From: Nadya T
To: City Clerk
Cc: Marilyn Ezzy Ashcraft; John Knox White; Malia Vella; Tony Daysog; Trish Spencer
Subject: [EXTERNAL] Item 6-A: Choose Chochenyo Park (Option 1)
Date: Tuesday, January 19, 2021 7:29:04 PM

Dear Councilmembers,

My name is Nadya and I am a resident of Alameda. I am writing to ask that you please vote for Option 1 on item 6-A on the 1/19//2021 agenda. Rename Former Jackson Park to Chochenyo Park per the recommendation of the Recreation & Parks Commission

Renaming Jackson Park to Chochenyo Park presents an opportunity for education about an inclusive history of the original peoples of this place. This new name offers a clear repudiation of Andrew Jackson, his enslavement of African-Americans, and his involvement in the genocide of Indigenous peoples and theft of their land. This name is a gesture towards redressing the harm of the former name.

Thank you,

Nadya

From: Mike Van Dine
To: City Clerk
Subject: [EXTERNAL] ITEM 6-A File #2021-504
Date: Tuesday, January 19, 2021 7:10:05 PM

Good Evening Council members and thanks for an opportunity to address this item.

I'd like to begin by making reference to the Sunshine Ordnance and the definition of a policy body as "Any committee or body, created by the initiative of a policy body as a whole". It is indisputable that the Park and Recreation Commission is a policy body. On July 9, its action of appointing a sub-committee of two Commission Members to establish a citizen's committee renders that citizens committee a body "created" by the Commission, regardless of the fact that the committee members were appointed by the sub-committee.

A similar process was used by City Council in directing the City Manager to appoint a Citizens committee on police reform. It is clear to me that in both instances the strategy behind this approach is designed to avoid the requirements of both our Sunshine Ordinance and the Brown Act requiring public notice of and participation in meetings of these two citizens committees. I do not think that these laws were intended to allow local government bodies to avoid transparency requirements by the simple means of delegating the appointment of committee members to a third party.

For these reasons, I hope you will consider taking a pause at this time and reopening the process of the renaming of the park to recognize the citizens committee as a policy body subject to the transparency requirements of our sunshine Ordinance and the Brown Act. If you fail to do so your action will be challenged under the process provided in our Sunshine Ordinance and/or Brown Act.

Mike Van Dine

From: Conchita Perales
To: City Clerk
Subject: [EXTERNAL] Item 6-A File# 2021-504
Date: Tuesday, January 19, 2021 6:58:46 PM

The renaming of the park process was not transparent!

The City Council's decision to re-name Jackson Park in itself rights the wrongs of honoring Andrew Jackson in the first place. And the majority of the Rec & Park Commissioners agreed that simply reversing the Park to its original name made sense to them when they first considered it.

But the members of the the park-renaming sub-committee never wanted to rename the park "Alameda". They determined that they were going to choose any names for the Park on their own for their own reasons.

So why did the committee ask the public their favorite names from their list of 10? And why did they choose to ignore the public's favorite name "Alameda Park"? The sub-committee stated that the poll which included a question asking the voter's ethnicity showed that too many white people had participated. Amazingly, this whole process that was supposed to emphasize "inclusion" was excluding the white voters of the poll.

This unfortunate situation of trying to erase the popular choice of Alameda caused the sub-committee and even one commissioner to attempt to create a tortured accounting of Alameda Park's history including claims that it was never actually named Alameda Park despite it's appearance on maps and city ordinances as early as 1867 and as late as 1908.

And even worse members of the sub-committee and one commissioner felt the need to state the name Alameda itself was an unacceptable word because it was a Spanish word and the Spaniards removed the Ohlone Indians from the Bay Area.. Yes, Alameda, the name of our City was unacceptable to the subcommittee.

The fact is, the City of Alameda was born in the Gold Rush not during the Spanish occupation. Alameda Park itself was fully developed and designed in the Victorian era which is a main tap root of the City and an asset of our community. We should celebrate the original roots of our City and not fall victim to the attempted shaming by a few committee members. The park already had a name, it was Alameda Park!

As for the name Chochenyo, it is also an important part of our history. At the far Western shore of our City is a federal Wildlife refuge that eventually will be restored to it's natural state. This area could and should be named Chochenyo as it represents the way the land existed when they first migrated to this area.

From: Victoria Felix
To: City Clerk
Subject: [EXTERNAL] Park name
Date: Tuesday, January 19, 2021 6:56:01 PM

Hello,

Please approve the renaming of the Jackson Park to Chochenyo Park.
As a member of the Pit River Nation/Ajumawi band from Northern California, we join in agreement on the honoring of our fellow indigenous members.

This will show honor to native people and begin the reconciliation and healing process.

Thank you,

Lisa Gali

From:	mcgavin_ted@comcast.net
To:	Marilyn Ezzy Ashcraft; Malia Vella; John Knox White; Tony Daysog; Trish Spencer
Cc:	Manager Manager; City Clerk
Subject:	[EXTERNAL] Alameda City Council Meeting 01/19/2021; Agenda Item #6-A
Date:	Tuesday, January 19, 2021 6:47:29 PM

Dear Members of the City Council:

I am concerned about what I see as the lack of transparency in the selection process for the renaming of Jackson Park.

California's Brown Act and the City of Alameda's own Article VIII (Sunshine Ordinance) guarantee the public's right to attend and participate in meetings of local legislative bodies, boards, commissions, and committees.

However, even though the City already has a Recreation and Parks Commission, it was decided to convene two "subcommittees" (which I understand are not covered by the Brown Act and the Sunshine Ordinance) to give input to the decision-making process.

As the process unfolded, Exhibit 2 to this Agenda Item describes two polling efforts:

- A one-day Community Forum, 27 votes, winner 'Ohlone' followed closely by 'Alameda' and
- A four-day Community Survey, 625 votes, winner 'Alameda'

I thought the comments on the Community Survey (pages 5-15 in Exhibit 2) reflected a good cross-section of Alameda opinions on the subject. However many of the complaints were directed at the Community Survey methodology and the short time the poll was open.

Then I heard that it had been decided to rename Jackson Park to Chochenyo Park – not a big winner in either poll. When I later learned that it was suggested that the subcommittees decide the name rather than an open and inclusive process, this made me concerned that the subcommittees were just being used as a tactic to circumvent the Brown Act and the Sunshine Ordinance.

I respectfully request that the Council table Agenda Item 6-A at this time and revisit the renaming process so that it takes place in a Board, Committee, or Commission for transparency and that the opinions of more Alamedans can be included. I think it's only fair.

Respectfully,

Ted McGavin
mcgavin_ted@comcast.net

From:	K Welch
To:	City Clerk
Cc:	John Knox White; Marilyn Ezzy Ashcraft; Malia Vella; Tony Daysog; Trish Spencer
Subject:	[EXTERNAL] Rename Former Jackson Park to Chochenyo Park
Date:	Tuesday, January 19, 2021 6:00:54 PM

Dear Councilmembers,

My name is Kristin Welch and I am a resident of Alameda. I am writing to ask that you please vote Yes on item 6-A and vote to rename former Jackson Park to be Chochenyo Park per the recommendation of the Alameda Recreation and Parks Commission.

Renaming former Jackson Park to be Chochenyo Park provides an opportunity for parents like me to teach my children about an inclusive history of indigineous peoples, specifically the Chochenyo division of the Ohlone Tribe. At the same time, it will send a clear message of repudiation of slave owner Andrew Jackson and his genocidal involvement and theft of Indigenous peoples' land. It is time for Alamedans to face our history and to remove racist symbols from our city's public places.

Thank you,
Kristin Welch
Alameda Resident

From:	HOYT FAY
To:	City Clerk
Cc:	Marilyn Ezzy Ashcraft; John Knox White; Malia Vella; Tony Daysog; tspencer@alamedaca.go
Subject:	[EXTERNAL] Rename Jackson Park to Chochenyo Park
Date:	Tuesday, January 19, 2021 5:19:10 PM

Dear Councilmembers,

My name is Hoyt Fay and I am a resident of Alameda. I am writing to ask that you please vote for Option 1 on item 6-A on the 1/19/2021 agenda.

Just yesterday an armed white male resident of Alameda with a rifle approached peaceful marchers honoring Dr. Martin Luther King Jr.'s legacy and told them to leave. We clearly need to address historical and current harms that are happening in our city. Please rename Jackson Park to Chochenyo Park to honor our city's commitment to eradicating white supremacy, promoting inclusive education, and moving forward in justice and healing.

Rename Former Jackson Park to Chochenyo Park per the recommendation of the Recreation & Parks Commission.

Renaming Jackson Park to Chochenyo Park presents an opportunity for education about an inclusive history of the original peoples of this land. This new name offers a clear repudiation of Andrew Jackson, his enslavement of African-Americans, and his involvement in the genocide of Indigenous peoples and theft of their land. This name is a gesture towards redressing the harm of the former name.

Thank you,

Hoyt Fay

Alameda Resident

From:	Savanna Cheer
To:	Tony Daysog; Trish Spencer; Marilyn Ezzy Ashcraft; Malia Vella; John Knox White
Cc:	Manager Manager; City Clerk; Lara Weisiger
Subject:	[EXTERNAL] Public Comment on item 6-A for the 1/19 meeting
Date:	Tuesday, January 19, 2021 5:08:12 PM

Hello,

I would like to voice my support for adopting the name Chochenyo Park for the park formerly known as Jackson Park. Please vote to adopt that name as a minimum first step towards rematriation and honoring the stolen land that we all live on. Alameda has the opportunity, with this renaming, to adopt a principled and respectful process towards naming public spaces. I'm looking forward to our city examining all public spaces in Alameda to see what opportunities we have to address the wrongdoings of the past.

Thank you,
Savanna Cheer

From: Erin Ransburg
To: City Clerk
Cc: Marilyn Ezzy Ashcraft; John Knox White; Malia Vella; Tony Daysog; tspencer@alamedaca.go
Subject: [EXTERNAL] Rename Jackson Park to Chochenyo Park
Date: Tuesday, January 19, 2021 5:06:23 PM

Dear Councilmembers,

My name is Erin Ransburg and I am a resident of Alameda. I am writing to ask that you please vote for Option 1 on item 6-A on the 1/19/2021 agenda.

Just yesterday an armed white male resident of Alameda with a rifle approached peaceful marchers honoring Dr. Martin Luther King Jr.'s legacy and told them to leave. We clearly need to address historical and current harms that are happening in our city. Please rename Jackson Park to Chochenyo Park to honor our city's commitment to eradicating white supremacy, promoting inclusive education, and moving forward in justice and healing.

Rename Former Jackson Park to Chochenyo Park per the recommendation of the Recreation & Parks Commission.

Renaming Jackson Park to Chochenyo Park presents an opportunity for education about an inclusive history of the original peoples of this land. This new name offers a clear repudiation of Andrew Jackson, his enslavement of African-Americans, and his involvement in the genocide of Indigenous peoples and theft of their land. This name is a gesture towards redressing the harm of the former name.

Thank you,

Erin Ransburg

Alameda Resident

From:	David Greene
To:	Marilyn Ezzy Ashcraft; Tony Daysog; Malia Vella; John Knox White; Jim Oddie; City Clerk; Andrew Thomas; Manager Manager; Trish Spencer
Subject:	[EXTERNAL] Jackson Park Proposed Renaming
Date:	Tuesday, January 19, 2021 5:05:58 PM

City council is to reflect the desires of the community. If this can't even be done on such a simple and non-consequential matter as a park name, then why even have a community?

No change of the name is desired. However, if change is imminent, "Alameda Park" as per polling is the name that should be applied.

Hoping to retain a thread of hope in council members and citizen representation,
Dave Greene
Alameda Resident

From: Amy Wooldridge
To: Lara Weisiger
Subject: FW: [EXTERNAL] Agenda item 6-A Renaming Jackson Park
Date: Tuesday, January 19, 2021 4:53:06 PM

Amy Wooldridge
Recreation and Parks Director
2226 Santa Clara Avenue, Alameda, CA 94501
(510) 747-7570
awooldridge@alamedaca.gov
www.alamedaca.gov/recreation

From: The Mannings [mailto:maryandjim.manning@gmail.com]
Sent: Tuesday, January 19, 2021 3:20 PM
To: Marilyn Ezzy Ashcraft <MEzzyAshcraft@alamedaca.gov>; John Knox White <JknoxWhite@alamedaca.gov>; Malia Vella <MVella@alamedaca.gov>; tdaysog@alamedaca.com; Trish Spencer <tspencer@alamedaca.gov>
Subject: [EXTERNAL] Agenda item 6-A Renaming Jackson Park

Dear Council members,

I am in favor of the Park Commission recommendation of Chochenyo Park as the new name.

I am not in favor of the joint name Alameda Chochenyo Park. I feel it is a dilution, not a compromise. Reverse the words. Say "Chochenyo Alameda Park," and I think you will see what I mean.

If the Council insists on a joint name, it should be Chochenyo Alameda Park.

Thank you for your consideration in this matter.

Mary Manning
1167 Park Ave, Alameda, CA 94501

From:	ps4man@comcast.net
To:	Lara Weisiger
Subject:	[EXTERNAL] FW: Item 6A on Jan 19 Agenda Please place in correspondence file for this item.
Date:	Tuesday, January 19, 2021 4:48:47 PM
Attachments:	We sent you safe versions of your files.msg Epstein v Hollywood Entertainment Dist II Business Improvement Dist.pdf Californians Aware v Joint LaborManagement Benefits Committee.pdf International Longshoremens and Warehousemens Union v Los Angeles Export Termina.pdf

From: ps4man@comcast.net <ps4man@comcast.net>
Sent: Tuesday, January 19, 2021 4:46 PM
To: Marilyn Ashcraft <mezzyashcraft@alamedaca.gov>; Malia Vella <mvella@alamedaca.gov>; John Knox White <jknoxwhite@alamedaca.gov>; 'tony_daysog@alum.berkeley.edu' <tony_daysog@alum.berkeley.edu>; 'tspencer@alamedaca.gov' <tspencer@alamedaca.gov>
Cc: 'Eric Levitt' <elevitt@alamedaca.gov>; 'yshen@alamedacityattorney.org' <yshen@alamedacityattorney.org>
Subject: Item 6A on Jan 19 Agenda

Dear Mayor Ashcraft and Council Members:

It has been brought to my attention that there may be public comment on Item 6A that asserts that the park naming citizens committee has violated our Sunshine Ordinance and the Brown Act by failing to follow the transparency requirements of notice and public participation applicable to "policy bodies" as defined by the Ordinance. There are multiple definitions of the term in Sec. 2-91.1 (d) of the Ordinance, the pertinent one here being Sub-sec (d) (4) which defines it as "any committee or body, created by the initiative of a policy body as a whole;".

The Park and Recreation Commission is a policy body. On July 9, its action of appointing a sub-committee of two Commission Members to establish a citizen's committee renders that citizens committee a body "created" by the Commission, regardless of the fact that the committee members were appointed by the sub-committee.

A similar process was used by City Council in directing the City Manager to appoint a Citizens committee on police reform. In both instances these actions were designed to avoid the requirements of both our Sunshine Ordinance and the Brown Act requiring public notice and participation in meetings of these two citizens committees. I do not think that these laws were intended to allow local government bodies to avoid transparency requirements by the simple means of delegating the appointment of committee members to a third party.

As an aid to you and the City Attorney, I attach the cases which I think clearly support this view. Unless the City Attorney can convince me otherwise I will likely challenge these actions pursuant to the sunshine Ordinance and/or Brown Act.

Paul S Foreman

87 Cal.App.4th 862
Court of Appeal, Second District, Division 3, California.

Aaron EPSTEIN, Plaintiff and Appellant,
v.
HOLLYWOOD ENTERTAINMENT DISTRICT II BUSINESS IMPROVEMENT DISTRICT, et al., Defendants and Respondents.

No. B134256.
|
March 8, 2001.
|
Review Denied June 13, 2001.

Synopsis
Owner of property zoned for business purposes within business improvement district (BID) brought action to establish that non-profit corporation that administered funds raised through city's assessments on businesses within the district was subject to Brown Act's open meetings requirements. The Superior Court, Los Angeles County, Super. Ct. No. BC207337, Ricardo A. Torres, J., denied owner's motion for preliminary injunction, and he appealed. The Court of Appeal, Croskey, J., held that corporation was a "legislative body" subject to Brown Act's open meetings requirements.

Reversed and remanded.

Attorneys and Law Firms

****858 *863** Moskowitz, Brestoff, Winston & Blinderman, Dennis A. Winston and Barbara S. Blinderman, Los Angeles, for Plaintiff and Appellant.

***864** Sheppard, Mullin, Richter & Hampton, Costa Mesa, and Andre J. Cronthall, Los Angeles, for Defendants and Respondents Hollywood Entertainment District II Business Improvement District and Hollywood Entertainment District Property Owners Association.

James K. Hahn, City Attorney, Patricia V. Tubert, Senior Assistant City Attorney and Kenneth Cirlin, Assistant City Attorney ****859** for Defendant and Respondent City of Los Angeles.

Opinion

CROSKEY, J.

The Hollywood Entertainment District II Business Improvement District (BID II) is a special assessment district in the City of Los Angeles (City). The Hollywood Entertainment District Property Owners Association (the POA), a 26 United States Code section 501(c)(6) non-profit corporation, administers the funds City raises through assessments on businesses within BID II's boundaries.[1] The money is used to contract for such things as security patrols, maintenance, street and alley cleaning, and a newsletter.

Aaron Epstein (plaintiff), who owns property zoned for business purposes within BID II, sued defendants to establish that the POA was required to comply with the Ralph M. Brown Act (the Brown Act or the Act) (Gov.Code, § 54950 et seq.)[2] by holding noticed, open meetings and posting its agenda in advance. His motion for a preliminary injunction was denied after the superior court concluded that the Brown Act did not apply because (1) the POA had not been created by City, and (2) the POA had pre-existed the creation of BID II by at least two years.

Plaintiff filed timely notice of appeal. We reverse. The facts of this case come within the parameters of our holding in *International Longshoremen's & Warehousemen's Union v. Los Angeles Export Terminal, Inc.* (1999) 69 Cal.App.4th 287, 81 Cal.Rptr.2d 456 (*International Longshoremen's*), because City "played a role in bringing" the POA "into existence." The POA was not simply a pre-existing corporation which just "happened" to be available to administer the funds for BID II. Instead, the record indicates that the POA was formed and structured in such a way as to take over administrative functions that normally would be handled by City.

***865 *FACTUAL AND PROCEDURAL BACKGROUND*[3]**

The Property and Business Improvement District Law of 1994 (Sts. & Hy.Code, §§ 36600 et seq.) authorizes cities to establish property and business improvement districts (BIDs) in order to levy assessments on real property for certain purposes. Those purposes include acquiring, constructing, installing, or maintaining improvements

(Sts. & Hy.Code, § 36606), which include such things as parks, street changes, ramps, sidewalks and pedestrian malls. (Sts. & Hy.Code, § 36610, subds. (f), (i), and (k).) A prerequisite to the creation of such a BID is a petition filed by property owners who will pay more than 50 percent of the total amount of assessments to be levied. (Sts. & Hy.Code, § 36621, subd. (a).)

On September 3, 1996, City adopted ordinance No. 171273 (the first Ordinance) to create the Hollywood Entertainment District Business Improvement District (BID I). The first Ordinance incorporated by reference a "Management District Plan" which contained information required by Streets and Highways Code section 36622.[4] The Management District Plan included a "Proposed Annual Program" which included security, maintenance, marketing, streetscape and administration components. It also included a section on "Governance," which provided, in relevant part, "The Property and Business Improvement District programs will be governed by a non-profit association. Following is a partial ****860** summary of the management and operation of the *proposed* association." (Italics added.) The section on Governance made it clear that the non-profit association, which would govern BID I, was not yet in existence.[5]

Articles of incorporation of the Hollywood Property Owners Association (the POA), the non-profit association that did take over governance of BID I, were filed with the California Secretary of State on September 25, 1996. These articles of incorporation were dated September 5, 1996. The POA was a nonprofit mutual benefit corporation, whose specific and primary purpose was "to develop and restore the public areas of the historic core of Hollywood, California, in order to make it a more attractive and popular destination for tourists, shoppers, businesspeople and persons interested in culture and the arts."

***866** On August 18, 1998, City adopted ordinance No. 172190 (the second Ordinance) to create Hollywood Entertainment District II Business Improvement District (BID II). The second Ordinance incorporated by reference a "Management District Plan" which contained information required by Streets and Highways Code section 36622. The Management District Plan for BID II, which was entitled "Hollywood Entertainment District Property Business Improvement District Phase II," included a copy of the petition used to form BID II, which referred to BID II as an "extension" of BID I. In fact, a comparison of the map of the proposed boundaries of BID II with the map of the proposed boundaries of BID I shows that BID II simply added approximately another 10 blocks down Hollywood Boulevard to the approximately five blocks down the length of the boulevard already covered by BID I.

The Management District Plan for BID II also included a "Program and Budget," which included security, maintenance, marketing and promotion, and administration components. It also included a section on "Governance," which provided, in relevant part, "The Property and Business Improvement District programs will be governed by the Hollywood Entertainment District Property Owners Association, a 501(c)(6) non-profit corporation *which was formed in 1996 to govern Phase I.* Following is a summary of the management and operation of the Association *as it relates to Phase II."* (Italics added.) In addition, unlike the Management District Plan for BID I, the Management District Plan for BID II included the "Amended and Restated Bylaws" of the POA which were quite detailed. And, although the POA was to manage and operate the BID, City, by law, retained the power to "modify the improvements and activities to be funded with the revenue derived from the levy of assessments by adopting a resolution determining to make the modifications after holding a public hearing on the proposed modifications." (Sts. & Hy.Code, § 36642.)

The POA's monthly meetings were not open to the public, much to the distress of plaintiff, who owns property subject to assessment in favor of BID II. Furthermore, according to plaintiff, the POA's by-laws allow it to do other things that would be prohibited by the Brown Act if it were applicable to the POA. For example, the by-laws allow meetings to take place anywhere, not solely within the POA's jurisdiction, and to take place without posting notice 72 hours in advance.

Accordingly, on March 18, 1999, plaintiff filed a complaint for declaratory and injunctive relief against defendants, seeking, among other things, a declaration that the Brown Act does apply to the POA and that, in fact, the POA's meetings are required to be open and noticed as required by the ***867** Brown Act, and that any contracts let by the POA must comply with ****861** the competitive bidding requirements of City's charter. He moved for a preliminary injunction, which the superior court denied on the ground that because the POA was not created by City, and because it pre-existed the creation of BID II by at least two years, the Brown Act did not apply. The order denying the motion was filed on June 11, 1999, and on August 4, 1999, plaintiff filed notice of appeal.

CONTENTIONS ON APPEAL

Plaintiff contends that the trial court erred by concluding that the POA was not a legislative body under the Brown Act. He further contends that because the POA is a legislative body within the meaning of the Act, and can only exercise the powers that City could delegate to it, it cannot enter into contracts without complying with the City Charter's requirement of competitive bidding. Finally, he contends the trial court erred by denying him injunctive relief against the POA. Defendants dispute these contentions.

DISCUSSION

1. *Public Policy Favors Conducting the Public's Business in Open Meetings*

It is clearly the public policy of this State that the proceedings of public agencies, and the conduct of the public's business, shall take place at open meetings, and that the deliberative process by which decisions related to the public's business are made shall be conducted in full view of the public. This policy is expressed in (1) the Bagley–Keene Open Meeting Act (§§ 11120 et seq.), which applies to certain enumerated "state bodies" (§§ 11121, 11121.2), (2) the Grunsky Burton Open Meeting Act (§§ 9027–9032), which applies to state agencies provided for in Article IV of the California Constitution, and (3) the Ralph M. Brown Act (§§ 54950 et seq.), which applies to districts or other local agencies, including cities. Under these various laws related to open meetings, a wide variety of even the most arcane entities must give notice of their meetings, and make such meetings open to the public.[6]

***868** 2. *The Purpose Behind the Brown Act*

The Brown Act, the open meeting law applicable here, is intended to ensure the public's right to attend the meetings of public agencies. (*Freedom Newspapers, Inc. v. Orange County Employees Retirement System* (1993) 6 Cal.4th 821, 825, 25 Cal.Rptr.2d 148, 863 P.2d 218; *International Longshoremen's, supra,* 69 Cal.App.4th at p. 293, 81 Cal.Rptr.2d 456.)[7] To achieve this aim, the ****862** Act requires, inter alia, that an agenda be posted at least 72 hours before a regular meeting and forbids action on any item not on that agenda. (§ 54954.2, subd. (a); *International Longshoremen's, supra,* 69 Cal.App.4th at p. 293, 81 Cal.Rptr.2d 456.) The Act thus serves to facilitate public participation in all phases of local government decisionmaking and to curb misuse of the democratic process by secret legislation of public bodies. (*International Longshoremen's, supra,* 69 Cal.App.4th at p. 293, 81 Cal.Rptr.2d 456.)

The Brown Act specifically dictates that "[a]ll meetings of the *legislative body* of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter." (§ 54953, subd. (a), italics added.) The term "legislative body" has numerous definitions, grouped together in section 54952. The definition that arguably may apply to the POA is found in subdivision (c)(1)(A) of section 54952. This portion of the Brown Act states, in relevant part: "As used in this chapter, 'legislative body' means: [¶] ... [¶] (c)(1) A board, commission, committee, or other multimember body that governs a private corporation or entity that ...: [¶] (A) Is *created* by the elected legislative body in order to exercise authority which may lawfully be delegated by the elected governing body to a private corporation or entity." (§ 54952, subd. (c)(1)(A), italics added.) Thus, the question before us here, as a matter of law, is whether the POA's board of ***869** directors is a legislative body within the meaning of this subdivision because the POA was created by City in order to exercise delegated governmental authority.

In answering this question, we are mindful, as we noted in *International Longshoremen's,* that the Brown Act is a remedial statute that must be construed liberally so as to accomplish its purpose. (*International Longshoremen's, supra,* 69 Cal.App.4th at p. 294, 81 Cal.Rptr.2d 456; see *People ex rel. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 313, 58 Cal.Rptr.2d 855, 926 P.2d 1042 ["civil statutes for the protection of the public are, generally, broadly construed in favor of that protective purpose. [Citations.]]")

3. *The POA's Board of Directors Is a Legislative Body Within The Meaning of the Brown Act*

a. *The City Can Be Said to Have "Created" the POA Within the Meaning of the Brown Act*

Here, just as in *International Longshoremen's,* the pivotal issue is whether City, an elected legislative body,

"created" the POA in order to exercise authority that City could lawfully delegate. Therefore, we discuss in some detail the facts of *International Longshoreman's.*

In the *International Longshoremen's* case, the Los Angeles Export Terminal, Inc. (LAXT) was a private, for-profit corporation organized to design, construct and operate a facility for the export of coal. The facility would be on land leased from the Harbor Department of the City of Los Angeles, and the Harbor Department was to be a fifteen-percent shareholder in LAXT. The shareholders' agreement by which LAXT was set up gave the Harbor Department the right to appoint three of LAXT's 19 board members, plus veto power over the coal facility project. The lease of the Harbor Department's land was also something that had to be, and was, approved by the City Council.

Thereafter, LAXT's board of directors authorized LAXT to enter into a terminal operating agreement with Pacific Carbon Services Corporation (PCS). This decision was made at a meeting that did not comply with the requirements of the Brown Act. The International Longshoremen's & ****863** Warehousemen's Union (ILWU) sued to nullify the agreement with PCS, and for an injunction, contending that LAXT was required to comply with the Brown Act.

The trial court agreed with the union, nullified the PCS agreement, and enjoined LAXT from making decisions without complying with the Brown ***870** Act. It reached this result because it concluded that LAXT's board of directors was a legislative body within the meaning of the Brown Act. LAXT appealed, and argued, among other things, that it had not been created by the City Council (a legislative body), but only by the Harbor Commission (an appointed body), and hence the Brown Act, by its terms, did not apply.

We disagreed. Although section 54952, subdivision (c)(1)(A), did not, and does not, define what is meant by the term "created by," we relied on the ordinary definition of "to create," which is "to bring into existence." (*International Longshoremen's, supra,* 69 Cal.App.4th at p. 295, 81 Cal.Rptr.2d 456, quoting Webster's New Internat. Dict. (3d ed.1986) p. 532.) We concluded that the "City Council was involved in bringing LAXT into existence," because (1) it had the ultimate authority to overturn the Harbor Commission's actions, and (2) it could have disaffirmed any steps the Harbor Commission took to become part of LAXT. (69 Cal.App.4th at p. 296, 81 Cal.Rptr.2d 451.) We also concluded that LAXT had been created to exercise governmental authority, to wit, the development and improvement of a city harbor (§ 37386), and that the City Council had delegated its governmental authority as to this aspect of the City's harbor to LAXT. (69 Cal.App.4th at pp. 297–299, 81 Cal.Rptr.2d 451.) Therefore, the Brown Act applied to LAXT's meetings. (*Id.* at pp. 299–300, 81 Cal.Rptr.2d 451.)

Here, as discussed in more detail below, we conclude that City was "involved in bringing into existence" the POA to exercise delegated governmental authority, that City also retained the authority to overturn the POA's actions, and that it could have removed, and can still remove, the POA as the entity managing the BID.

1. *The City "Was Involved in Bringing the POA into Existence" to Exercise Some Governmental Authority Over BID I, and BID II Was Just an Extension of BID I*

In the case here, the issue is whether the POA is a private corporation or entity that was *created* by City, the elected legislative body, to exercise some authority that City could lawfully delegate to a private corporation or entity. We conclude that here, just as in *International Longshoremen's,* the private entity, the POA, was "created" by City to exercise governmental authority over BID I, authority that City otherwise could exercise.

The POA was, in fact, "created" by City, because City "played a role in bringing" the POA "into existence." (*International Longshoremen's, supra,* 69 Cal.App.4th at p. 295, 81 Cal.Rptr.2d 456.) City specifically provided in the first Ordinance that BID I *would* be governed by a non-profit association, and even set forth a partial summary of the management and operation of such proposed ***871** association. Within days of the adoption of the first Ordinance, the POA's articles of incorporation were prepared, and less than a month later, were filed with the Secretary of State. The POA's sole purpose was to "develop and restore the *public* areas of the historic core of Hollywood." And it was the POA that did, in fact, take over governance of BID I. Obviously, when City adopted the first Ordinance creating BID I that called for the creation of a non-profit association to govern the BID I programs, the City "played a role in bringing the POA into existence."

Defendants, however, would prefer that we ignore the POA's history vis-à-vis BID I, and concentrate instead on the POA's relationship to BID II. This is because the POA's existence preceded the creation of BID II. Defendants would have us look at the POA as simply a "preexisting corporation" that just "happened" to be available to administer the funds for BID II, apparently in

reliance on footnote 5 of *International* ****864** *Longshoremen's.* In that footnote, we opined that if LAXT, the private corporation in question there, had been a "preexisting" entity "which simply entered into a contractual arrangement" to exercise authority that the government entity could have exercised, then the private entity "would not have been a creation of the City Council" and the private entity's board of directors would not be subject to the Brown Act. (*International Longshoremen's, supra,* 69 Cal.App.4th at p. 300, fn. 5, 81 Cal.Rptr.2d 456.)

There is no reason to ignore the history behind the POA, and, in fact, because the issue is the "creation" of the entity whose governing board now wields governmental authority, we *must* look at the circumstances surrounding the POA's birth. The record shows that the POA was formed and structured for the sole purpose of taking over City's administrative functions as to BID I. Therefore, under the Brown Act, as interpreted by us in *International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal, Inc., supra,* 69 Cal.App.4th 287, 81 Cal.Rptr.2d 456, the POA's board of directors, vis-à-vis BID I, was subject to the Brown Act, because the board was a legislative body within the meaning of section 54952 subdivision(c)(1)(A).

Thereafter, the boundaries of BID I were extended, the new BID was called BID II, and the POA simply continued to administer the assessments collected from property owners in the enlarged District. Obviously, the fact that the POA was already in existence and ready to take over City's legislative functions vis-à-vis BID II cannot change the result we would have reached if this case had been presented after BID I was created and before BID II had come into existence. And the connection between BID I and BID II rationally cannot be ignored in any determination of when and ***872** how the POA was "created." City itself, in the Management District Plan for BID II, explicitly recognized that the POA "was formed in 1996 to govern Phase I," that the POA also would govern "Phase II," and that BID II was just an "extension" of BID I.

Under these circumstances, we would improperly elevate form over substance if we were to treat the POA as a "pre-existing" private entity with which City just "happened" to decide to do business when it turned governance of BID II over to the POA. To turn a blind eye to such a subterfuge would allow City (and, potentially, other elected legislative bodies in the future) to circumvent the requirements of the Brown Act, a statutory scheme designed to protect the public's interest in open government. This we will not do. (*Plumbing, etc., Employers Council v. Quillin* (1976) 64 Cal.App.3d 215, 220, 134 Cal.Rptr. 332 [court will not place form above substance if doing so defeats the objective of a statute]; *People v. Jackson* (1937) 24 Cal.App.2d 182, 192, 74 P.2d 1085, *disapproved on another ground, People v. Ashley* (1954) 42 Cal.2d 246, 262, 267 P.2d 271 ["It should be and is an established principle of the law that the substance and not the mere form of transactions constitutes the proper test for determining their real character. If this were not true it would be comparatively simple to circumvent by sham the provisions of statutes framed for the protection of the public. This the law does not permit. (Citations.)"]; see also Civ.Code, § 3528 ["The law respects form less than substance."]; *People v. Reese* (1934) 136 Cal.App. 657, 672, 29 P.2d 450, *disapproved on another ground, People v. Ashley* (1954) 42 Cal.2d 246, 262, 267 P.2d 271 ["The evidence tends to prove, and the jury had the right to find, that the real intention of the defendants was to place upon the market and sell shares of stock in a corporation, and that the form of the certificates issued by them was a subterfuge adopted in order to defeat the purposes of the Corporate Securities Act. The operation of the law may not thus be circumvented."].)

****865** In order to avoid the conclusion that the Brown Act applies, the defendants characterize our treatment of the POA as a legislative body within the meaning of the Brown Act as being "contrary to the evidence produced in the trial court and unfair to the businessmen trying to improve their local community." They contend that there is no evidence that City ever "handled" the administrative functions of any BID, and that, to the contrary, the BIDs and the POA were structured by the local property owners themselves from the outset to be administered by a nonprofit organization formed by the owners themselves.

This contention, however, misses the point. The fact that local property owners who wanted City to create a BID were involved in the structuring of ***873** the BID, and structuring of the POA to run the BID, does not mean that City did not "play a role in bringing" the POA "into existence." A BID cannot be created by private individuals. Private individuals do not have the power to authorize tax assessments, or to create tax liens. Thus, a public entity *must* be involved in the creation of any BID, no matter how, when, or by whom the idea and future structuring of the BID-to-be was initiated and pursued. Here, as already noted, the POA was formed for the purpose of administering the BID. Thus, by giving the BID the necessary legal standing as a BID, and by providing that the BID would, in fact, be administered by a POA yet to be formed, City clearly was involved in bringing into existence the POA. An operative BID was the *raison d'être* for the POA; by giving the BID the legal breath of life, the City breathed life into the POA as well.

2. *City Retained the Authority to Overturn the POA's Actions*

Furthermore, just as in *International Longshoremen's, supra,* 69 Cal.App.4th at page 296, 81 Cal.Rptr.2d 456, City, the elected legislative body with ultimate accountability to the voters, retained plenary decisionmaking authority over the BID's activities. (Sts. & Hy.Code § 36642.) Street and Highways Code section 36642 provides, in relevant part, that a city council "may modify the improvements and activities to be funded with the revenue derived from the levy of the assessments by adopting a resolution determining to make the modifications after holding a public hearing on the proposed modifications."

This retention of power over the POA is not only provided for by section 36642, but it is required by well-established law, which provides that a public body may only delegate the performance of its administrative functions to a private entity if it retains ultimate control over administration so that it may safeguard the public interest. (*International Longshoremen's, supra,* 69 Cal.App.4th at pp. 297–298, 81 Cal.Rptr.2d 456 and cases cited there.) And a nonprofit corporation to which such administrative functions are delegated *must comply with the same laws and regulations as the public entity that is delegating its authority.* (*International Longshoremen's, supra,* 69 Cal.App.4th at p. 300, 81 Cal.Rptr.2d 456; 81 Op.Atty.Gen. 281 (1998) [when a community redevelopment agency used a nonprofit corporation to administer its housing activities, the nonprofit corporation was required to comply with the same laws applicable to the redevelopment agency itself, such as open meeting laws and public bidding and prevailing wage statutes].)

b. *There Is No Legal Reason to Exempt the POA from The Operation of the Brown Act*

1. *The "Unfairness" and "Interference with Business" Argument*

As noted above, City and the BID contend that our decision that the POA must comply with the same laws as would City, for example, the Brown Act, ***874** is somehow unfair to businesspeople, and interferes with private businesses' ability to improve their areas of operation. Needless to say, if local businesspeople want to form property ****866** owners' associations to try to improve their local community, they are free to do so. They may hold their meetings in secret, by invitation only, or may invite the general public, limited only by whatever laws, if any, are applicable to such groups. However, participation in such purely private, purely voluntary organizations differs dramatically from participation in a BID. For example, membership in a private business owners' organization is voluntary, and, presumably, membership can be terminated at will. In contrast, "membership" in a BID may be involuntary for a majority of the property owners within the BID. (Sts. & Hy.Code, § 36621, subd. (a) [the only prerequisite to the creation of such a BID is not a petition filed by a *majority* of the property owners in the proposed district, but a petition filed by property owners who will *pay* more than 50 percent of the total amount of assessments to be levied].) And, once the BID is created, "membership" lasts for at least five years, and cannot be voluntarily terminated by individual members. (Sts. & Hy.Code, §§ 36622, subd. (h), 36630.)

Given these differences, defendants' pleas that the result we reach here is somehow "unfair" to businesspeople are simply not persuasive. When an individual business owner's money can be taken without his or her individual consent, when it can be taken through use of the government's power to tax and assess, and when it can be used to benefit others' property through the provision of services (whether or not such services include such traditional municipal services as street and sidewalk improvements), it is clearly not "unfair" for such individual business owners to expect to have an opportunity to participate in the decision-making process by which one benefit or another is actually conferred. Nor is it unfair for us, given the language of the Brown Act and the rules of interpretation related to it, to validate that expectation.

2. *The "Supplemental Services" Argument*

Defendants also point to the "supplemental" nature of the services provided by this BID, as though this somehow obviates any need to comply with the Brown Act. Such an argument makes no sense. First, what is "supplemental" can become quite subjective. There is nothing to stop a city from proclaiming that *any* traditional municipal services, other than the most critical things such as fire and police protection, are "supplemental." Thus, street sweeping, the trimming of

street trees, and even the purchase of new library books could be characterized as "supplemental" services. Shall we ***875** interpret the Brown Act on a case-by-case basis, based on each public entity's own characterization of the topic as being one of "supplemental," versus basic, services? Shall the Brown Act apply if the legislative body is making decisions about the purchase of police cars, but not if it is deciding whether to buy new library books or to cut back the street tree maintenance program? To ask such questions is to answer them.

Second, focussing on the "supplemental" nature of the *services* is backwards it is not the *kinds of services,* so much as the *nature of the source of funding* to be used for them, which is relevant to the issue on appeal. Are traditional legislative bodies exempt from the Brown Act merely because they act to disperse "bonus" federal funding for special, supplemental programs and services? If a private benefactor donates $10 million to a city to spend on "supplemental" services and programs, may the city council meet informally and secretly to decide upon the proper allocation of such funds? The obvious answer to both these questions is "No." This is so because the funds involved constitute public money. The funds do not belong to the individual council members, they belong to the public, and the public has a right to participate in any decisions about how public funds should be expended. Very simply, the Brown Act contains no exemptions ****867** for decisions about expenditures of *public funds* for "supplemental services."

3. The "Advisory Committee" Argument

Defendants also argue that the existence of "advisory committees" somehow obviates the need for application of the Brown Act's rules to actions taken by the POA vis-à-vis the BID. Just as there is no exemption in the Brown Act for actions on "supplemental services" taken by statutorily-defined legislative bodies, so, too, there is no exemption for actions taken by bodies such as the POA which were "previewed" by an advisory committee.

True, Streets and Highways Code section 36631, subdivision (b) provides that advisory committees "*shall* " comply with the Brown Act. But, contrary to the arguments of the BBID and the POA, that section does *not* also specify that any other entities involved in a BID are *exempt* from the Brown Act. When section 36631 is read in context with the Property and Business Improvement District Law of 1994 as a whole, it is apparent that the Legislature assumed the advisory committee would be making reports and recommendations about the BID to a city council (Sts. & Hy.Code, §§ 36631, subd. (a); 36633, 36640), which *itself* would then be taking legislative action to carry out the assessments, levies, boundary changes and improvements and activities to be funded. (See, e.g., Sts. & Hy.Code, §§ 36632, 36634, 36635, 36641, 36642, 36651.)

***876** Thus, the Legislature specified that an advisory committee's meetings about its intended reports and recommendations vis-à-vis a BID are subject to the Brown Act, and did not so specifically state that the Brown Act applies to a city council's meetings to actually carry out, modify, or disapprove such recommendations. Is this persuasive evidence that the Legislature intended to exempt city councils from the Brown Act when they make decisions about BIDs? Of course not. Likewise, the Legislature's failure to *expressly* specify that a nonprofit corporation to whom a city has delegated its administrative functions vis-à-vis a BID must comply with the Brown Act is no evidence that the Legislature intended to *exempt* such a nonprofit corporation from open meeting requirements.

4. *The "We Said We Didn't 'Create' the POA, So You Can't Decide We Did" Argument*

Defendants urge that because City itself concluded that it did not "create" the POA, we are somehow bound by such a conclusion. Defendants characterize this determination as a finding of fact to which we must defer, citing *McCarthy v. City of Manhattan Beach* (1953) 41 Cal.2d 879, 890, 264 P.2d 932 and *Consaul v. City of San Diego* (1992) 6 Cal.App.4th 1781, 1792, 8 Cal.Rptr.2d 762. Not so. The issue of whether City was involved in bringing the POA into existence, in other words, whether City "created" it within the meaning of section 54952, subdivision (c)(1)(A), is, ultimately, a question of law.

CONCLUSION

The POA's status as an entity originally "created" to take over City's legislative functions was not somehow negated, annulled, or dissipated simply because its role subsequently was expanded by the geographic expansion of the area over which it exercised such functions. Nor do any of the reasons advanced by defendants justify exempting the POA from the same application of the

Brown Act as would apply to City's legislative body. We therefore conclude that the POA is a legislative body within the meaning of the Brown Act, that its actions must be taken in compliance with that Act, and that the trial erred by denying plaintiff's motion for a preliminary injunction.

DISPOSITION

The order denying plaintiff's request for a preliminary injunction is reversed and ****868** remanded. The trial court is directed to enter a preliminary injunction in favor of plaintiff in accordance with the views expressed ***877** herein. In connection with any arguments that the POA is or is not bound to follow City's laws related to competitive bidding, the trial court should be guided by our conclusion that the POA is a legislative body within the meaning of the Brown Act, and that the Brown Act does apply to actions taken by the POA in its administration of the BID. Plaintiff shall recover his costs on appeal.

KLEIN, P.J., and ALDRICH, J., concur.

All Citations

87 Cal.App.4th 862, 104 Cal.Rptr.2d 857, 2001 Daily Journal D.A.R. 2513

Footnotes

1 BID II, City and POA may be referred to collectively as defendants in this opinion.

2 All further statutory references will be to the Government Code, except as otherwise noted.

3 We recite facts taken from the Clerk's Transcript.

4 For example, section 36622 requires a map showing each parcel of property within the district, the proposed district name, the improvements and activities proposed for each year of operation, the proposed amount to be spent to accomplish the activities and improvements each year, and the source of funding.

5 Section 36622 does *not* require the management district plan to contain information on governance or management. However, a city council may require the management district plan to contain other items not specifically required by the state law. (§ 36622, subd. (*l*).)

6 See, e.g., Business and Professions Code section 3325 [meetings of the Hearing Aid Dispensers Advisory Commission must be noticed and open]; Business and Professions Code section 7315 [meetings of the State Board of Barbering and Cosmetology must be noticed and open]; Government Code section 8790.7 [meetings of the California Collider Commission must be noticed and open]; Harbors and Navigation Code section 1153 [meetings of the Board of Pilot Commissioners must be noticed and open] Harbors and Navigation Code section 1202 [meetings for the purpose of investigating pilotage rates shall be noticed and open]; Health and Safety Code section 1179.3, subd. (b) [meetings of the Rural Health Policy Council for comments on projects in rural areas of California must be noticed and open]; Insurance Code section 10089.7, subd. (j) [meetings of the governing board and advisory panel of the California Earthquake Authority must be noticed and open]; Public Resources Code section 33509 [meetings of the governing board of the Coachella Valley Mountain Conservancy must be noticed and open]; Education Code section 51871.4, subd. (g) [meetings of the Commission on Technology in Learning must be noticed and open].

7 The Brown Act's statement of intent provides: "In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. [¶] The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created." (§ 54950.)

104 Cal.Rptr.2d 857, 2001 Daily Journal D.A.R. 2513

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200 Cal.App.4th 972
Court of Appeal, Second District, Division 5, California.

CALIFORNIANS AWARE et al., Plaintiffs and Appellants,
v.
JOINT LABOR/MANAGEMENT BENEFITS COMMITTEE et al., Defendants and Respondents.

No. B227558.
|
Nov. 10, 2011.
|
As Modified on Denial of Rehearing Nov. 28, 2011.

Synopsis
Background: Political advocacy group brought action against joint labor/management benefits committee (JLMBC) of community college district for declaratory, injunctive, and writ relief challenging committee's failure to follow Ralph M. Brown Act open meeting procedures. The Superior Court, Los Angeles County, No. BS124856, David P. Yaffe, J., denied petition. Advocacy group appealed.

Holdings: The Court of Appeal, Mosk, J., held that:

Brown Act did not apply to JLMBC, and

JLMBC's meetings with unions were within exemption from Brown Act.

Affirmed.

Attorneys and Law Firms

****767** Law Offices of Kelly A. Aviles, La Verne, Kelly A. Aviles; Dennis A. Winston, Los Angeles; Joseph T. Francke, Carmichael, for Plaintiffs and Appellants Californians Aware and Richard P. McKee.

Atkinson, Andelson, Loya, Ruud & Romo, Cerritos, Warren S. Kinsler and Joshua E. Morrison for Defendants and Respondents Joint Labor/Management Benefits Committee and Los Angeles Community College District.

MOSK, J.

***974 INTRODUCTION**

Plaintiffs, petitioners, and appellants Californians Aware and Richard P. McKee (McKee) filed a verified petition for writ of mandate, an injunction, and declaratory relief against defendants, respondents, and respondents in this appeal the Los Angeles Community College District (District) and the Joint Labor/Management Benefits Committee (JLMBC) alleging that the JLMBC failed to comply with the public notice and open meeting requirements of the Ralph M. Brown Act (Brown Act). (Gov.Code, § 54950 et seq.[1]) The trial court in denying the petition found that the JLMBC was not subject to the Brown Act because the JLMBC was formed to further the District's collective bargaining with the unions representing the District's employees and thus was exempt from the Brown Act under section 3549.1, subdivision (a), which is part of the Educational Employment Relations Act (EERA) (§ 3540 et seq.[2]). Petitioners appeal. We affirm.

BACKGROUND[3]

In or about 2002, the District entered into a "Master Benefits Agreement" (Agreement) with unions representing its employees[4] concerning hospital-medical, ****768** dental, vision group coverage, group life insurance coverage, and the District's employee assistance program. The unions are referred to in the Agreement as the "Exclusive Representatives" of the employees. Pursuant to the Agreement, the District was to convene, and the Exclusive Representatives were to participate in, the JLMBC. The JLMBC's purpose was to "contain the costs of the District's Health Benefits Program while maintaining and, when feasible, improving the quality of the benefits available to employees."

***975** Prior to adoption of the Agreement, the District's six bargaining units each had a separate article in their collective bargaining agreements that addressed health benefits. Those articles were inconsistent, resulting in

coverage disparities. One of the Agreement's purposes was to ensure common benefits throughout the District. Under the Agreement, the District's health benefits program consisted of "group benefit plans recommended by the Joint Labor/Management Benefits Committee and approved by the Board under which eligible District employees (and their eligible dependents) receive hospital, medical, dental, and vision care coverage. The purpose of the Health Benefits Program is to provide quality health care to the District's employees, retirees, and their eligible dependents and survivors."

The JLMBC was composed of "one voting and one non-voting District Member" (District Members); six "Employee Members," one from each of the Exclusive Representatives; and the "Chair" who was to be nominated by the president of the Los Angeles College Faculty Guild and confirmed by a simple majority of the regular voting members. Each Exclusive Representative could appoint nonvoting members in proportion to the size of each bargaining unit. The JLMBC had authority to:

"1. review the District's Health Benefits Program and effect any changes to the program it deems necessary to contain costs while maintaining the quality of the benefits available to employees (this includes, but is not limited to, the authority to substitute other plans for the District's existing health benefits plans);

"2. recommend the selection, replacement, and evaluation of benefits consultants;

"3. recommend the selection, replacement, and evaluation of benefit plan providers;

"4. review and make recommendations regarding communications to faculty and staff regarding the health benefits program and their use of health care services under it;

"5. review and make recommendations regarding benefit booklets, descriptive literature, and enrollment forms;

"6. study recurring enrollee concerns and complaints and make recommendations for their resolution;

"7. participate in an annual review of the District's administration of the Health Benefits Program;

***976** "8. review and make recommendations about the District's health benefits budget; and

"9. if health care legislation that necessitates modification of the District's Health Benefits Program is enacted before the termination of this agreement, assess the effects of such legislation and make recommendations to the District and the Exclusive ****769** Representatives about appropriate action to take."

Any action taken by the JLMBC required approval by the affirmative vote of the voting District Member and all but one of the voting Employee Members at a meeting at which a quorum was present. The Agreement provided that a quorum consisted of the voting District Member and any five voting Employee Members. The JLMBC had to submit any proposed changes to the board of trustees (presumably the District's board of trustees) (Board) for its consideration. In order to continue to provide quality health care to the District's employees, retirees, and eligible dependents at a reasonable and sustainable cost, the JLMBC annually had to report to the Board on its actions and activities to mitigate increases to the cost of the health benefits program.

In 2002, the District adopted board rule 101702.10, which provided, "The District shall convene a Joint Labor/Management Benefits Committee (JLMBC) as prescribed by the Master Agreement between the District and the exclusive representatives of its employees. The role, composition, and authority of the Committee are specified in Section IV of the Master Agreement. Section IV of that Agreement (as it now reads or as it may be revised by the parties from time to time) is, by this reference, incorporated herein as if set forth in full."

McKee, on behalf of himself and Californians Aware, submitted a letter to the Board and the JLMBC asserting that the JLMBC was a "legislative body" of the District, which had been holding meetings that did not conform to the public notice and open meeting requirements of the Brown Act. McKee demanded that the District publicly acknowledge in a letter to him that the JLMBC was a "legislative body" under the Brown Act and that all future JLMBC meetings would comply with the Brown Act. Dr. Susan Aminoff, the Chair of the JLMBC, responded that the JLMBC was not a "Brown Act committee."

Petitioners filed their verified petition for writ of mandate, an injunction, and declaratory relief for the JLMBC's alleged violations of the Brown Act. In their petition, petitioners alleged, among other things, that a controversy existed between petitioners and the JLMBC concerning "(1) the legal rights of members of the public to proper and timely notice of the business to be ***977** transacted by the JLMBC and to an opportunity to provide input to the JLMBC prior to or during the JLMBC's discussion of that business; and (2) the ministerial duties imposed upon the JLMBC by the Brown Act." The petition sought a declaration that the JLMBC is a "legislative body" under

the Brown Act and a peremptory writ of mandate ordering the JLMBC to comply with the Brown Act's requirements. Petitioners filed a motion for "Peremptory Writ of Mandate and for Declaratory Relief."

The trial court denied petitioners' petition for writ of mandate. In its order denying the petition, the trial court referred to the California Attorney General's publicly issued opinion that the JLMBC is not required to comply with the Brown Act. The trial court stated that the petition implicated two statutory schemes—the Brown Act and the EERA. According to the trial court, the purpose of the Brown Act, an open meeting law, is to require local entities to conduct their business in public, and the purpose of the EERA is to require public school districts, including community college districts, to recognize and bargain collectively with labor unions representing school district employees. The trial court noted that there is a "tension" between the open meeting ****770** requirements of the Brown Act and the closed-door collective bargaining provided by the EERA. The trial court opined that the Legislature resolved that tension with section 3549.1, subdivision (a), which provides that meetings and negotiations between management and labor are not subject to the Brown Act.

The trial court rejected petitioners' attempt to distinguish meetings conducted by the JLMBC from labor-management negotiations and observed that the District and its employees' unions had agreed to divide their negotiations into subgroups, one of which was the "particularly complex" subject of health benefits. The trial court said that the parties created the JLMBC, "to filter out the changes that are to be brought to the negotiating table by requiring some degree of consensus by both labor and management members of the JLMBC in order to submit a change to the board of trustees for its consideration." The trial court concluded, "The activities of the JLMBC are part of the collective bargaining process and the intent of the legislature is that those activities are not to be done in public."

DISCUSSION

Petitioners contend that the trial court erred in denying their petition for writ of mandate. The trial court properly ruled that the JLMBC is not subject to the provisions of the Brown Act.

***978** *A. Standard of Review*

" ' "In reviewing the trial court's ruling on a writ of mandate (Code Civ. Proc., § 1085), the appellate court is ordinarily confined to an inquiry as to whether the findings and judgment of the trial court are supported by substantial evidence. [Citation.] However, the appellate court may make its own determination when the case involves resolution of questions of law where the facts are undisputed. [Citation.]" [Citation.]' (*Caloca v. County of San Diego* (1999) 72 Cal.App.4th 1209, 1217 [85 Cal.Rptr.2d 660].)" (*Zubarau v. City of Palmdale* (2011) 192 Cal.App.4th 289, 301, 121 Cal.Rptr.3d 172; *International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal, Inc.* (1999) 69 Cal.App.4th 287, 293, 81 Cal.Rptr.2d 456 (*International Longshoremen's*) [applicability of Brown Act to undisputed facts is subject to de novo review].) Here, because the facts are undisputed, we make our own determination as to the interpretation and application of the Brown Act and the EERA.

B. Relevant Statutes

1. The Brown Act

Section 54953, subdivision (a) sets forth the Brown Act's general requirement that local agencies must hold their meetings open to the public. Section 54953, subdivision (a) provides, "All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter."[5] As relevant here, section 54952, subdivision (b) of the Brown Act defines a "legislative body" as "[a] commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body." A commission, committee, board, or other body of a local agency is "created by" charter, ordinance, resolution or other formal action of a legislative body if the legislative body " 'played a role' in bringing ... 'into existence' " the ****771** commission, committee, board, or other body. (*Epstein v. Hollywood Entertainment District II Bus. Improvement Dist.* (2001) 87 Cal.App.4th 862, 864, 104 Cal.Rptr.2d 857 (*Epstein*), quoting *International Longshoremen's, supra,* 69

Cal.App.4th at p. 295, 81 Cal.Rptr.2d 456; see also *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal.App.4th 354, 358–363, 36 Cal.Rptr.3d 47.)

***979** 2. The EERA

Section 3549.1 of the EERA provides in relevant part, "All the proceedings set forth in subdivisions (a) to (d), inclusive, are exempt from the provisions of ... the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), unless the parties mutually agree otherwise: [¶] (a) Any meeting and negotiating discussion between a public school employer and a recognized or certified employee organization."

Section 3540.1, subdivision (h) provides in pertinent part, " 'Meeting and negotiating' means meeting, conferring, negotiating, and discussing by the exclusive representative and the public school employer in a good faith effort to reach agreement on matters within the scope of representation...." Section 3540.1, subdivision (k) provides as applicable here, " 'Public school employer' or 'employer' means the governing board of a school district, a school district...."

C. Application of Statutes

Petitioners contend that the JLMBC is a "legislative body" subject to the public notice and open meeting requirements of the Brown Act because the District played a role in bringing it "into existence" by entering into the Agreement and by adopting board rule 101702.10. The Brown Act exemption in section 3549.1 of the EERA does not apply to the JLMBC, petitioners contend, because the JLMBC is not a "public school employer" that may engage in "meeting and negotiating," as it is neither the District itself nor a governing board of the District.

The Attorney General issued a formal opinion that the JLMBC is not required to comply with the Brown Act. (92 Ops.Cal.Atty.Gen. 102, 107 (2009).) Citing section 3549.1 and its prior opinion at 61 Ops.Cal.Atty.Gen. 1, 8, 9 (1978) ["that the Legislature ... did not intend to require bargaining committees to negotiate in public is clearly exemplified in section 3549.1...."], the Attorney General stated that it is well-settled that labor-management negotiations conducted pursuant to the EERA between a public school employer and a recognized or certified employee organization are not subject to the Brown Act. (92 Ops.Cal.Atty.Gen., *supra,* at p. 105.) The Attorney General added, "Health benefits are matters of employee health, safety, and training, which fall squarely within the recognized scope of collective bargaining. [Fn. omitted.] The JLMBC formation springs directly from collective bargaining between an employer and the exclusive bargaining representatives of the employer's workforce. With its ongoing responsibility to monitor the employees' health benefits, the JLMBC plays a continuing role in the collective bargaining process with respect to a mandatory subject of bargaining." (*Id.* at p. 106.)

***980** The Attorney General further stated, "To 'create' means, among other things, 'to bring into existence,' or 'to produce or bring about by a course of action or behavior.' [Fn. omitted.] The JLMBC was brought into existence through the process of collective bargaining memorialized in the Master Agreement. Having established the JLMBC, the Master Agreement ****772** conferred upon the District the complementary obligation to cause the JLMBC to assemble, which the District discharged through the adoption of Rule 101702.10. [¶] Because the JLMBC was created through the process of collective bargaining as memorialized in the Master Agreement, it does not come within the definition of a legislative body under section 54952. [Fn. omitted.]" (92 Ops.Cal.Atty.Gen., *supra,* at pp. 106–107.)

We agree with the Attorney General and respondents that the JLMBC was created as part of, and for the purpose of furthering, the collective bargaining process under the EERA and, as such, is not subject to the provisions of the Brown Act. (92 Ops.Cal.Atty.Gen., *supra,* at pp. 105–107.) In this matter, we view the Attorney General's opinion as a significant authority. As the court in *Freedom Newspapers, Inc. v. Orange County Employees Retirement System* (1993) 6 Cal.4th 821, 829, 25 Cal.Rptr.2d 148, 863 P.2d 218 said, "While the Attorney General's views do not bind us (*Unger v. Superior Court* (1980) 102 Cal.App.3d 681, 688 [162 Cal.Rptr. 611]), they are entitled to considerable weight (*Meyer v. Board of Trustees* (1961) 195 Cal.App.2d 420, 431 [15 Cal.Rptr. 717]). This is especially true here since the Attorney General regularly advises many local agencies about the meaning of the Brown Act and publishes a manual designed to assist local governmental agencies in complying with the Act's open meeting requirements. (See, e.g., Open Meeting Laws (Cal.Atty.Gen., 1989).)" (See also *Shapiro v. Board of Directors* (2005) 134 Cal.App.4th 170, 183, fn. 17, 35 Cal.Rptr.3d 826 [quoting *Freedom Newspapers, Inc. v. Orange County Employees Retirement System, supra,* 6 Cal.4th at p. 829, 25 Cal.Rptr.2d 148, 863 P.2d 218 and

stating, " '[a]n opinion of the Attorney General "is not a mere 'advisory' opinion, but a statement which, although not binding on the judiciary, must be 'regarded as having a quasi judicial character and [is] entitled to great respect,' and given great weight by the courts. [Citations.]" ' [Citation.]"].)

Petitioners' contention that the Brown Act exemption in section 3549.1 does not apply to the JLMBC because the JLMBC is not a "public school employer" that may engage in "meeting and negotiating" as it is neither the District itself nor a governing board of the District is incorrect. The JLMBC is a means for the District and its employees' exclusive representatives to meet and negotiate. Under the Agreement, the JLMBC includes one voting District Member and one nonvoting District Member. Section 3543.3 plainly permits the District, a "public school employer," such representation when "meeting and negotiating" with its employees' exclusive representatives. Section 3543.3 provides, "A public school employer *or such representatives* ***981** *as it may designate* who may, but need not be, subject to either certification requirements or requirements for classified employees set forth in the Education Code, *shall meet and negotiate* with and only with representatives of employee organizations selected as exclusive representatives of appropriate units upon request with regard to matters within the scope of representation." (Italics added.) The District Members on the JLMBC clearly are such representatives—school districts act through agents or representatives.

Petitioners rely on *International Longshoremen's, supra,* 69 Cal.App.4th 287, 81 Cal.Rptr.2d 456, *Epstein, supra,* 87 Cal.App.4th 862, 104 Cal.Rptr.2d 857, and *Frazer v. Dixon Unified School District* (1993) 18 Cal.App.4th 781, 22 Cal.Rptr.2d 641 (*Frazer*) for the proposition that the JLMBC is a "legislative body" because the District participated in its creation. ****773** *International Longshoremen's, supra,* 69 Cal.App.4th at pages 290 through 291, 81 Cal.Rptr.2d 456 concerned the Los Angeles City Council's approval of an agreement between its harbor department and 34 foreign and domestic companies to form a private, for-profit corporation that would design, construct, and operate a facility for the export of coal. *Epstein, supra,* 87 Cal.App.4th at page 864, 104 Cal.Rptr.2d 857 dealt with the City of Los Angeles's formation of a nonprofit corporation to administer funds that the city raised through assessments on businesses in a special assessment district within the city—that is, to take over administrative functions that the city normally would handle. *Frazer, supra,* 18 Cal.App.4th at pages 785 through 786, and 792, 22 Cal.Rptr.2d 641 involved the formation, pursuant to a school board policy, of hearing and review committees to advise the school superintendant and school district on a challenged change in school curriculum. None of these cases involved a mechanism, such as the one here, which was established as part of the collective bargaining process and therefore subject to a statutory Brown Act exemption.

Finally, petitioners contend that even if the JLMBC is deemed a "public school employer" within the meaning of section 3549.1, the JLMBC is subject to the open meeting and public participation requirements in section 3547.[6] Petitioners' argument fails. Section 3547 is part of the EERA and not the Brown Act. Petitioners' writ petition concerned the JLMBC's alleged lack of ***982** compliance with the Brown Act and not the JLMBC's alleged lack of compliance with section 3547 of the EERA. Accordingly, petitioners have forfeited this issue.[7] (*Tutti Mangia Italian Grill, Inc. v. American Textile Maintenance Co.* (2011) 197 Cal.App.4th 733, 740, 128 Cal.Rptr.3d 551.)

DISPOSITION

The judgment is affirmed. No costs are awarded.

We concur: ARMSTRONG, Acting P.J., and KRIEGLER, J.

All Citations

200 Cal.App.4th 972, 133 Cal.Rptr.3d 766, 192 L.R.R.M. (BNA) 2436, 274 Ed. Law Rep. 247, 11 Cal. Daily Op. Serv. 13,783

Footnotes

1 All statutory citations are to the Government Code unless otherwise noted.

2 The EERA sometimes used to be referred to as the Rodda Act. (*Sonoma County Bd. Of Education v. Public Employment Relations Bd.* (1980) 102 Cal.App.3d 689, 692, 163 Cal.Rptr. 464; 3 Witkin, Summary of Cal. Law (10th ed. 2005) Agency and

Employment, § 587, p. 700.)

3 The factual background is taken from the pleadings before the trial court.

4 The Los Angeles College Faculty Guild, AFT Local 1521; the AFT College Staff Guild, Los Angeles, AFT Local 1512A; the Los Angeles City and County School Employees Union, SEIU (Service Employees International Union) Local 99; the Los Angeles/Orange Counties Building and Construction Trades Council; the Supervisory Employees Union, SEIU Local 347; and the Public, Professional and Medical Employees Union of the California Teamsters, Local 911.

5 Section 54954.2 provides for notice.

6 Section 3547 provides:
"(a) All initial proposals of exclusive representatives and of public school employers, which relate to matters within the scope of representation, shall be presented at a public meeting of the public school employer and thereafter shall be public records.
"(b) Meeting and negotiating shall not take place on any proposal until a reasonable time has elapsed after the submission of the proposal to enable the public to become informed and the public has the opportunity to express itself regarding the proposal at a meeting of the public school employer.
"(c) After the public has had the opportunity to express itself, the public school employer shall, at a meeting which is open to the public, adopt its initial proposal.
"(d) New subjects of meeting and negotiating arising after the presentation of initial proposals shall be made public within 24 hours. If a vote is taken on such subject by the public school employer, the vote thereon by each member voting shall also be made public within 24 hours.
"(e) The board may adopt regulations for the purpose of implementing this section, which are consistent with the intent of the section; namely that the public be informed of the issues that are being negotiated upon and have full opportunity to express their views on the issues to the public school employer, and to know of the positions of their elected representatives."

7 Citing California Code of Regulations, title 8, section 32602, respondents argue that any claimed violation of section 3547 is within the exclusive jurisdiction of the Public Employment Relations Board and that therefore petitioners have not exhausted their administrative remedies. Because petitioners forfeited their claim that respondents violated section 3547, we do not reach this issue.

69 Cal.App.4th 287
Court of Appeal, Second District, Division 3, California.

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION et al., Plaintiffs and Respondents, v. LOS ANGELES EXPORT TERMINAL, INC., Defendant and Appellant.

No. B112263.
|
Jan. 14, 1999.
|
As Modified on Denial of Rehearing Feb. 10, 1999.
|
Review Denied April 14, 1999.

Synopsis
After board of directors of private corporation that developed and operated coal export facility entered into terminal operating agreement with proposed operator, union filed petition for writ of mandate, seeking to nullify agreement as well as injunctive relief requiring board to conduct its meetings publicly in accordance with the Ralph M. Brown Act. The Superior Court, Los Angeles County, No. BC145559, Robert H. O'Brien, J., ruled that board was subject to the Brown Act, denied corporation's posttrial motions to vacate judgment and for new trial, and awarded attorney fees to union as the prevailing party. Corporation appealed. The Court of Appeal, Klein, P.J., held that: (1) corporation's board of directors was a "legislative body" within meaning of the Brown Act; (2) trial court properly denied corporation's posttrial motions; (3) award of attorney fees to union in the amount of $60,660, based on reasonable market value rather than on fees actually incurred, was proper; and (4) union was entitled to reasonable attorney fees on appeal.

Affirmed.

Attorneys and Law Firms

****458 *289** Jones, Day, Reavis & Pogue, Gerald W. Palmer, Erich R. Luschei and Erin E. Nolan, Los Angeles, for Defendant and Appellant.

***290** Leonard, Carder, Nathan, Zuckerman, Ross, Chin & Remar, Robert Remar, Beth A. Ross, and Arthur A. Krantz, San Francisco, for Plaintiffs and Respondents.

Opinion

KLEIN, P.J.

Defendant and appellant Los Angeles Export Terminal, Inc. (LAXT) appeals a judgment and postjudgment order in favor of plaintiffs and respondents International Longshoremen's and Warehousemen's Union (ILWU), three of its affiliated locals, ILWU Local 13, ILWU Local 63 and ILWU Local 94, and three individuals, James Spinosa, John Vlaic and Mike Freese, each of whom is an officer or agent of one of the local affiliates (collectively, ILWU).

The essential issue presented is whether LAXT's board of directors is subject to the open meeting requirements of the Ralph M. Brown Act (the Brown Act or the Act) (Gov.Code, § 54950 et seq.).[1]

For the reasons discussed below, we conclude LAXT, a private corporation in which the Harbor Department of the City of Los Angeles (the Harbor Department) is a shareholder, is subject to the Brown Act. The judgment and postjudgment order are affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

In 1981, the Board of Harbor Commissioners, which is entrusted by sections 138 and 139 of the Los Angeles City Charter (City Charter) with power and authority over the Harbor Department and the Port of Los Angeles, adopted Resolution 4531. Said resolution approved in concept the development of a major coal terminal on Terminal Island and set forth a series of steps to expedite related environmental studies and review. The Port commissioned a feasibility study which was to determine the viability of the project.

Thereafter, 28 private companies based in Japan, six domestic companies and the Harbor Department negotiated and reached agreement on a complex contractual arrangement known as the Shareholders' Agreement. Under the agreement, LAXT would be formed as a private, for profit corporation to design,

construct and operate a dry bulk handling facility for the export of coal on land leased from the Harbor Department. LAXT was to be capitalized with $120 million. The Harbor Department, as a 15 percent shareholder, ***291** would contribute $18 million and would be entitled to nominate three of the 19 LAXT board members.

Pursuant to a Charter provision requiring the Los Angeles City Council (City Council) to approve contracts with a payment commitment ****459** extending beyond three years, the Shareholders' Agreement was submitted to the City Council for its consideration.

On February 23, 1993, the City Council adopted Ordinance No. 168614, stating: "The Shareholders' Agreement is hereby approved and the Mayor of Los Angeles, or the President of the Board of Harbor Commissioners or the Executive Director of the Harbor Department is hereby authorized to execute said agreement."

On March 31, 1993, articles of incorporation were filed with the Secretary of State by a Los Angeles deputy city attorney.

The corporate entities and the Harbor Department entered into the Shareholders' Agreement on April 12, 1993.

The Shareholders' Agreement contained, inter alia, a condition that the project would not go forward unless the parties unanimously approved the terms of the lease between LAXT and the Harbor Department. The Board of Harbor Commissioners approved the lease on June 14, 1993.

The lease specified a term of 35 years, including a 10–year option. Under the City Charter, leases having a duration exceeding five years require City Council approval. Because of the lease's duration, it was submitted to the City Council, which approved it on July 27, 1993.

The lease then was executed by LAXT and "THE CITY OF LOS ANGELES, by its Board of Harbor Commissioners," effective August 30, 1993.

LAXT's organization, shareholder funding, election of directors, project design and construction then proceeded. On November 16, 1995, LAXT's board of directors authorized LAXT to enter into a Terminal Operating Agreement with Pacific Carbon Services Corporation (PCS).

1. *Proceedings.*

Following LAXT's approval of the Terminal Operating Agreement with PCS, ILWU initiated this action on March 4, 1996 by filing a petition for writ of mandate which sought to nullify said agreement as well as injunctive ***292** relief. ILWU alleged PCS was a "non-union" or "anti-union" employer which would employ workers at LAXT and its facilities "at substandard wages and under substandard terms and conditions of employment that will severely harm the prevailing standards in the Port of Los Angeles." ILWU alleged LAXT's board of directors was a legislative body within the meaning of the Brown Act and therefore was required to conduct its meetings publicly.

ILWU sought an injunction requiring LAXT's board of directors to conduct its future affairs in accordance with the Brown Act, and a judicial determination that the PCS agreement was null and void because LAXT's board of directors had approved the PCS agreement without complying with the procedural requirements of the Brown Act calling for open public meetings. ILWU also sought an award of attorney fees pursuant to section 54960.5 of the Act.

2. *Trial court's ruling.*

The matter was tried on briefs, declarations and exhibits. After hearing arguments by counsel, the trial court ruled LAXT's board of directors is a "legislative body" subject to the Brown Act.

The statement of decision provides in relevant part: The construction and operation of the port facility herein would be a pure governmental function, but for the City's arrangement with LAXT. The construction and operation of a port facility is a properly and lawfully delegable activity of the City in that such activity constitutes the performance of administrative functions. (*County of Los Angeles v. Nesvig* (1965) 231 Cal.App.2d 603, 616, 41 Cal.Rptr. 918.) The City's actions in forming LAXT "amount to the creation of LAXT by the City's elected legislative body, the Los Angeles City Council." LAXT is a private entity created by the elected legislative body of a local agency in order to exercise authority that may lawfully be delegated by the elected governing body to a private corporation or entity, within the meaning of section 54952, subdivision (c)(1).) Therefore, the Brown Act applies to the LAXT board of directors. On February

2, 1996, ILWU made a proper demand that LAXT comply with the Brown Act. "All actions taken by the **460 LAXT [b]oard of [d]irectors within the 90 days preceding [ILWU's] demand, November 4, 1995 through February 2, 1996, are null and void, ..." (§ 54960.1, subd. (a).)

Judgment was entered on March 7, 1997.

3. *Postjudgment proceedings.*

On April 25, 1997, the trial court denied LAXT's motion to vacate the judgment and enter a judgment of dismissal, as well as LAXT's motion for *293 a new trial. In addition, pursuant to section 54960.5, the trial court awarded attorney fees to ILWU, as the prevailing party, in the sum of $60,660.

This appeal followed.

CONTENTIONS

LAXT contends the trial court erred: in determining the LAXT board of directors is a legislative body subject to the Brown Act; in denying LAXT's posttrial motions to vacate the judgment and for a new trial; in awarding attorney fees to ILWU and in the amount awarded.

DISCUSSION

1. *Standard of review.*

The central issue is the applicability of the Brown Act, specifically, whether LAXT's board of directors is a legislative body within the meaning of section 54952, subdivision (c)(1)(A), so as to be subject to the Act. As an appellate court, "we 'conduct independent review of the trial court's determination of questions of law.' [Citation.] Interpretation of a statute is a question of law. [Citations.] Further, application of the interpreted statute to undisputed facts is also subject to our independent determination. [Citation.]" (*Harbor Fumigation, Inc. v. County of San Diego Air Pollution Control Dist.* (1996) 43 Cal.App.4th 854, 859, 50 Cal.Rptr.2d 874.)

2. *The Brown Act's purpose, scope and broad construction.*

The Brown Act (§ 54950 et seq.), adopted in 1953, is intended to ensure the public's right to attend the meetings of public agencies. (*Freedom Newspapers, Inc. v. Orange County Employees Retirement System* (1993) 6 Cal.4th 821, 825, 25 Cal.Rptr.2d 148, 863 P.2d 218.) To achieve this aim, the Act requires, inter alia, that an agenda be posted at least 72 hours before a regular meeting and forbids action on any item not on that agenda. (§ 54954.2, subd. (a); *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 555, 35 Cal.Rptr.2d 782.) The Act thus serves to facilitate public participation in all phases of local government decisionmaking and to curb misuse of the democratic process by secret legislation of public bodies. (*Cohan, supra,* 30 Cal.App.4th at p. 555, 35 Cal.Rptr.2d 782.)

The Act's statement of intent provides: "In enacting this chapter, the Legislature finds and declares that the public commissions, boards and *294 councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. [¶] The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created." (§ 54950; Stats.1953, ch. 1588, p. 3270, § 1.)

The Brown Act dictates that "[a]ll meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter." (§ 54953, subd. (a).)

The term "legislative body" has numerous definitions, grouped together in section 54952. The question before us *de novo* is whether LAXT's board of directors is a legislative body within the meaning of subdivision (c)(1)(A) of section 54952. This provision states in relevant part: "As used in this chapter, 'legislative body' means: [¶] ... [¶] (c)(1) A board, commission, committee, or other multimember body that governs a private

corporation or entity that ...: [¶] (A) Is created by the elected legislative body in **461 order to exercise authority that may lawfully be delegated by the elected governing body to a private corporation or entity." (§ 54952, subd. (c)(1)(A).)

In determining whether LAXT's board of directors is a legislative body within the meaning of the Brown Act, we are mindful that as a remedial statute, the Brown Act should be construed liberally in favor of openness so as to accomplish its purpose and suppress the mischief at which it is directed. (*San Diego Union v. City Council* (1983) 146 Cal.App.3d 947, 955, 196 Cal.Rptr. 45 [construing open-meeting requirements].) This is consistent with the rule that "civil statutes for the protection of the public are, generally, broadly construed in favor of that protective purpose. [Citations.]" (*People ex rel. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 313, 58 Cal.Rptr.2d 855, 926 P.2d 1042.)

3. *LAXT's board of directors is a legislative body within the meaning of the Brown Act.*

As indicated, section 54952, subdivision (c)(1)(A), defines a legislative body as "A board, commission, committee, or other multimember body that governs a private corporation or entity that ...:[¶] (A) Is created by the elected legislative body in order to exercise authority that may lawfully be delegated by the elected governing body to a private corporation or entity."

*295 There is no question that LAXT's board of directors is a multimember body that governs a private corporation or entity. The dispute concerns the remaining elements of section 54952, subdivision (c)(1)(A). LAXT contends the trial court erred in concluding LAXT's board of directors is a legislative body within the meaning of the statute because: (1) LAXT was not created by an *elected legislative body,* the City Council, but rather, by an appointed body, the Board of Harbor Commissioners; (2) LAXT was not created to exercise any governmental authority; and (3) LAXT was not granted any authority which could be delegated by the City Council. The arguments are unpersuasive.

a. *LAXT was created by an elected legislative body, namely, the Los Angeles City Council.*

To be subject to the Brown Act, the private corporation must be "created by the elected legislative body." (§ 54952, subd. (c)(1)(A).)

The City Charter vests the Harbor Commission, an *appointed* body, with power and authority over the operation and development of the Port of Los Angeles. (L.A. Charter §§ 138, 139.) LAXT asserts it was the Harbor Commission, not the City Council, which created LAXT, and the acts of the Harbor Commission in creating LAXT cannot be attributed to the City Council without disregarding the explicit allocations of power under the Charter.

Section 54952, subdivision (c)(1)(A), does not define what is meant by the term "created by." The ordinary definition of " to create" is "to bring into existence." (Webster's New Internat. Dict. (3d ed.1986) p. 532.) Here, the City Council, as well as the Harbor Commission, played a role in bringing LAXT into existence.

Specifically, on February 23, 1993, the City Council adopted Ordinance No. 168614, stating: "The Shareholders' Agreement is hereby approved and the Mayor of Los Angeles, or the President of the Board of Harbor Commissioners or the Executive Director of the Harbor Department is hereby authorized to execute said agreement."[2]

Following this formal action by the City Council, on March 31, 1993, articles of incorporation were filed by a deputy city attorney with the *296 Secretary of State, and the corporate entities and the Harbor Department entered into the Shareholders' Agreement on April 12, 1993.

Thus, the City Council was involved in bringing LAXT into existence. The contention LAXT was entirely a creature of the Board of Harbor Commissioners is without merit.

Of particular significance is a provision of the City Charter expressly authorizing the City Council to review any matter originally considered by the Board of Harbor Commissioners, effectively usurping the Commission's **462 role. Section 32.3 of the Charter provides in relevant part: "Notwithstanding any other provisions of this Charter, actions of commissions and boards shall become final at the expiration of the next five (5) meeting days of the City Council during which the Council has convened in regular session, unless City Council acts within that time by two-thirds vote to bring such commission or board action before it for consideration and for whatever action, if any, it deems appropriate, ... If the Council asserts such jurisdiction, said commission or board will immediately transmit such action to the City

Clerk for review by the Council and the particular action of the board or commission shall not be deemed final and approved.... *If the Council asserts such jurisdiction over the action, it shall have the same authority to act on the matter as that originally held by the board or commission,* but it must then act and make a final decision on the matter before the expiration of the next twenty-one (21) calendar days from voting to bring the matter before it, or the action of the commission or board shall become final." (Italics added.)

Thus, the City Council, an elected legislative body with ultimate accountability to the voters, retains plenary decision-making authority over Harbor Department affairs and has jurisdiction to overturn any decision of the appointed Board of Harbor Commissioners. Here, by adopting an ordinance which approved the Shareholders' Agreement to form LAXT, as well as by acquiescing in the Board of Harbor Commissioners' activity in establishing LAXT, the City Council was involved in bringing LAXT into existence. Without the express or implied approval of the City Council, LAXT could not have been created. Accordingly, LAXT was created by an elected legislative body within the meaning of the statute, and the trial court properly so found.

Nonetheless, in an attempt to characterize LAXT as entirely a creature of the Board of Harbor Commissioners, LAXT emphasizes the Shareholders' Agreement was submitted to the City Council for its approval *only because* ***297** section 390 of the City Charter required that contracts with a payment commitment extending for a period longer than three years be approved and authorized by ordinance of the City of Los Angeles. LAXT also stresses the 35–year lease between LAXT and the Harbor Department was submitted to the City Council for its approval *only because* section 140(e) of the City Charter required City Council approval for leases having a duration exceeding five years. These arguments are unpersuasive. Irrespective of the length of the payment commitment or the duration of the lease, the City's elected legislative body, namely, the City Council, inherently was involved in the creation of LAXT. Even assuming the payment commitment would have extended for less than three years, or the lease extended for less than five years, the City Council would have been involved in LAXT's creation.

As explained, under section 32.3 of the Charter the City Council is vested with the power to assert jurisdiction over any matter before the Board of Harbor Commissioners and the Council then has the same authority to act on the matter as was originally held by that board. Obviously, if the City Council is in agreement with the action taken by the Board of Harbor Commissioners, there is no need for the Council to usurp that board's role. In such a situation, the City Council, with full knowledge of the Harbor Commissioners' action and with the power to disaffirm the action, simply can acquiesce and thereby ratify the action taken by the Board of Harbor Commissioners. It is only when the City Council disagrees with the action taken by the Board of Harbor Commissioners that there is a need for the City Council to intervene.

Therefore, LAXT's attempt to depict itself as purely a creature of the appointed Board of Harbor Commissioners is unavailing. Irrespective of the level of the City Council's active involvement in the creation of LAXT, in view of the City Council's ultimate authority to overturn an action of the Harbor Commission, the trial court properly found LAXT was created by the City's *elected legislative body.* (§ 54952, subd. (c)(1)(A).)

****463** b. *LAXT was created to exercise governmental authority.*

Section 54952, subdivision (c)(1)(A) requires the private entity be created by the elected legislative body "in order to exercise authority" which may be delegated. LAXT contends it was not created to exercise any governmental authority. The argument is not persuasive.

By way of background, a public body may delegate the performance of administrative functions to a private entity if it retains ultimate control over ***298** administration so that it may safeguard the public interest. (*County of Los Angeles v. Nesvig, supra,* 231 Cal.App.2d at p. 616, 41 Cal.Rptr. 918.) Case law delineates the permissible scope of delegation of governmental authority. For example, *Irwin v. City of Manhattan Beach* (1966) 65 Cal.2d 13, 23, 51 Cal.Rptr. 881, 415 P.2d 769, upheld a city's grant of authority to private parties to build and operate an overpass as a lawful delegation. *County of Los Angeles v. Nesvig, supra,* 231 Cal.App.2d at page 617, 41 Cal.Rptr. 918, upheld the County of Los Angeles's contract with a private company to operate the Music Center as a lawful delegation of governmental authority. *Haggerty v. City of Oakland* (1958) 161 Cal.App.2d 407, 415–417, 326 P.2d 957, upheld the Oakland Board of Port Commissioners' lease of a port facility to a private company as a lawful delegation. In contrast, *Egan v. San Francisco* (1913) 165 Cal. 576, 583–584, 133 P. 294, invalidated a contract between San Francisco and a private corporation formed to build an opera house on public land, where the city had not retained sufficient control over operation of the opera house for the delegation to be valid.[3]

Here, Tay Yoshitani, who served as LAXT's president and as an LAXT director representing the Harbor Department, acknowledged in a letter to a taxpayers' organization: "*All major facilities at the Port of Los Angeles are totally built and paid for by the port and subsequently leased to a tenant with the exception of LAXT.* In other words, the port typically assumes 'all of the risk' of building a major marine facility. In the case of LAXT, the port structured the project so that other parties besides the City [of Los Angeles] assumed the bulk of the risk." (Italics added.)

Thus, LAXT's own president recognized the Board of Harbor Commissioners had delegated to LAXT its own authority to construct and operate a port facility. This is consistent with Government Code section 37386, which provides: "A city may lease such tide and submerged lands and uplands for: [¶] (a) Industrial uses. [¶] (b) Improvement and development of city harbors. [¶] (c) Construction and maintenance of wharves, docks, piers, or bulkhead piers. [¶] (d) *Other public uses* consistent with the requirements of commerce or navigation in city harbors." (Italics added; see also Gov.Code § 37385; Civ.Code, § 718.) Here, the City created LAXT to develop a coal facility on land leased from the Harbor Department, instead of developing the facility directly.

Accordingly, LAXT's contention it was not created to exercise any governmental authority must be rejected.

***299** c. *The delegation to LAXT was effected by the City Council.*

To be subject to the Brown Act, the private corporation must be created to exercise governmental authority "that may lawfully be delegated by the elected governing body to a private corporation or entity." (§ 54952, subd. (c)(1)(A).) LAXT asserts the authority which was delegated to it was delegated by the Board of Harbor Commissioners, not by the City Council. LAXT contends only the Board of Harbor Commissioners had the authority to delegate the authority at issue herein, i.e., to construct and operate a port facility.

The contention fails. LAXT is correct insofar as sections 138 and 139 of the City Charter vest the Board of Harbor Commissioners with power and authority over the Port of Los Angeles. However, the Board of Harbor Commissioners was powerless to delegate any authority to LAXT without the express or implied approval of the City Council. As indicated, the City Council retains ****464** the power to assert jurisdiction over any action and has the same authority to act as that originally held by the Board of Harbor Commissioners, including the power to disapprove any decision of that board. (L.A. Charter § 32.3.) Thus, the delegation of authority to LAXT could not have occurred without, at a minimum, the implied approval of the City Council.

Therefore, the trial court properly found the delegation of authority to LAXT was effected by the City Council as the duly elected legislative body, so as to bring LAXT within the Brown Act.[4]

***300** d. *Conclusion re applicability of Brown Act to LAXT's board of directors.*

The trial court properly held LAXT's board of directors is subject to the Brown Act because it is a legislative body within the meaning of section 54952(c)(1)(A). This interpretation is informed by the broad purpose of the Brown Act to ensure the people's business is conducted openly. Under LAXT's constrained reading of the Brown Act, the statute's mandate may be avoided by delegating municipal authority to construct and operate a port facility to a private corporation. While there is no indication LAXT was structured in an attempt to avoid the Brown Act, LAXT's narrow reading of the statute would permit that to occur. Surely that is not what the Legislature intended.[5]

4. *Trial court properly denied LAXT's posttrial motions.*

Based on the above contentions, LAXT argues the trial court should have granted its motion to vacate the judgment and enter a judgment of dismissal, as well as its motion for new trial. This contention necessarily fails in view of our rejection of LAXT's underlying contentions.

In addition, LAXT asserts the trial court abused its discretion in denying the motion for new trial based on newly discovered evidence after trial. The newly discovered evidence showed that one of the three directors who had been nominated by the City Council in accordance with the Shareholders' Agreement had resigned, leaving only two city nominees sitting among 17 directors. Further, due to the subsequent issuance of new shares, the Harbor Department's stake in LAXT has decreased to 13.6 percent, and because the Shareholders'

Agreement allocates one nomination for each five percent share, the City Council would not be able to nominate a third director. LAXT argues this new evidence demonstrates LAXT is a ****465** private corporation engaged in commerce, not an instrumentality of government.

The argument is unavailing. The issue here is whether LAXT's board of directors amounts to a "legislative body" within the meaning of ***301** section 54952, subdivision (c)(1)(A). The dilution of the Harbor Department's stake in LAXT does not alter the conclusion that LAXT's board is a legislative body within the meaning of the statute.

Therefore, we reject LAXT's contention the trial court abused its discretion in denying the motion for new trial.

5. *Award of attorney fees to ILWU was proper.*

LAXT contends the trial court erred in making an award of attorney fees to ILWU and in the amount awarded. Its arguments are unpersuasive.

a. *LAXT's board of directors is a "legislative body" within the meaning of section 54960.5.*

Section 54960.5, which was the basis for the trial court's award of attorney fees and costs, states in relevant part: "A court may award court costs and reasonable attorney fees to the plaintiff in an action brought pursuant to Section 54960 or 54960.1 where it is found that a *legislative body* of the local agency has violated this chapter." (Italics added.)

The Brown Act violation herein was committed by the board of directors of LAXT, not by the City Council. Obviously, LAXT's board of directors is *not* a "legislative body" within the ordinary definition of the term. Therefore, the question arises whether LAXT's board is subject to the attorney fees provision of section 54960.5.

Admittedly, the statutory scheme is not a model of drafting. Nonetheless, it would appear the extensive definition of "legislative body" set forth in section 54952 applies to the use of that term in section 54960.5. It is a fundamental principle of statutory interpretation that statutes are not construed in isolation, but rather, with reference to the entire scheme of law of which they are part so that the whole may be harmonized and retain effectiveness. (*Brown v. Superior Court* (1984) 37 Cal.3d 477, 484, 208 Cal.Rptr. 724, 691 P.2d 272; *People v. Ledesma* (1997) 16 Cal.4th 90, 95, 65 Cal.Rptr.2d 610, 939 P.2d 1310.) Further, it is internally inconsistent to suggest that a governing board subject to the open meeting requirements of the Brown Act pursuant to the definition of "legislative body" contained in section 54952 is exempt from the Act's attorney fees provision on the ground it is not a "legislative body" within section 54960.5.

Accordingly, we conclude LAXT's board of directors is a legislative body subject to the attorney fees provision of section 54960.5 of the Act.

***302** b. *Award of attorney fees was within trial court's discretion.*

LAXT argues the trial court abused its discretion in awarding any attorney fees to ILWU due to the lack of any benefit to the general public. (*Common Cause v. Stirling* (1983) 147 Cal.App.3d 518, 524, 195 Cal.Rptr. 163.) LAXT argues ILWU's purpose in bringing this litigation was to advance the union's parochial goal of preserving the level of the prevailing wage and voiding the approval by LAXT of a contract with a nonunion employer.

By way of background, a trial court is not required to award attorney fees "to a prevailing plaintiff in every Brown Act violation. A court must still thoughtfully exercise its power under section 54960.5 examining all the circumstances of a given case to determine whether awarding fees under the statute would be unjust with the burden of showing such inequity resting on the defendant." (*Common Cause v. Stirling* (1981) 119 Cal.App.3d 658, 665, 174 Cal.Rptr. 200.) Considerations which the trial court should weigh in exercising its discretion include "the necessity for the lawsuit, lack of injury to the public, the likelihood the problem would have been solved by other means and the likelihood of recurrence of the unlawful act in the absence of the lawsuit." (*Ibid.*)

****466** The public benefit from ILWU's action was sufficient to support an award of attorney fees. As discussed, LAXT asserted it was a private entity beyond the reach of the Brown Act, and it continues to adhere to that position. Therefore, had ILWU not brought this action, LAXT would have engaged in recurring violations of the Brown Act, to the detriment of the public generally.

Clearly, the outcome of the lawsuit was not exclusively for the benefit of ILWU.

Accordingly, we reject LAXT's contention an award of attorney fees to ILWU is unjust.

c. *Trial court did not err in basing the attorney fees award on market rates.*

LAXT contends the $60,660 attorney fees award to ILWU is excessive. The record reflects ILWU paid its attorneys an hourly rate of $125 per hour and later, $140 per hour. However, in moving for attorney fees, ILWU requested reasonable attorney fees based on market rates, which ranged from $125 per hour to $275 per hour for the attorneys who worked on this matter. LAXT contends the trial court erred in awarding fees in excess of those actually charged by ILWU's counsel. The argument fails.

***303** In *Serrano v. Unruh* (1982) 32 Cal.3d 621, 642, 186 Cal.Rptr. 754, 652 P.2d 985, which involved a claim for attorney fees under Code of Civil Procedure 1021.5, the private attorney general statute, our Supreme Court cited with approval the view of the First Circuit, which earlier held: " 'We do not think ... that compensating a public interest organization ... on the same basis as a private practitioner results in ... a windfall.... Indeed, we are concerned that compensation at a lesser rate would result in a windfall to the defendants.' (*Palmigiano v. Garrahy* (1st Cir.1980) 616 F.2d 598, 602, cert. den....)" *Serrano* concluded "[s]ervices compensable under section 1021.5 are computed from their reasonable market value. The trial court was entitled to use the prevailing billing rates of comparable private attorneys as the 'touchstone' for determination of that value. Cost figures bore no reasonable relevance to calculation of the 'touchstone' figure. [Fn. omitted.]" (*Id.,* at p. 643, 186 Cal.Rptr. 754, 652 P.2d 985.)

The private attorney general statute is analogous to the Brown Act's attorney fees provision in that both authorize compensation for private actions which serve to vindicate important rights affecting the public interest. (*Serrano, supra,* 32 Cal.3d at p. 632, 186 Cal.Rptr. 754, 652 P.2d 985; *Common Cause, supra,* 147 Cal.App.3d at p. 524, 195 Cal.Rptr. 163.) In *Common Cause,* a case involving attorney fees under the Brown Act, the court was guided, inter alia, by decisions involving fees under the private attorney general theory. (*Common Cause, supra,* 147 Cal.App.3d at p. 522, 195 Cal.Rptr. 163, citing *Marini v. Municipal Court* (1979) 99 Cal.App.3d 829, 160 Cal.Rptr. 465 and *Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917, 154 Cal.Rptr. 503, 593 P.2d 200.) Therefore, the rationale for basing an award of attorney fees on reasonable market value is equally applicable to section 54960.5. Accordingly, the trial court was not required to base the attorney fees award on the fees actually incurred by ILWU.

6. *ILWU is entitled to reasonable attorney fees on appeal.*

In the respondent brief, ILWU requests reasonable attorney fees incurred in the defense of this appeal.

The issue presented is whether section 54960.5 authorizes an award of attorney fees at the appellate level. The statute provides a court may award attorney fees and costs "to the plaintiff" or "to a defendant." (§ 54960.5.) The statute does not use the terms "appellant" or "respondent." Nonetheless, we conclude section 54960.5 authorizes compensation for all hours reasonably spent, including those necessary to defend the judgment on appeal.

In *Serrano,* defendants contended no fees were recoverable for defending the fee award on appeal because the appeal did not independently meet the ***304** requirements of Code of Civil Procedure section 1021.5. (*Serrano, supra,* 32 Cal.3d at p. 637, 186 Cal.Rptr. 754, 652 P.2d 985.) *Serrano* disagreed, reasoning a contrary rule "would permit the fee to vary ****467** with the nature of the opposition." (*Id.,* at p. 638, 186 Cal.Rptr. 754, 652 P.2d 985.) A defendant " 'cannot litigate tenaciously and then be heard to complain about the time necessarily spent by the plaintiff in response.' [Citation.]" (*Ibid.*) Therefore, *Serrano* held that "absent circumstances rendering the award unjust, fees recoverable under section 1021.5 ordinarily include compensation for all hours reasonably spent, including those necessary to establish and defend the fee claim." (*Id.,* at p. 639, 186 Cal.Rptr. 754, 652 P.2d 985.)

By a parity of reasoning, we conclude ILWU is entitled under section 54960.5 to recover reasonable attorney fees incurred in defending this appeal.[6]

DISPOSITION

The judgment and postjudgment order are affirmed. ILWU shall recover costs and reasonable attorney fees on appeal.

CROSKEY and ALDRICH, JJ., concur.

All Citations

69 Cal.App.4th 287, 81 Cal.Rptr.2d 456, 99 Daily Journal D.A.R. 537, 1999 Daily Journal D.A.R. 1389

Footnotes

1 All further statutory references are to the Government Code, unless otherwise indicated.

2 Although LAXT contends it was created by the collective action of all of its shareholders rather than by any governmental entity, absent this approval by the City Council authorizing the Harbor Department to enter into the Shareholders' Agreement, LAXT could not have been created.

3 There is no contention here there was an excessive delegation of public authority to LAXT.

4 In support of LAXT's contention the City Council lacked power to delegate authority held by the Board of Harbor Commissioners, LAXT invokes section 32.1(a) of the City Charter, which states in relevant part: "Notwithstanding the powers, duties and functions of the several departments, boards or bureaus of the City government as set forth in this Charter, the Mayor, subject to the approval of the Council by ordinance, adopted by a two-thirds vote of the whole of the Council, may transfer any such powers, duties or functions from one department, board or bureau to another, or consolidate the same in one or more of the departments, boards or bureaus created by this Charter or in a new department, board or bureau created by ordinance.... *The power of the Mayor and Council so to act as provided in this section shall not extend to the Harbor Department,* Department of Airport, the Department of Water and Power, the City Employees' Retirement System or the Department of Pensions." (Italics added.)
LAXT's reliance on City Charter section 32.1(a) is misplaced. Section 32.1(a) empowers the Mayor and City Council to transfer powers, duties and functions from one department to another and specifies the power of the Mayor and Council so to act does not extend to the Harbor Department, among others. However, there is no issue here as to a transfer by the Mayor or Council of the powers of the Harbor Department to another municipal department. Further, nothing in section 32.1(a) negates the power of the City Council under section 32.3 to revisit any action taken by the Board of Harbor Commissioners. Thus, in allowing the delegation by the Harbor Department to LAXT to proceed, the City Council acted within its power by effectively ratifying the delegation.

5 We emphasize our holding is a narrow one. LAXT's board of directors is subject to the Brown Act pursuant to section 54952, subdivision (c)(1)(A), because, inter alia, LAXT was created b*y* an *elected legislative body,* i.e., the Los Angeles City Council. Had LAXT been a *preexisting* corporation which simply entered into a contractual arrangement with the Harbor Department to develop the coal facility, LAXT would not have been a creation of the City Council and LAXT's board of directors would not be subject to the Brown Act pursuant to section 54952, subdivision (c)(1)(A).

6 If our interpretation of various aspects of the Brown Act is not what the Legislature intended, the statutory scheme could use clarification. (See *Malibu Committee for Incorporation v. Board of Supervisors* (1990) 222 Cal.App.3d 397, 410, 271 Cal.Rptr. 505, review den.; *Mir v. Charter Suburban Hospital* (1994) 27 Cal.App.4th 1471, 1487, fn. 7, 33 Cal.Rptr.2d 243, review den.; *Las Tunas Beach Geologic Hazard Abatement Dist. v. Superior Court* (1995) 38 Cal.App.4th 1002, 1016, fn. 10, 45 Cal.Rptr.2d 529, review den.; *United Farm Workers of America v. Agricultural Labor Relations Bd.* (1995) 41 Cal.App.4th 303, 321, 48 Cal.Rptr.2d 696, review den.; *Denny's, Inc. v. City of Agoura Hills* (1997) 56 Cal.App.4th 1312, 1329, fn. 9, 66 Cal.Rptr.2d 382.)

From: Rasheed El Shabazz
To: City Clerk; Amy Wooldridge
Cc: Marilyn Ezzy Ashcraft
Subject: [EXTERNAL] Embrace Chochenyo Park
Date: Tuesday, January 19, 2021 2:34:25 PM

Dear Mayor and People of Alameda,

My name is Rasheed Shabazz. I live on the Ohlone land of Huichin, as a resident of a political entity called Alameda.

I am part of the Rename Jackson Park group and was invited to participate in the Park Renaming Committee to rename TPFKAJP.

Tonight on item 6A, I urge you to Rename Jackson Park to Chochenyo Park. In 2018, I proposed renaming the park to "Justice Park" as a response to the 111-year injustice of honoring Andrew Jackson, an enslaver of Black people and "Indian Killer" responsible for the Trail of Tears.

The effort to rename Jackson Park has:

- **Educated Alamedans about Andrew Jackson**: Through this process, Alamedans learned about our first park's namesake. Many residents were oblivious to Andrew Jackson's history, including a former Park Commissioner. Considering yesterday's 1776 Commission Report, facing history is as important as ever.

- **Engaged Black Artists in Public Art:** Once the 'monument' came down, the City partnered with Rhythmix to produce the beautiful "Creating our Future" exhibit, which created the beautiful artwork attached. If you missed it, we shared a history of the park and the effort to rename Jackson Park. More timely, the experiences of these Black artists with Alameda was enlightening.

- **Challenged Local Historical Mythology:** This experience has also uncovered some local mythology. Jim Morrison. Primary sources strongly suggest the City may not have adopted a name for the park prior to 1909. "Alameda Park" was certainly a hotel and resort, but may not have been the official name adopted by the City. My recent *Alameda Sun* column lays this out. See the primary sources for yourself. I hope this leads to a wider conversation about historical narratives about Alameda's history and who is viewed as an authority of local history.

-

Honored Our Past and Present: Amid a time of death and grief due to the pandemics, Alamedans submitted park name suggestions of abolitionists, human rights leaders, local civic leaders, and principles like Truth and reconciliation. I hope the list(s) can be utilized to lift up local history to tell the stories of people, beyond the dominant narratives that center architectural preservation and "City of Beaches and Homes" narrative and omit people like Mabel Tatum.

- **Initiated a New Relationship with the Ohlone:** Finally, last week, Rename Jackson Park hosted a Community Dialogue with the Confederated Villages of Lisjan (Ohlone). I never learned local Indigenous history as an Alameda student and hope this wealth of knowledge can be incorporated into the local curriculum.

Honoring Chochenyo Park and establishing a relationship with our Indigenous relatives symbolizes Justice and is a positive step towards healing.

I also strongly urge you to develop educational/interpretive signage at the park which can explain the origins of the land, the park name(s), and why the park was renamed. I've shared a draft with the Park Renaming Committee.

In the event I am unable to attend tonight, my prepared remarks to City Council

Rasheed Shabazz

Nearly three years ago we started a petition to Rename Jackson Park. At the time, parents had just started the effort to rename Haight Elementary School. Alameda was really beginning to grapple with the overt white nationalism centered at the White House and growing instances of antiblackness, antisemitism, and white supremacy here. I committed myself to pointing out the constant contradictions of condemning white supremacy elsewhere while the legacies of white supremacy in the housing market and the physical landscape remain.

At the time, we proposed renaming Jackson Park to Justice Park. I wrote in the *Alameda Sun*, "Of course renaming Jackson Park ... will not liberate the Africans he enslaved at the Hermitage, return land to the Native Americans forcibly resettled in the "Trail of Tears," or resurrect those he murdered. However, honoring those he dishonored would be a symbolic move towards justice." I proposed erecting a memorial to those Black and Indigenous peoples oppressed by Andrew Jackson,

AND, recognizing the historic exclusion of Indigenous, Japanese, and African American people from Alameda. Andrew Jackson's legacy of enslaving African peoples, his attack on Negro Fort, and ultimately his actions of Indian Removal to make room for white settlers and slaveholders demonstrate the connections between the enslavement of African people and the dispossession of Indigenous peoples.

The Park Renaming Committee could have simply chosen a name from a preexisting list of possible park names, but instead, solicited community members for input. Since racism/white supremacy was the reason we are renaming the park, we developed criteria to evaluate proposed names. We then used that criteria along with feedback from a community forum, an online poll, and various other informal conversations to narrow the list down to four names to present to the Commission. During this process, we also reached out to local Indigenous peoples to inform them that their name came up and include their input in the process. Ultimately, the Commission unanimously chose to recommend the name "Chochenyo."

Changing Andrew Jackson Park to Chochenyo Park is a symbolic step in repairing the harm of colonization and land theft personified in the legacy of "Old Hickory." As Committee member Raquel Williams of the Youth Activists of Alameda said, "Each [proposed] name is a learning opportunity." Justice Park invited us to consider the most recent iteration of the Black Freedom Movement and efforts to abolish police terrorism by acknowledging Alameda's history of racist exclusion and expulsion. (A number of the petition signatories are displaced and former Alameda residents). Mabel Tatum Park invited us to remember the efforts of Black Women advocating for Housing as a Human Right and recognize the ongoing struggle to end residential segregation and inequality, including in Alameda. Finally, Chochenyo Park invites us to acknowledge the Indigenous Peoples whose unceded land we live on. We have an opportunity to learn more about our Lisjan-Ohlone relatives and the place they call Huichin.

Chochenyo Park is a recognition of Indigenous people that is specific to the entity we now call "Alameda." Renaming Jackson Park to Chochenyo Park is an opportunity for the City and its inhabitants to form new relationships with Huichin and the people who belong to it. Choose Chochenyo.

Sincerely,

Rasheed Shabazz

https://laurendo.wordpress.com/2021/01/12/this-is-alameda/

From:	Austin Tam
To:	City Clerk
Cc:	Marilyn Ezzy Ashcraft; John Knox White; Malia Vella; Tony Daysog; Trish Spencer
Subject:	[EXTERNAL] ***Please rename Former Jackson Park to Chochenyo Park***
Date:	Tuesday, January 19, 2021 2:28:25 PM

TO: clerk@alamedaca.gov

CC: Marilyn Ezzy Ashcraft <mezzyashcraft@alamedaca.gov>, John Knox White <jknoxwhite@alamedaca.gov>, Vice-Mayor Malia Vella <mvella@alamedaca.gov>, Tony Daysog <tdaysog@alamedaca.gov>, Trish Herrera Spencer <tspencer@alamedaca.gov>.

TEMPLATE:

Subject Line Suggestion: Rename Former Jackson Park to Chochenyo Park

Dear Councilmembers,

My name is Austin Tam and I am a resident of [Alameda]. I am writing to ask that you please vote for Option 1 on item 6-A on the 1/19//2021 agenda. Rename Former Jackson Park to Chochenyo Park per the recommendation of the Recreation & Parks Commission

Renaming Jackson Park to Chochenyo Park presents an opportunity for education about an inclusive history of the original peoples of this place. This new name offers a clear repudiation of Andrew Jackson, his enslavement of African-Americans, and his involvement in the genocide of Indigenous peoples and theft of their land. This name is a gesture towards redressing the harm of the former name.

Thank you,

Austin Tam

Alameda Resident

From: Helen Simpson
To: City Clerk
Cc: Marilyn Ezzy Ashcraft; John Knox White; Malia Vella; Tony Daysog; Trish Spencer
Subject: [EXTERNAL] Jackson Park - January 19, 2021 - Item 6A
Date: Tuesday, January 19, 2021 2:25:51 PM

Dear Mayor and Council Members.

I am opposed to the City Council voting to re-name Jackson Park to Chochenyo. The residents of Alameda should have more involvement on the naming of the park, other than the 625 that responded to one survey over the Thanksgiving week. On January 19, 2021, the Council Members should vote on extending the renaming of the park to hear more from the community; vote to keep the name Jackson Park or vote on naming the park its original name "Alameda Park" grove of trees.

On December 10, 2020, I watched, via Zoom, the Recreation and Parks Commission voted on renaming Jackson Park to Chochenyo Park. I was confused and concerned on how the commission voted on the name of Chochenyo Park. First, the list from the sub-committee submitted to the commission, only contained four names of the finalists, which were (1) Ohlone, (2) Chochenyo, (3) Mabel Tatum and (4) Justice and the name the commission voted on is Chochenyo. When, in fact, the list should have been: (1) Alameda, (2) Ohlone, (3) Peace and (4) Justice. Two of the four names voted on by the residence of Alameda (625 of approximately 80,000) made the final four list.

There was a petition signed to re-name Jackson Park. The petition received a little over 1,200 signatures, which approximately 175 of the signatures were from outside of Alameda, and some of the votes were from outside of California.

There was a five-day survey conducted by the Rec & Parks from November 23rd through November 27th, the week of Thanksgiving, when people were preparing for the holiday. There were 625 individuals whom participate in the survey. Only 625 individuals, out of an estimated 80,000 residence, participated in the survey. That should be a red flag. The 625 that participated in the survey is a little over half the people (1,200) whom signed the petition to remove the name "Jackson Park."

Out of the 625 votes, the number one choice, at 61.44% 384 votes, to rename

Jackson Park to Alameda Park. Chochenyo was voted as the fifth choice at 18.60% with 115 votes. Chochenyo Park should not have been on the sub-committee's top 4 names. During the meeting, the sub-committee indicated that "Alameda Park" did not meet its criteria and, therefore, it was removed from the list, even though it was the most popular through the voting by residence of Alameda.

It is interesting to see in the poll voted by 625 residents was to name the park "Alameda Park" and yet that is not what is being considered. If a poll is conducted, shouldn't that information have more weight than what is being considered? Thank you for your consideration.

Helen Simpson

From: Lorin Laiacona Salem
To: City Clerk
Subject: [EXTERNAL] Support for Chochenyo Park
Date: Tuesday, January 19, 2021 2:07:26 PM

I am writing in support of renaming the former Jackson Park to be Chochenyo Park. The Recreation & Parks Commission did excellent work in picking and recommending this name. I think it is an excellent choice.

Thank you,
Lorin Salem
Alameda Resident

From:	Zac Bowling
To:	City Clerk
Cc:	Marilyn Ezzy Ashcraft; John Knox White; Malia Vella; Tony Daysog; Trish Spencer
Subject:	[EXTERNAL] Public comment for Item 6-A: In support of renaming Jackson Park to Chochenyo Park.
Date:	Tuesday, January 19, 2021 1:06:38 PM

Dear mayor and councilmembers,

I writing to ask you to accept the commission's recommendation and support the renaming of the park formed called Jackson Park to Chochenyo Park.

Let's work to continue to shed Alameda of all of its past honers and monuments to racists including like we did with Henry Haight and now Andrew Jackson. Let's work to remove the racist separatist John C. Calhoon from the list of street names, and rename Godfrey Park away from our former mayor, Milton Godfrey, who publicly worked to try to prevent African Americans from living in Alameda in the 1940s.

Thank you,

Zac Bowling
Alameda Resident

From:	meresa
To:	John Knox White; Malia Vella; Tony Daysog; Trish Spencer; City Clerk; Marilyn Ezzy Ashcraft
Subject:	[EXTERNAL] Item 6-A
Date:	Tuesday, January 19, 2021 12:08:21 PM

Dear Councilmembers,

My name is Meresa and I am a resident of Alameda. I am writing to ask that you please vote for Option 1 on item 6-A on the 1/19//2021 agenda. Rename Former Jackson Park to Chochenyo Park per the recommendation of the Recreation & Parks Commission

Renaming Jackson Park to Chochenyo Park presents an opportunity for education about an inclusive history of the original peoples of this place. This new name offers a clear repudiation of Andrew Jackson, his enslavement of African-Americans, and his involvement in the genocide of Indigenous peoples and theft of their land. This name is a gesture towards redressing the harm of the former name.

Thank you,

Meresa Connors-Walters

From:	Jennifer Rakowski
To:	City Clerk
Cc:	Marilyn Ezzy Ashcraft; John Knox White; Malia Vella; Tony Daysog; Trish Spencer
Subject:	[EXTERNAL] Chochenyo Park
Date:	Tuesday, January 19, 2021 11:17:11 AM

I want to voice my strong support for the renaming of the park, Chochenyo Park.

I want to publicly thank the City Council members who voted unanimously to de-name the park. I am appreciative of APRD and all the community advisory members for a thoughtful selection process. Alameda residents got the chance to submit over 150 name ideas for the park, myself included. The City collaborated with Rhythmix Cultural Works on Creating Our Future, a public art installation at the sight of the old sign, bringing art into public space when it is so desperately needed. The de-naming of the park was in large part responsible for inspiring the Alameda Week of Remembrance for lives lost to Covid 19 centered around the memorial tree in the park last October. I think the city has crafted a thoughtful and transparent renaming process that has enriched my life and deepens my feeling of connection to city parks and land.

I could not be happier with the name Chochenyo Park to honor the voice and the language of the Indigenous Ohlone people of Lisjan. As a white person, it has encouraged me to dig deeper into my own family history in the forced removal of indigenous people from their homeland. Justice requires honest reckoning with our own complacency.

Honoring voice and language also provides a important counter note to the bench honoring "dumb friends" The bench reference is to the muteness of animals but uses historical terminology that has also shaped people's prejudices of other people.

I believe Chochenyo Park, a park centuries in the making, has found new vitality and meaning. By affirming this name, we are encouraging healing and equity. With this name we can celebrate a park that is welcoming and enriching for all.

Sincerely,

Jennifer Rakowski

From:	Lilianna Cordero
To:	City Clerk
Cc:	Marilyn Ezzy Ashcraft; John Knox White; Malia Vella; Tony Daysog; Trish Spencer
Subject:	[EXTERNAL] 6-A Vote, Chochenyo Park
Date:	Tuesday, January 19, 2021 10:25:52 AM

Dear Councilmembers,

My name is Lilianna Cordero and Alameda is my hometown. I continue to follow the activities of our council and know that tonight, you will be voting to finally rename Jackson Park. From the current list of the top ten choices, I would ask you to vote for Chochenyo Park. Naming this space in honor of the language of the Lisjan Ohlone peoples acknowledges both the fact that our city is occupied land and the linguistic erasure that occupation has exacerbated.

I am sure you all feel the truth: that this is a challenging time for our city, and our nation. In my heart, I try to hold onto hope. When I was a young girl scout, I had the honor of performing the flag ceremony at the inauguration of our city's first female mayor. In that moment, I felt change under my feet; and to me, that feeling of change, of progress, is my feeling of "home."

I know you all work so hard to make Alameda a place where everyone feels heard and welcomed. Thank you for giving this and all our local matters the due attention and care they deserve.

Kind regards,
Lily

--
Lilianna Cordero
Educator | Historian | Editor
lily.e.cordero@gmail.com

From:	Erin Odenweller
To:	City Clerk
Cc:	John Knox White; Malia Vella; Tony Daysog; Marilyn Ezzy Ashcraft; Trish Spencer
Subject:	[EXTERNAL] Rename it! Jackson Park -> Chochenyo Park
Date:	Tuesday, January 19, 2021 9:52:30 AM

Dear Councilmembers,

My name is Erin Odenweller, and I am a resident living near the former Jackson Park. I am writing to ask that you please vote for Option 1 on item 6-A on the 1/19/2021 agenda. Rename Former Jackson Park to Chochenyo Park per the recommendation of the Recreation & Parks Commission

Renaming Jackson Park to Chochenyo Park presents an opportunity for education about an inclusive history of the original peoples of this place. This new name offers a clear repudiation of Andrew Jackson, his enslavement of African-Americans, and his involvement in the genocide of Indigenous peoples and theft of their land. This name is a gesture towards redressing the harm of the former name, which we are overdue in making.

Thank you,

Erin Odenweller

An Alameda Resident for whom this is their closest park

From:	Ginger Lua
To:	City Clerk
Cc:	Marilyn Ezzy Ashcraft; John Knox White; Malia Vella; Tony Daysog; Trish Spencer
Subject:	[EXTERNAL] Vote for Chochenyo Park on 6-A
Date:	Tuesday, January 19, 2021 9:38:00 AM

Dear Councilmembers,

My name is Ginger Kwan and I am a resident of Alameda. I am writing to ask that you please vote to rename former Jackson Park to Chochenyo Park. Among the list of top 10 names, Chochenyo is an excellent choice to honor the Lisjan Ohlone peoples whose land we continue to occupy. While there are some other good names on the list - I am also partial to Mabel Tatum - I think there is significant value in choosing to honor the true owners of this land in the first renaming of a public space in Alameda during this time of necessary growth and change. There are a number of other public spaces and streets in Alameda that should be considered for renaming in the near future that we can use to commemorate other significant people in the history of this land. Now is the time to choose to acknowledge the land we occupy in this city.

I encourage you all to vote for Chochenyo Park at tonight's meeting.

Thank you,

Ginger

From:	johnsen cyndy
To:	City Clerk
Cc:	Amy Wooldridge; Marilyn Ezzy Ashcraft; Malia Vella; Tony Daysog; Trish Spencer; John Knox White
Subject:	[EXTERNAL] Item 6-A: Chochenyo Park
Date:	Tuesday, January 19, 2021 9:05:59 AM

RE: Item 6-A, Chochenyo Park

Dear Councilmembers,

Chochenyo is a lovely name. Thank you for your consideration and to the committee that worked so thoughtfully on this project -- well done!

Sincerely,

Cyndy Johnsen

From:	Isabel Sullivan
To:	City Clerk
Cc:	Marilyn Ezzy Ashcraft; John Knox White; Malia Vella; Tony Daysog; Trish Spencer
Subject:	[EXTERNAL] Remame Former Jackson Park to Chochenyo Park
Date:	Monday, January 18, 2021 7:30:26 PM

Dear Councilmembers,

My name is Isabel Sullivan and I am a resident of Alameda. I am writing to ask that you please vote for Option 1 on item 6-A on the 1/19/2021 agenda. Rename Former Jackson Park to Chochenyo Park per the recommendation of the Recreation & Parks Commission

Renaming Jackson Park to Chochenyo Park presents an opportunity for education about an inclusive history of the original peoples of this place. This new name offers a clear repudiation of Andrew Jackson, his enslavement of African-Americans, and his involvement in the genocide of Indigenous peoples and theft of their land. It is our responsibility in Alameda to remove racist symbols from our public spaces. Renaming the park Chochenyo Park is a gesture towards redressing the harm of the former name.

Thank you,

Isabel Sullivan

From:	Andy Murdock
To:	City Clerk
Cc:	Marilyn Ezzy Ashcraft; John Knox White; Malia Vella; Tony Daysog; Trish Spencer
Subject:	[EXTERNAL] In Support of the Renaming of Jackson Park to Chochenyo Park
Date:	Monday, January 18, 2021 3:06:03 PM

Dear Councilmembers,

My name is Andy Murdock and I am a resident of Alameda and frequent user of the former Jackson Park with my family. I am writing to ask that you please support the recommendation of the Recreation & Parks Commission to rename the former Jackson Park to Chochenyo Park (item 6-A on the January 19, 2021 agenda).

As part of the renaming process, I wrote in to recommend that the City should consider a Native American name, since that important part of Alameda's history is poorly represented in our city's place names. Chochenyo is a wonderful choice. With Andrew Jackson's record of grievous harm to Indigenous peoples and theft of their land, this name would be a strong symbolic rejection of his actions and worldview.

As a resident of Calhoun St., a name with its own historical baggage, I hope this is a first step in updating Alameda's place names to honor the spirit of the city we live in today. I'm all in favor of honoring our past, but times change, and who we choose to honor is a reflection of who we are and who we want to be.

My daughter, who is 10, was thrilled to learn of the coming name change and it proved to be a great educational opportunity to discuss American history. She's not old enough to vote, but she also sends a big thumbs up for the name "Chochenyo Park."

Thank you for your consideration,

Andy Murdock
2814 Calhoun St.,
Alameda, CA 94501
andymurdock@gmail.com
@andy_murdock

From:	Ezra Denney
To:	Marilyn Ezzy Ashcraft; Malia Vella; City Clerk; John Knox White; Tony Daysog; Trish Spencer
Subject:	[EXTERNAL] Chochenyo Park
Date:	Monday, January 18, 2021 1:58:22 PM

Hello,

I write to urge the council to approve the recommendation of the Recreation & Parks Commission to rename Jackson Park Chochenyo Park.

We have an opportunity to take a small restorative step in recognizing that we live on stolen land. Honoring the Ohlone first nation with a park that recognizes whose land it is built upon is almost literally the least we can do.

There is a beautiful irony in removing the name of the oppressor responsible for so much tragedy among first nation communities, and replacing it with a symbol acknowledging those he sought to oppress.

Let this park be an educational opportunity for all Islanders to learn about the Ohlone, and the land we took from them.

Please, demonstrate that everyone belongs here, and hatred has no place on our Island by approving the new name of the park.

Thank you,

Ezra Denney

From:	Drew Dara-Abrams
To:	City Clerk
Cc:	Marilyn Ezzy Ashcraft; John Knox White; Malia Vella; Tony Daysog; Trish Spencer
Subject:	[EXTERNAL] Rename former Jackson Park to Chochenyo Park
Date:	Monday, January 18, 2021 1:20:04 PM

Dear Mayor, Vice Mayor, and Councilmembers,

I'm writing in as an Alameda resident to encourage you to adopt Chochenyo Park as the new name for the park formerly known as Jackson Park.

My kids and I often walk past the park on our way to and from Park St. It's a pleasant place. The former name was less than pleasant. As a city we pick who and what we remember, and Andrew Jackson does not seem either locally relevant or the most appropriate example of qualities we'd like to honor in 2021.

It's been encouraging to see this community engagement process proceed over the past few years and months. We've only had time to participate occasionally, dialing into a few phone calls led by the ever-intrepid Rasheed Shabazz, completing ARPD surveys, having a look at the new displays and signage, and filling out some of the made-for-kids coloring sheets. We've appreciated being able to join in occasionally and to also see a much more thorough process happen with the Park Renaming Committee.

The depth and breath of this overall engagement process is a very positive sign. It's great to even see stakeholders reaching out to modern-day representatives of Ohlone groups. That's a sign that not only is there value in the actual name that's attached to a place like this park, there's also value in having these opportunities to reconsider their names. There's certainly a place for disagreement within this overall process, and I appreciate seeing that this overall process has provided positive ways to channel constructive debate.

Thanks to the volunteers and city staffers who have been supporting this process. Please now take the final step of approving their recommendation of Chochenyo Park.

Sincerely,
Drew Dara-Abrams
Calhoun St.

From:	Rosemary Jordan
To:	City Clerk
Cc:	Marilyn Ezzy Ashcraft; John Knox White; Malia Vella; Tony Daysog; Trish Spencer
Subject:	[EXTERNAL] Please Rename Former Jackson Park to Chochenyo Park
Date:	Monday, January 18, 2021 8:55:26 AM

Council Members:

My name is Rosemary Jordan and I am a long-time resident, public health professional and park enthusiast here in Alameda. I am writing to ask that you please vote for Option 1 on item 6-A on the 1/1//2021 agenda. This action would rename Former Jackson Park to Chochenyo Park per the recommendation of the Recreation & Parks Commission

Renaming Jackson Park to Chochenyo Park presents an opportunity for learning and for healing. As a public health professional, I've studied the harm that hundreds of years of white supremacy have caused and I believe it is our collective responsibility to act to address this harm and promote well-being. In the specific case of Andrew Jackson, it is acknowledged by historians that he literally constructed bridle reins from the strips of skin of deceased indigenous people - other acts are so appalling that I cannot write them. This is not even close - this guy was awful and there is zero reason we should continue to celebrate him with his name on a prime spot of public recreation.

Renaming this park is a public health imperative - taking on a bolder and more comprehensive Truth and Reconciliation project is something I'd like to see local electeds take seriously and champion going forward.

Thank you,

Rosemary C. Jordan

Alameda Resident

From:	Laura Gamble
To:	City Clerk
Cc:	Marilyn Ezzy Ashcraft; John Knox White; Malia Vella
Subject:	[EXTERNAL] Rename Former Jackson Park to Chochenyo Park
Date:	Sunday, January 17, 2021 4:28:52 PM

Hello Alameda City Councilmembers,

I would like to urge you to vote for Option 1 on item 6-A on the 1/19/2021 agenda. Please rename the former Jackson Park to Chochenyo Park per the recommendation of the Recreation & Parks Commission.

Alameda must remove monuments to white supremacists within our community if we believe that "Everyone belongs here" or that "Black lives matter."

In the summer of 2020 the City Council in a small town in North Carolina called Asheville voted unanimously in favor of reparations for black residents - the city apologized "for its participation in and sanctioning of slavery, as well as other historical injustices perpetrated against Black people." The intent is to build generational wealth for black people, "who have been hurt by income, educational and health care disparities."

This step was shocking to me because this small town is where the most bigoted members of my family reside. They don't acknowledge my existence because I was raised Jewish. If Asheville can take this step, can't Alameda change the name of a park honoring a white supremacist.

Removing monuments to white supremacy is the first step towards a more inclusive Alameda. While I hope that the council moves us towards a more progressive town with this vote, I hope that this change - honoring the indigenous residents of this island - brings about more meaningful, tangible change, like Asheville. I urge the city council to explore establishing a memorial Andrew Jackson's countless victims and take accountability for the decades of damage done by the choice to honor this man - this "Indian Killer" with no connection to Alameda.

Thank you for your time & consideration.

Laura Gamble

From:	Josh Geyer
To:	City Clerk
Cc:	Marilyn Ezzy Ashcraft; John Knox White; Malia Vella; Tony Daysog; Trish Spencer
Subject:	[EXTERNAL] Adopt the name Chochenyo Park
Date:	Sunday, January 17, 2021 3:56:28 PM

Dear Councilmembers,

I am a resident of Alameda and I am writing to ask that you please vote for Option 1 on item 6-A on the 1/1//2021 agenda. This will rename the park formerly known as Jackson Park to Chochenyo Park, per the recommendation of the Recreation & Parks Commission. The Park Renaming Committee spent countless hours developing a transparent and community engaged process in order to identify new names and educate community members on why the park must be renamed, leading to the Recreation and Parks Commission voting unanimously to accept the committee's recommendation.

Renaming Jackson Park to Chochenyo Park presents an opportunity for education about an inclusive history of the original peoples of the East Bay and Alameda specifically. This new name offers a clear repudiation of Andrew Jackson, his enslavement of African-Americans, and his involvement in the genocide and forced removal of Indigenous peoples from their ancentral lands by the U.S. government. While those material harms remain for the descendants of those people who endured Jackson's violence, this name acknowledges the harm of Jackson himself and the park's former name while honoring the Indegenous people who are native to this part of the country.

Further, I support the assessment and redress of the ongoing harms of the names of other Alameda public facilities. It's encouraging that people--particularly white people--have started to become aware that honoring historical figures with legacies of racial prejudice or outright oppression cause continual harm to members of our community and that this is at odds with our image of ourselves as an inclusive, "progressive" community. I hope that moving forward Council will be proactive in creating policies and processes that will facilitate this process for other city facilities, including streets named after Jackson, John C. Calhoun, and other notable racists. The fact that changing a street name is more complex than renaming a park doesn't make the harm caused by those names any less important.

Thank you,

Josh Geyer

From:	Kristan LaVietes
To:	City Clerk
Cc:	Marilyn Ezzy Ashcraft; John Knox White; Malia Vella; Tony Daysog; Trish Spencer
Subject:	[EXTERNAL] Renaming the Park Formerly Known as Jackson Park to Chochenyo Park
Date:	Sunday, January 17, 2021 3:51:49 PM

My name is Kristan LaVietes, and I am a resident of Alameda. I am writing in support of the Alameda Recreation & Parks Commission's recommendation to rename the park formerly known as Jackson Park to Chochenyo Park. I hope you will all vote in favor of the Commission's recommendation at Tuesday's (Jan. 19, 2021) City Council meeting.

Alameda has a reputation around the Bay Area as being an especially unwelcoming place to the Black people, Indigenous people, and People of Color who call this island Home and who visit. That reputation has been earned over and over again.

Changing the name of a park in a prominent location from one that honors an enslaver, to one that instead honors the first people to settle on this land, their way of life, and the harm they endured here in history is the right thing to do. And it is one of many steps Alameda must continue taking to change its reputation and its reality, and to confront some of the painful experiences that have earned it the dishonor of being known as--of, in fact, *being*--a city antithetical to a genuine sense of belonging.

I applaud the Recreation & Parks Commission's highly visible and lengthy campaign to involve the community in this renaming effort, and I look forward to visiting Chochenyo Park with my family.

Thank you,
Kristan LaVietes
3273 Adams St.
Alameda
310/430.2568
kristan.lavietes@gmail.com

From: gaylon parsons
To: City Clerk
Subject: [EXTERNAL] Item 6-A, vote yes for Chochenyo Park
Date: Sunday, January 17, 2021 3:47:56 PM

Dear mayor and city council,

I writing to ask you to accept the unanimous recommendation of the parks commission to adopt Chochenyo Park as the new name of the park formerly named Jackson Park. Please vote yes on Item 6-A.

No place name is permanent, and the selected name communicates to the community that we understand: 1) Andrew Jackson was a slaver and "Indian Killer," and we should not honor him with a park name, 2) the history of our island and region did not begin during the settler era, and 3) the Ohlone are still here. With this name, Alameda takes the first step toward being in right relationship with them.

Thank you,
Gaylon Parsons
Alameda resident

From: Dorinda von Stroheim
To: City Clerk
Subject: [EXTERNAL] Chochenyo Park
Date: Thursday, January 14, 2021 5:12:24 PM

Dear City Council,

On January 16th please choose to rename the former Jackson Park to Chochenyo Park. Jackson Park was named after President Andrew Jackson who was a slave holder and was responsible for the forced relocation and death of thousands of Native Americans. Parks are important public spaces, their names have impact, and should represent the values of the community. Officially name the park 'Chochenyo' after the Ohlone people that inhabited and cared for our local lands.

Thank you,

Dorinda von Stroheim

Alameda Resident

From: Meg Gudgeirsson
To: City Clerk
Subject: [EXTERNAL] Renaming Jackson Park
Date: Thursday, January 14, 2021 1:40:44 PM

Hello,

I am emailing in support of renaming Jackson Park to Chochenyo Park.

Thank you,
Meg Gudgeirsson
1827 Stanton St.
Alameda

From:	John Carnwath
To:	City Clerk
Cc:	Marilyn Ezzy Ashcraft; John Knox White; Malia Vella; Tony Daysog; Trish Spencer
Subject:	[EXTERNAL] Chochenyo Park
Date:	Wednesday, January 13, 2021 10:55:22 PM

Dear Council Members,

I am an Alameda resident, writing to express my support for changing the name of Jackson Park to Chochenyo Park as recommended by the Recreation and Parks Commission. The indigenous history of the land that is now the City of Alameda is all but invisible in the built environment and cultural life of the city. This year, as in previous years, I searched in vain for programs or events in Alameda to honor Indigenous Peoples' day and educate my children about the history and culture of the Ohlone peoples who lived (and continue to live) on this land.

I would even go one step further and ask you to consider rematriating this ancestral Ohlone land by turning ownership of the park over to Sogorea Te' Land Trust. This would make a strong statement in support of our indigenous communities, and position Alameda as a leader in redressing the injustices of our past - injustices that each of us continues to benefit from every day that we wake up in our beautiful bayside city, on land that was forcibly taken from its original occupants.

Thank you.

Sincerely,

John Carnwath
1223 Post St
Alameda, CA 94501
415 696 4416

From: Stephanie Green
To: City Clerk
Cc: Marilyn Ezzy Ashcraft; John Knox White; Malia Vella; Tony Daysog; Trish Spencer
Subject: [EXTERNAL] Rename Former Jackson Park to Chochenyo Park
Date: Wednesday, January 13, 2021 8:04:20 PM

Dear Councilmembers,

My name is Stephanie Green and I am a resident of Alameda. I am writing to ask that you please vote for Option 1 on item 6-A on the 1/19/2021 agenda. Rename Former Jackson Park to Chochenyo Park per the recommendation of the Recreation & Parks Commission.

Renaming Jackson Park to Chochenyo Park presents an opportunity for education about an inclusive history of the original peoples of this place. This new name offers a clear repudiation of Andrew Jackson, his enslavement of African-Americans, and his involvement in the genocide of Indigenous peoples and theft of their land. This name is a gesture towards redressing the harm of the former name.

Thank you,
Stephanie Green
Alameda Resident

From: Amy Wooldridge
To: Lara Weisiger
Subject: FW: [EXTERNAL] Jackson Park Rename
Date: Wednesday, January 13, 2021 2:03:51 PM

Public comment below for Item 6-A

Amy Wooldridge
Recreation and Parks Director
2226 Santa Clara Avenue, Alameda, CA 94501
(510) 747-7570
awooldridge@alamedaca.gov
www.alamedaca.gov/recreation

From: Laura Meith [mailto:lmeith@gmail.com]
Sent: Tuesday, January 12, 2021 4:11 PM
To: Amy Wooldridge <AWooldridge@alamedaca.gov>
Subject: [EXTERNAL] Jackson Park Rename

Ms. Wooldridge,

We have lived on Park Avenue, mid park for over 14 years. I am pleased to see Jackson Park's name removed however, ANY person's name could be affiliated with something not preferable as no human, especially over the course of time, has been perfect. I would love to see it returned to his original name, Alameda Park. It's the oldest park in Alameda and a special one with its greenery and manicured lawn for a proper frolic or pleasant picnic. I'm pleased to see that the playground is not there which is NOT what our park needs at all. We are surrounded by playgrounds less than one mile from here, we don't need another one. Isn't it nice to have a park for all people and not just what's easiest for kids.

Thank you for your time and consideration,
Laura
1226 Park Avenue

Laura Meith
Real Estate Professional, in training
No Excuse Mom, Alameda

(415) 812-5345

From: Amy Wooldridge
To: Lara Weisiger
Subject: FW: [EXTERNAL] Re: Chochenyo name for Park
Date: Wednesday, January 13, 2021 2:01:53 PM

Please see public comment below for Item 6-A. Ms. Deetz requested in a separate email that this be included under public comment.

Amy Wooldridge
Recreation and Parks Director
2226 Santa Clara Avenue, Alameda, CA 94501
(510) 747-7570
awooldridge@alamedaca.gov
www.alamedaca.gov/recreation

From: nanette deetz [mailto:nanettedeetz@comcast.net]
Sent: Tuesday, January 12, 2021 4:31 PM
To: Amy Wooldridge <AWooldridge@alamedaca.gov>
Subject: [EXTERNAL] Re: Chochenyo name for Park

Hello Amy Wooldridge,

Osiyo doguado (Cherokee= Hello, how are you?)

Nanette Alameda tsinsila (Cherokee= My name is Nanette and I live in Alameda).

I am thrilled that the Parks and Recreation Dept. decided on Chochenyo as a replacement name for Jackson Park. I am Tsalagi or Cherokee and have always thought it should be changed.

Currently I am the Vice President, host and coordinator for the Alameda Island Poets, and a journalist with Indian Country Today and Native News Online. Corrina Gould of the Lisjan band of Ohlone is a good friend of mine, and I have been supporting her for many years.

I am a published poet in numerous anthologies, and have written a poem entitled, "Alameda Night Song" in honor of the Chochenyo Ohlone. If there is a ceremony or any other virtual event, or publication I would love to read or have my poem included. In 2019 I was honored with a Lifetime Achievement Award at the 17th Annual Berkeley Poetry Festival by the City Council of Berkeley.

Please let me know if you would like a copy of the poem, and if there is some way I can be included with my poem.

Wado donadagohvi (Tsalagi or Cherokee Thank you. Until we speak again)

Nanette Deetz

VP Alameda Island Poets
journalist
(510) 995-8698 land line

From:	Serge Wilson
To:	City Clerk
Cc:	Marilyn Ezzy Ashcraft; John Knox White; Malia Vella; Tony Daysog; Trish Spencer
Subject:	[EXTERNAL] Jackson Park renaming
Date:	Wednesday, January 13, 2021 9:03:06 AM

Hi

I've been living here 10+ years and have been a Bay Area resident for over 50 years.

Having a park named after Andrew Jackson was offensive, and it was a good move to get rid of that name.

Chochenyo Park is a fine replacement - it has local roots, and it's good to remember that there were people who lived here before colonization and ethnic cleansing.

It's not too terribly complicated. Bad name out, suitable name in. After the name change is done, life goes on for everyone (see Love Elementary).

Thank you and good luck

Serge

From:	Madeline Adams
To:	City Clerk
Cc:	John Knox White; Marilyn Ezzy Ashcraft; Malia Vella; Tony Daysog; Trish Spencer
Subject:	[EXTERNAL] Rename Former Jackson Park to Chochenyo Park
Date:	Tuesday, January 12, 2021 2:15:57 PM

Dear Councilmembers,

My name is Madeline Sherwood and I am a resident of Alameda. My husband and two daughters have lived in Alameda for the past 5 years and I've voted in every local election since we had an Alameda address. I appreciate how so many Alameda residents care so much about our community.

I am writing to ask that you please vote for Option 1 on item 6-A on the 1/1//2021 agenda. Rename Former Jackson Park to Chochenyo Park per the recommendation of the Recreation & Parks Commission.

As our country experiences massive upheaval starting this summer I started to learn more about the indigenous tribes that lived in the Bay Area many many years before any of us came to call it home. I think it would be a beautiful thing to recognize the people that first came here and recognized its beauty and created a community here.

Renaming Jackson Park to Chochenyo Park presents an opportunity for education about an inclusive history of the original peoples of this place. This new name offers a clear repudiation of Andrew Jackson, his enslavement of African-Americans, and his involvement in the genocide of Indigenous peoples and theft of their land. This name is a gesture towards redressing the harm of the former name.

Thank you,
Madeline Sherwood

From:	MollyA Mills
To:	City Clerk
Cc:	John Knox White; Malia Vella; Tony Daysog; Trish Spencer
Subject:	[EXTERNAL] Rename Former Jackson Park to Chochenyo Park
Date:	Tuesday, January 12, 2021 11:57:46 AM

Dear Councilmembers,

My name is Molly Mills and I am a resident of Alameda I am writing to ask that you please vote for Option 1 on item 6-A on the 1/1//2021 agenda. Rename Former Jackson Park to Chochenyo Park per the recommendation of the Recreation & Parks Commission

Renaming Jackson Park to Chochenyo Park presents an opportunity for education about an inclusive history of the original peoples of this place. This new name offers a clear repudiation of Andrew Jackson, his enslavement of African-Americans, and his involvement in the genocide of Indigenous peoples and theft of their land. This name is a gesture towards redressing the harm of the former name.

Thank you,

Molly Mills

Sent from my iPad

From: Amy Wooldridge
To: Lara Weisiger
Subject: FW: [EXTERNAL] Re: Park name
Date: Tuesday, January 12, 2021 11:34:52 AM

Two public comments below for Item 6-A

Amy Wooldridge
Recreation and Parks Director
2226 Santa Clara Avenue, Alameda, CA 94501
(510) 747-7570
awooldridge@alamedaca.gov
www.alamedaca.gov/recreation

From: Gary Cates [mailto:glcbfd1967@gmail.com]
Sent: Tuesday, January 12, 2021 11:23 AM
To: jacksonparkwatch@googlegroups.com
Cc: Amy Wooldridge <AWooldridge@alamedaca.gov>
Subject: [EXTERNAL] Re: Park name

Chochencho is a wonderful choice. Gary and Mary Ann Cates.

Sent from my iPhone

> On Jan 12, 2021, at 9:03 AM, Kaye Fitzsimons <rayandkaye@comcast.net> wrote:
>
> Dear Amy Wooldridge,
> I Reside on Park Ave. Of the names suggested for a new name for the park, I am in favor of Chochenyo. It represents the first residents of our area for the first park in Alameda.
> Kaye Fitzsimons
>
> Sent from my iPhone
>
> --
> You received this message because you are subscribed to the Google Groups "jacksonparkwatch" group.
> To unsubscribe from this group and stop receiving emails from it, send an email to jacksonparkwatch+unsubscribe@googlegroups.com.
> To view this discussion on the web visit https://groups.google.com/d/msgid/jacksonparkwatch/BCB2CD38-A61A-4707-92EB-6AF7B77C263E@comcast.net.

From: Philip James
To: City Clerk
Subject: [EXTERNAL] Communication in support of Item 6-A on January 19 Agenda
Date: Sunday, January 10, 2021 12:47:09 PM

Hello. My name is Philip James and I am a resident of Alameda. I am writing in in support of ITem 6-A on the January 19, 2021 City Council Agenda, the Renaming of Former Jackson Park Chochenyo Park.

As someone who lived on Park Ave, across from the Former Jackson Park, for many years, now is the time to make sure that this piece of Alameda represents who we want to be as Alamedans. I urge the City Council to vote in favor of the renaming.

Thank you for your time,
Philip James