support the corporation's purposes or wish to involve themselves in its activities. Very few of them wish to be involved in governance of the corporation. I believe when asked by me, you replied that very few members attend your annual membership meetings.

With this in mind, you may wish to convert the corporation, a membership corporation, to a non-membership organization by withholding from your "members" the right to vote on amendments of the articles or bylaws, elect directors, or dispose of the assets of the corporation, while at the same time

allowing it to still having “members” (non-statutory members, that is) who support your activities and purposes. I believe this would allow greater flexibility for management of the corporation while continuing to allow you the broad base of support that you have through your membership. I would be pleased to discuss this with you further at a board meeting.

The above aside, I believe your Article IV could be cleaned up substantially. I suggest changes as follows:

Section 1. Membership This corporation shall have four classes of members, designated as individual, family, business, and lifetime. Any person dedicated to the purposes of the corporation shall be eligible for membership on approval of the membership application by the board and on timely payment of such dues and fees that the board may fix from time to time. Qualifications of members and classes in terms of membership shall be as determined by the Board of Directors.

Each member must pay within the time and on the conditions set forth by the Board, the dues, fees and assessments in amounts to be fixed from time to time by the Board. The dues, fees, and assessments shall be equal for all members of each class, but the Board may, in its discretion, set different dues, fees, and assessments for each class.

Section 2. Membership Rights All members that have the right to vote, as set forth in these bylaws on the election of directors, on the disposition of all or substantially all of the corporation’s assets, on any merger and its principal terms and any amendment of those terms, and on any election to dissolve the corporation. In addition, those members shall have all rights afforded all members under the California Non-Profit Public Benefit Corporation Law.

For any class of membership for which a “member” consists of more than one person, such member shall have one vote and shall designate the individual entitled to cast such vote on behalf of such member of the corporation.

(Alternative, non-statutory member provision: All members shall have the right to vote on matters submitted to the membership by the Board of Directors. Notwithstanding the foregoing, no member shall have the right to vote on the election of directors, on the dispositions of all or substantially all of the corporation’s assets, on any merger and its principles terms and any amendment of those terms, and on any elections to dissolve the corporation.)

Such provisions allow the Board of Directors from time to time to determine the membership fees and qualifications of each class of membership. It also allows the board to determine whether the fees of members joining midyear should be prorated.

In addition to the above provisions I suggest you include the following to your Article IV:

Section 3. Members in Good Standing Members who have paid the required dues, fees, and assessments in accordance with these bylaws and who are not suspended shall be members in good standing.

Section 4. Termination of Membership A membership shall terminate on occurrence of any of the following events:

- (1) Resignation of the member;
- (2) Expiration of the period of membership, unless the membership is renewed under the null terms fixed by the Board;
- (3) The member's failure to pay dues, fees or assessments as set by the Board within 60 days after they are due and payable;
- (4) Any event that renders the member ineligible for membership, or failure to satisfy membership qualifications; or,
- (5) Termination based on the good faith determination by the Board that the member has failed in a material and serious degree to observe the rules of conduct of the corporation, or has engaged in conduct materially and seriously prejudicial to the corporation's purposes and interests.

Section 5. Suspension of Membership A member may be suspended based on the good faith determination by the Board that the member has failed in a material and serious degree to observe the corporation's rules of conduct, or has engaged in conduct materially and seriously prejudicial to the corporation's purposes and interests. A person whose membership is suspended shall not be a member during the period of suspension.

Section 6. Memberships not Transferable No membership of right or arising from membership shall be transferred. All membership rights cease on the member's death or dissolution.

Article V discusses meetings of the members. Section 1 provides that regular meetings of the members shall be held monthly or as deemed necessary. As we discussed this past summer, I believe that the corporation's bylaws should provide only for an annual meeting of the members, but allow special meetings to be called as you now allow, by the president or by a majority of the Board of Directors. Accordingly, Article V needs to be amended in its entirety.

The California Corporations Code provides that unless otherwise provided in the bylaws, one-third of the members constitutes a quorum at a meeting of the members. However, the bylaws may provide for any percentage of the members to be a quorum. A quorum of less than one-third of the members is permitted if stated in a bylaw provision. A quorum set lower than one-third of the members, however, can vote only on matters to which notice of their general nature was given under the notice of the meeting. Your bylaws allow a quorum of those members present at a meeting. If those members are less than one-third of the membership, then they may vote only on matters set forth on the notice of the meeting. Of course, if you were not a statutory membership organization, you would not have any concerns.

Article VI addresses the Board of Directors of the Association. Section 2 allows the board to consist of a variable number of directors of between seven and 15 members, but it does not indicate how the number is to be determined. I suggest adding the following at the end of the first sentence of Section 2: "...a maximum of 15 members, as fixed by resolution adopted by the board of directors."

Section 3 of Article VI provides that the terms of office of directors are two years. To assure continuity of business, you may wish to consider staggering the terms of directors, so that elections for,

Re: Revision of Bylaws
November 4, 2011
Page 4 of 5

say, a simple majority of the directors is held one year, and for the other directors the next year, thus assuring that a certain number of existing directors continues after an election to provide knowledge and experience of the organization to the new directors.

Section 6 of the Article VI provides that a director may be removed for cause. For a statutory membership organization such as the Association now is, directors may only be removed if he or she has been declared of unsound mind by a final order of court, or convicted of a felony, or been found by a final order or judgment of any court to have breached any duty owed to the corporation, or, if at the time the director is selected, the bylaws provide that a director may be removed for missing a specified number of board meetings and fails to attend that number of meetings. Accordingly, so long as you remain a statutory membership organization, Section VI needs to be revised.

Section 7 of Article VI provides that a quorum is five directors. If the variable number of directors is greater than nine, this provision would allow less than a majority of the directors to take action on behalf of the corporation. Perhaps the quorum should be a simple majority of the authorized directors, whatever the number authorized.

The California Corporations Code allows meetings to be conducted telephonically or through other telecommunications equipment. In this day and age, your bylaws should so allow. Additionally, the Board could take action without a meeting if all directors unanimously consent to such an action. Section 8 of Article VI does not clarify that such consent must be unanimous.

Under Section 7 of Article VI, all directors are now elected by the members at the annual meeting. If you were a non-statutory membership corporation, your board could be selected by a committee of the Board without submitting the matter to a vote by the membership.

Section 13 of Article VI is confusing, in that it seems to require the members to appoint a director when a vacancy in his or her office occurs, while giving the Board the power to fill it as well. I would recommend that only the Board have the power to fill the vacancy on the board.

Your bylaws in Article IX provide that the members shall vote on any amendments to the bylaws and accordingly, any amendment must be approved by the members. Absent such provision, your bylaws could be amended by the vote of only the board, since the California Corporations Code provides in its definition of "member" that such term includes "any person who is designated in their articles or bylaws as a member and, pursuant to a specific provision of incorporations articles or bylaws, has the right to vote on changes to the articles or bylaws."

In sum, I believe your bylaws could stand to be revised substantially and I would be willing to work with you in doing so. For this reason, I do not believe they are ready to be presented to your membership for approval as revised, but instead should be sent back to the drawing board for further clean-up.

Should you have any questions or comments concerning the foregoing, please do not hesitate to call.

Re: Revision of Bylaws
November 4, 2011
Page 5 of 5

Sincerely,

JOHN JEFFERY CARTER

JOHN JEFFERY CARTER

Dictated but not reviewed.
Transmitted in writer's absence to avoid delay

JJC:nh