

Affiliate Review Committee

All Things Carmel

March 27, 2025

Federal Tax Exemption

- **Promote Carmel, also known as “All Things Carmel” (“Promote Carmel”)** was incorporated on February 12, 2020, as an Indiana nonprofit corporation under the Indiana Nonprofit Corporation Act of 1991, as amended.
- Promote Carmel applied to the IRS and received its federal IRS determination letter on July 29, 2022, confirming its status as **a public charity exempt from federal income tax under Code Sections 501(c)(3) and 509(a)(2).**

Federal Tax Exempt Requirements

- As a **public charity** exempt from federal income tax under Code Sections **501(c)(3)** and **509(a)(2)**, Promote Carmel is subject to several requirements:
 - **Prohibition Against Private Inurement:** Promote Carmel may not allow its net earnings to inure to the benefit of any individual (Code Section 501(c)(3))
 - **Organizational Test:** Promote Carmel must be **organized** exclusively for charitable purposes (Code Section 501(c)(3))
 - **Operational Test:** Promote Carmel must be **operated** exclusively for charitable purposes (Code Section 501(c)(3))

See exhibit A for Articles of Incorporation/Bylaws

Federal Tax Status Issues

In our initial review and analysis, **we discovered some ambiguities in Promote Carmel's governance and federal tax reporting:**

- The IRS granted public charity status to Promote Carmel on July 29, 2022 as an organization described in Code Section **509(a)(2)**.
- However, Promote Carmel's federal tax returns (Form 990) were filed on the basis that it is an organization described in Code Section **170(b)(1)(A)(vi)**.
- Furthermore, Promote Carmel's Bylaws include language that designates the City of Carmel as its "Supported Organization", referring to **Code Section 509(a)(3)**, which is not applicable to Promote Carmel (Bylaws, Art. I, Sections 1.2, 1.3 and 1.4).
- Presumably, this language was copied from other Carmel affiliates where the language was applicable (e.g., CCI).

Federal Organizational and Operational Tests

Article II of Promote Carmel's Amended and Restated Articles provides the charitable purposes for which Promote Carmel is organized and operated:

- “The Corporation is a public benefit corporation that shall be organized and operated exclusively to lessen the burden of government, to combat community deterioration, and to **benefit, perform, and carry out the charitable, recreational, educational and other public purposes of the City of Carmel, Indiana** within the meaning of Section 501(c)(3) of the Internal Revenue Code”.
- “The Corporation will serve to **promote the City of Carmel**, Indiana, its events and unique qualities, to both visitors and residents as part of the broader mission to sustain pride in our community, combat community deterioration, and attract and retain new residents and corporate employers. The Corporation will educate residents and visitors about the arts, and how they improve the quality of life within Carmel, Indiana. The Corporation will also **oversee the All Things Carmel store**, which will continue to serve as a “visitors center” and gift shop on Main Street and, potentially, future locations in the City.”

Promote Carmel's Commitments To The IRS In Its Form 1023

Promote Carmel's charitable purposes, as defined in Article II of its Articles are also described in its Form 1023 submitted to the IRS on October 26, 2021:

- Verbatim language from its Articles of Incorporation.
- Operation of the All Things Carmel store.
- Serves as a "Welcome Center" for the City.
- **Promote Carmel "has received and anticipates annually receiving a grant from the City that will be used to supplement the Corporation's expenses for the Store and provide funding for various promotional opportunities."**
- "Any revenues received by the Store that exceed the cost of operations are invested back into the Store and into promoting the City."

State Law Governance Structure

- **As publicly announced on August 20, 2024, the City is in the process of dissolving Promote Carmel.**
- **Dissolution:** Upon dissolution, Promote Carmel's net assets will be distributed to the City or a 501(c)(3) entity or entities with purposes substantially similar to its purposes (Articles, Article VIII, Section 8.4).
- **Board of Directors:**
 - Minimum of 3 directors (Bylaws, Article I, Section 1.2)
 - Appointed by Mayor (removals by Mayor with or without cause and vacancies filled by Mayor) (Bylaws, Article I, Sections 1.2, 1.3, 1.4)
 - Director terms of 1 year (Bylaws, Article 1, Section 1.2)
- **Officers:**
 - Officers consist of President, Secretary and Treasurer (Bylaws, Article II, Section 2.1)
 - Elected by Board (Board removes and fills vacancies) (Bylaws, Article II, Sections 2.1, 2.2, 2.3, 2.4)
 - Term of 1 year (Bylaws, Article II, Section 2.2)

Mayor Finkam's Transition Review

- Upon taking office, Mayor Finkam requested a **fiscal and legal review** of Promote Carmel which yielded the following conclusions:
 - Promote Carmel (which operates the All Things Carmel store) operated at a loss every year since its creation in 2020, and it relied upon taxpayer subsidies from the City of Carmel to keep its doors open.
 - The running of a gift store does not represent an essential City function, yet it is subsidized with taxpayer dollars.
 - Promote Carmel did not demonstrate a path towards fiscal sustainability.
 - Promote Carmel was occupying valuable space on Main Street that could be available for viable commercial businesses that add to Carmel's tax base.
 - The All Things Carmel store was competing with other commercial vendors in the Arts & Design District.
 - The City's subsidies to Promote Carmel diverted taxpayer funds away from critical essential services.

See exhibit B for Financial Documents

Mayor Finkam's Transition Review

- Results of **fiscal and legal review** (Cont):
 - Promote Carmel failed to meet fundamental criteria for commercial viability:
 - **Market Validation:** The ongoing losses suggest the market may not sufficiently value the goods or services provided at current price points.
 - **Opportunity Cost:** Resources tied up in an unsustainable business model prevent taxpayer dollars from flowing to essential City services or other viable business enterprises.
 - In addition, the City's financial consultant noted that Promote Carmel did not have audited financial statements, and the consultant advised that inventory values and related cost of sales figures may have been unreliable due to insufficient records and financial controls over the merchandise inventory, particularly failure to record purchases and new consignment items and failure to perform periodic inventory counts.
 - Finally, Promote Carmel's Grant Agreement with the City of Carmel required it to provide "quarterly financial statements within 45 days after each quarter-end" and a "year end report for each year, describing how the grant was used and the impact of the dollars received."
 - The City did not receive the required quarterly or year end reporting from Promote Carmel during 2023 and 2024 on the timelines required in the Agreement.

See exhibit C for Grant Agreement

City of Carmel Investments in Promote Carmel

Upon review, City officials confirmed the following subsidies to Promote Carmel between 2020 and 2024:

- **Annual Support**

- 2020: \$193,000
- 2021: \$196,000
- 2022: \$196,000
- 2023: \$430,000
- 2024: \$96,000 (half was paid in January. Remainder paid to satisfy dissolution liabilities).

Aggregate City Subsidies (Prior to Store Closing): \$1.2 million

- **Additional Taxpayer Subsidy to Pay Dissolution Liabilities \$116,575**

- Break lease 10/24/24: \$58,000
- Partial Grant Repayment: \$10,000
- Payments to Vendors: \$19,775.05
- Others: \$28,800.49 (utilities, etc...)

- **Estimate of City Funds Necessary To Satisfy Promote Carmel's Known Liability to Creditors Upon Dissolution: \$30,000 –including grant repayment of grant dollars**

Promote Carmel Board: Letter From Dan McFeely

While the City staff was conducting the fiscal and legal review of Promote Carmel, Dan McFeely transmitted a letter to its board of directors and stated the following (dated August 11, 2024):

- **During 2023, the Brainard administration asked Promote Carmel to assume new responsibilities:**
 - “The year 2023 presented new challenges as the previous administration asked Promote Carmel to assist in financially supporting activities related to the Carmel Sister Cities organization, primarily in the funding of travel expenses to and from Latvia, visiting musicians from Cortona and most all alcohol-related expenses for these visitors and other visitors. Toward the end of 2023, we were also asked to financially assist the Carmel JazzFest event which lost a substantial amount of money and was unable to pay its bills.”
 - “Another new request was to finance and work with a local author writing a Japanese “Cookbook” as part of a Sister City project.”
 - “Promote Carmel was asked to finance a History of the Carmel Symphony Orchestra on its 50th Anniversary celebration.”
- **Promote Carmel was in financial distress and unable to pay vendors:**
 - “In July, our bank account was so low that we were not able to send checks to our vendors who are on consignment. This has not changed in August.”

Promote Carmel Board: Letter From Dan McFeely

Letter (Cont.):

- **Promote Carmel accepted a \$50K charitable contribution from a donor to build a Chinese Peony Garden in 2022, but then used the charitable contribution for other purposes**
 - “Under the direction of the previous Mayor [Brainard], Promote Carmel was asked to work with the Carmel Clay Parks Department to accept and retain a **\$50,000** donation from a local resident for a future Chinese Peony Garden that had been planned near Carmel Elementary School. That money was needed to help with the JazzFest bailout with a promise to restore it the following year.”
- **The 2022 Charitable Grant Agreement for the construction of the Peony Garden provided the following:**
 - “The sole intent of the donation is for the purpose of purchasing Asian Tree Peonies, related plantings and garden fixtures to be placed in the Chinese Garden..., which is to be built in the central core of Carmel, Indiana. The Recipient will immediately place the donation in an interest-bearing FDIC bank account and will note in their permanent record the donation is only to be used for the purpose described within this letter.”

See exhibit D for Board Email/Letter

Legal Input

- The City was advised that Promote Carmel's use of the donor's restricted charitable contribution for the "JazzFest bailout" violated the terms of the charitable Grant Agreement, giving rise to potential liability for violation of the donor's intent.
 - Dan McFeely, author of the letter and self-appointed spokesman for Promote Carmel, was the President of The Carmel Jazz Festival, Inc. during the period that the charitable grant was used to pay the expenses of JazzFest.
- In addition, the use of the donor's restricted charitable grant of \$50,000 for the "JazzFest bailout," followed by continued subsidies from the City of Carmel, resulted in taxpayer funds contributing to the JazzFest bailout without transparency of that payment to the City or the City Council.
- In addition, there was overlap at Promote Carmel between the following:
 - Dan McFeely: City contractor, signatory on letter to Promote Carmel Board (See Exhibit D)
 - Sue McFeely: Dan McFeely's spouse and Promote Carmel Executive Director (with annual salary \$66k)

See exhibit E for Peony Garden MOU

Additional Notable Items: Fiscal and Legal Review

Promote Carmel paid a number of expenses on behalf of Mayor Brainard, including:

| Date | Amount | Purpose | Payee |
|----------|-------------|---|---------------|
| 6/7/21 | \$365.00 | Luxury Worldwide Transportation to Mayor's home post conference | Jim Brainard |
| 7/16/21 | \$475.50 | Flowers, staffing, cleaning for IMCL board dinner | Jim Brainard |
| 12/7/22 | \$600.00 | Sandy Gossling, Mayor's Christmas Party Entertainment | Sandy Gosling |
| 5/18/23 | \$15,648.15 | Travel Reimbursement | Sue McFeely |
| 8/20/23 | \$228.00 | Mayor's Reception, beverages only | Ritz Charles |
| 8/21/23 | \$3,323.04 | Ritz Charles beer and wine for Mayor's Reception | Ritz Charles |
| 9/12/23 | \$183.00 | Woodland Country Club: Mayor Brainard Dinner Liquor | Woodland |
| 9/28/23 | \$239.47 | Drinks for the Blockhouse Men | Jim Brainard |
| 12/19/23 | \$6,855.71 | Mayor's Christmas Party 2023 | Crooked Stick |

See exhibit F for Board Receipts

Dissolution of Promote Carmel

- As a result of the Mayor's fiscal and legal review, together with the lack of financial sustainability, the Promote Carmel board of directors voted to close the All Things Carmel store in August of 2024, and wind down and dissolve the legal entity.
- The City directed its staff to oversee the inventory and liquidation process at the All Things Carmel store, to mitigate the City's financial exposure and risk. City staff noted the following:
 - Complete vendor records were not stored or managed electronically.
 - Records related to consignments were incomplete, both in terms of items that had been consigned and revenues from sales of consigned items.
 - Computers, printers, and store records were kept at the private home of an employee.
- As noted above, the City estimates that it will need to make a grant in the amount of \$30,000 (based on current information) to satisfy the remaining creditors prior to final dissolution of Promote Carmel.
- The City expects that all dissolution paperwork will be filed with the State of Indiana by the end of March 26, 2025.

See exhibit G for donations