

SPECIAL MEETING
SACRAMENTO COMMUNITY CENTER AUTHORITY

FRIDAY

September 20, 1974

4:00 P.M.

I HEREBY CALL a Special Meeting of the Sacramento Community Center Authority to be held at the hour of 4:00 p.m., on Friday, September 20, 1974, in Room 203, City Hall, 915 I Street, for considering the following subjects:

1. Approval of minutes, Special Meeting of July 25, 1974.
2. Approval of Change Order No. 6.
3. Approval of Requisition No. 38.

Walter Christensen
CHAIRMAN

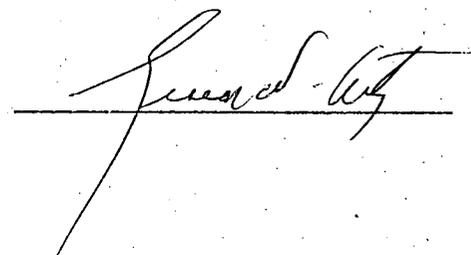
ATTEST:

W. K. DeFord
SECRETARY

SACRAMENTO COMMUNITY CENTER AUTHORITY

I hereby waive notice of the Special Meeting of the Sacramento
Community Center Authority to be held at the hour of 4:00 p.m.,
on Friday, September 20, 1974, in Room 203, City Hall, 915 I
Street, Sacramento.

September 20, 1974

A handwritten signature in cursive script, written over a horizontal line. The signature is difficult to decipher but appears to be a name followed by a date or initials.

SACRAMENTO COMMUNITY CENTER AUTHORITY

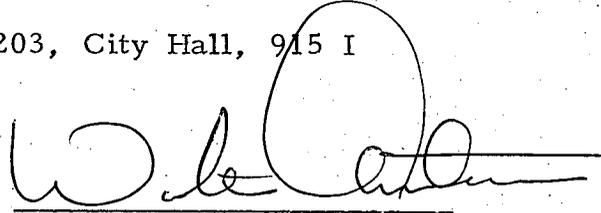
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Alfred W. Rulo

September 20, 1974

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September 20, 1974

September 17, 1974

The Honorable Anne Rudin
Councilwoman
District 4
1410 Birchwood Lane
Sacramento, California 95822

Walter Christensen, Chairman
Sacramento Community Center
Authority
1770 - 9th Avenue
Sacramento, California 95818

Dear Councilwoman Rudin and Mr. Christensen:

You have requested an opinion of counsel on the following matter.

QUESTION

Can the voters of Sacramento, acting by initiative, change the name of the Sacramento Earl Warren Community Center to another name?

CONCLUSION

Yes.

ANALYSIS

The California Constitution reserves to the electors of each city the power to adopt ordinances by the initiative (Calif. Const. Art. IV Section 25). The power of the initiative must be liberally construed to promote the democratic process. Farley v. Healey (1967) 67 Cal.2d 325, 328. City charters may not limit the initiative power, although they may increase it. Newport Beach Fire & Police Protection League v. City Council, (1961) 189 C.A.2d 17, 21. The Sacramento City Charter does not appear to increase the initiative power reserved to the electors by the California Constitution (Sacramento City Charter Sections 239, 248).

The power of the electorate to enact legislation by the use of the initiative process is circumscribed by the same limitations

as the legislative powers resting in the legislative body concerned. Mueller v. Brown, (1963) 221 C.A.2d 319, 324. The initiative is not available in cases where the result of the election would be to adopt an ordinance which is only advisory in nature. Mueller v. Brown, supra, at 325. The initiative may not be used where the matter involves exclusive delegation from the state to the local legislative body. Simpson v. Hite, (1950) 36 Cal.2d 125, 130. The initiative process may not be used to enact an ordinance where the inevitable effect would be to impair or wholly destroy the efficacy of some other governmental power, the practical application of which is essential. Chase v. Kalber, (1915) 28 C.A. 561, 569 [initiative held not applicable to improvement of city streets]. Where the matter concerns a limited number of individuals and a hearing is required to satisfy the requirements of due process, the initiative may not be used where the effect would be to deny the hearing. Chase v. Kalber, supra, at 572. The California Constitution, Article IV, Section 1, excepts from the initiative process calling elections, acts providing for tax levies or appropriations for the usual and current expenses of government, and urgency measures for the immediate preservation of the public peace, health or safety. An ordinance passed by the initiative process which renamed the community center would not appear to fall within any of the aforementioned categories.

Since there is a resolution (74-446) which has been adopted which named the community center, the question is presented as to the effect of an ordinance renaming the community center.---In Central Manufacturing District, Inc. v. Board of Supervisors, (1960) 176 C.A.2d 850, 860, the court discussed the difference between an ordinance and a resolution:

"The difference between an ordinance and a resolution is well stated in 35 California Jurisprudence 2d, section 392, page 200: 'The enactments of a city's legislative branch are known as ordinances and resolutions. Strictly speaking, there is a difference between the two. An ordinance in its primary and usual sense means a local law. It prescribes a rule of conduct prospective in operation, applicable generally to persons and things subject to the jurisdiction of the city. 'Resolution' denotes something less formal. It is the mere expression of the opinion of the legislative body concerning some administrative matter for the disposition of which it provides. Ordinarily it is of a temporary character, while an ordinance prescribes a permanent rule of conduct or of government. However, for many purposes the two words are equivalent terms.' See also 37 American Jurisprudence, section 142, page 755.

Crowe v. Boyle, 184 Cal. 117, 149 [193 P. 111]: "But in the absence of statutory or charter provision to the contrary, a legislative act may be either in the form of a resolution or of an ordinance. [Citations.] For many purposes resolutions and ordinances are equivalent terms. [Citations.] 'And it has been held that even where the statute or municipal charter requires the municipality to act by ordinance, if a resolution is passed in the manner and with the statutory formality required in the enactment of an ordinance, it will be binding and effective as an ordinance [Citations]. . .'"

The provisions of the Sacramento City Charter provide that the initiative may only be exercised by enactment of an ordinance (Sections 239, 241 and 248). The Sacramento City Charter provides that the City Council may act by ordinance, resolution or motion (Section 25).

When the provisions of a statute are irreconcilable, repugnant and inconsistent with another earlier statute, and there is no possibility of concurrent operation, then the inconsistent provisions of the earlier statute are considered to be repealed by implication. City of Oakland v. Hogan, (1946) 41 C.A.2d 333, 356, Warne v. Harkness, (1963) 60 Cal.2d 579, 587. The implied repeal is only as extensive as may be necessary to enable the courts to harmonize the two statutes. Sacramento Newspaper Guild v. Sacramento County Board of Supervisors, (1968) 263 C.A.2d 41, 54. Thus, it would appear that the effect of the existence of a resolution enacted by the City Council conferring one name on the community center and of an ordinance enacted by initiative conferring a different name on the community center would be to legally name the community center according to the ordinance adopted by the initiative.

The foregoing appears to allow the electorate to accomplish indirectly by initiative that which the electorate could not accomplish directly by referendum; that is, the repeal of Resolution No. 74-446. (See opinion dated September 5, 1974) The opinion dated September 5, 1974, stated that Resolution No. 74-446 was probably not subject to referendum because the action of the City Council in adopting said resolution was an administrative act. The effect of the administrative - legislative distinction on the initiative differs conceptually from its effect upon the referendum. If the matter is classified as administrative, the referendum is not available to repeal the enactment. However, it appears that the initiative process is available to alter the original legislative policy where it is possible for the legislative body to do so by legislative act. Mueller v. Brown, supra. In Blotter v. Farrell, (1954) 42 Cal.2d 804, 810, the court discussed the implied power of a city council to make, amend and repeal legislation as follows:

"It is well recognized that 'an ordinance proposed by the electors of a county or city of this state, under the Initiative Law must constitute such legislation as the legislative body of such county or city has the power to enact under the law granting, defining and limiting the powers of such body' (Hurst v. City of Burlingame, 207 Cal. 134, 140 [277 P.308]),

* * *

To put it another way, does the power to legislate on a particular subject include the power to repeal or amend such legislation or must such power be specifically spelled out in each instance?

In ~~Foster v. Police Comrs.~~, 102 Cal. 483, 489 [37 P. 763, 41 Am.St.Rep. 194], this court stated that the power to legislate on a particular subject 'necessarily includes the power to amend an existing regulation upon the same subject; . . .' In discussing the repeal of municipal legislation it has been stated that 'It will be presumed that an ordinance duly passed continues to exist, and the burden is upon one claiming a repeal to show it. However, it is clearly within the power of the council of a city to repeal any ordinance passed by it which does not affect the contractual relation of the city.' (18 Cal.Jur. 215.)

Frequently a municipal corporation is given the express power by charter or statute to make, repeal or amend ordinances; however, such is not necessary since 'it is the general rule that power to enact ordinances implies power, unless otherwise provided in the grant, to repeal them. It is patently obvious that the effectiveness of any legislative body would be entirely destroyed if the power to amend or repeal its legislative acts were taken away from it. . . . The power of repeal extends, generally speaking, to all ordinances. Indeed, a municipal corporation cannot abridge its own legislative powers by the passage of irrevocable ordinances. . . . Accordingly, in the absence of a valid provision to the contrary, a municipal council or assembly, having the power to legislate on, or exercise discretionary or regulatory authority over, any given subject may exercise that power at will by enacting or repealing an ordinance in relation to the subject.' (McQuillin, Municipal Corporations, 3d ed., vol. 6, §21.10.)

Thus it would appear that the power to legislate generally includes, by necessary implication, the power to amend or repeal existing legislation."

The Honorable Anne Rudin
Walter Christensen
September 17, 1974
Page -5-

Thus it appears that, while the electorate may not repeal Resolution No. 74-446 by use of the referendum power, because the resolution is an administrative act taken pursuant to legislation adopted at an earlier time, the electorate may adopt legislation by initiative which, in effect, amends the earlier action, supersedes the administrative act of the City Council of naming the convention center and, by implication, indirectly repeals Resolution No. 74-446. In order to avoid the possibility that a court might classify an initiative measure as a de facto referendum, (See Mueller v. Brown, supra) it would be necessary that the initiative actually confer a new name upon the community center.

Very truly yours,

JAMES P. JACKSON
City Attorney

By

LELIAND J. SAVAGE
Deputy City Attorney

LJS:ras

SACRAMENTO COMMUNITY
CENTER AUTHORITY

CHANGE ORDER

Distribution:
Authority 1
Controller 1
City Engineer 1
Architect 1
Contractor 2
Resident Engr. 1
Corp. Trustee 1

Change Order No. 6
(Place this number on all
progress estimates)

Date: September 12, 1974

Page 1 of 2

TO: Nielsen-Nickles Company
and
Carl W. Olson & Sons Company,
a Joint Venture

FROM: Sacramento Community Center Authority

PROJECT: Sacramento Community Center Complex Contract

Upon the mutual acceptance and execution of this document by the Sacramento Community Center Authority, hereinafter referred to as "Authority" and your firm, hereinafter referred to as "Contractor" and the approval thereof by resolution of the Sacramento City Council, you are hereby directed to make the following change or changes in the above-described project for the consideration set forth below. All work shall be performed in accordance with the requirement of the contract documents, plans and specifications.

Description:

The original Contract Sum was	\$	<u>12,512,000.</u>
Net change by previous Change Orders.	\$	<u>409,126.</u>
The Contract Sum prior to this Change Order was	\$	<u>12,921,126.</u>
The Contract Sum will be (increased) (decreased) (unchanged) by this Change Order.	\$	<u>186,654.</u>
New Contract Sum including all Change Orders.	\$	<u>13,107,780.</u>

Change Order No. 6

Date: September 12, 1974

Page 2 of 2

Change Order consists
of: No. 33
Written Sheets See attached
Drawings None

Contractor agrees that the amount of increase or decrease in the contract sum specified in this Change Order shall constitute full compensation for the work required by this Change Order, including but not limited to all compensation for the additional costs, if any, which may accrue to the Contractor by reason of any changes in work schedules, other contract work or cost of the project in any way made necessary by this Change Order. The Contractor further agrees that the performance of the work specified in this Change Order or the rescheduling of any or other work made necessary by this Change Order, shall not constitute a delay which will extend the "Estimated completion date" or the "Fixed completion date" of the project as said terms are used and described in the contract agreement between the Authority and Contractor.

Approved by:

Date of issuance:

Approved by:

"Architect"
Sacramento Architects Collaborative
2710 "X" Street
Sacramento, California 95818

By Maurice C. ...

Date September 13, 1974

"Authority"

Sacramento Community Center Authority
915 I Street
Sacramento, California 95814

Approved by Authority Resolution

No. _____

Date _____

"Contractor"

Nielsen-Nickles Company
and
Carl W. Olson & Sons Company,
a Joint Venture
Post Office Box 1287
Sacramento, California

By Ronald B. ...

Date September 13, 1974

Approved by Sacramento City
Council Resolution

No. _____

Dated _____

City Engineer

Dated _____

CHANGE ORDER #6

Reference		Amount	
1.	180-6300 Mod. 274	Providing Royal Commercial and Imperial Reducer vinyl carpet edging in lieu of specified material.	\$ 463.
2.	180-6318 Mod. 281	Landscaping work as required by changes on Drawing LS-1.	6,817.
3.	180-6319 Mod. 225	Providing pipe stanchions for side lighting in the Theater.	1,596.
4.	180-6324 Mod. 282	Modify line sets 2, 4, 10, 19, 29 and 43 Theater rigging.	3,986.
5.	180-6325 Mod. 283	Provide bar spacers between existing channels at loading gallery and installing ladder (furnished by others) from elev. 84.50 to 89.00.	4,343.
6.	180-6331 Mod. 284	Changing pump at Poseidon fountain due to a larger pump being required.	2,003.
7.	180-6334 Mod. 285	Providing sound volume control air baffle and extending four return air ducts in return air tunnel of the Theater.	1,847.
8.	180-6336 Mod. 286	Painting switch plates and electrical devices to match walls in Activity Building and Theater.	319.
9.	180-6337 Mod. 287	Providing door seal at door between orchestra lift storage and area to lift transformer room.	88.
10.	180-6338 Mod. 288	Providing chain midrail at handrail in storage rooms T-230 and T-231. Safety requirements.	129.
11.	180-6339 Mod. 289	Providing handrail light shields and pyrex lens at fixtures "TF" in the Theater.	1,323.
12.	180-6340 Mod. 290	Remove light reflectors from fluorescent light fixtures in second floor meeting rooms of the Activity Building. Room 202, 204 and 206.	101.
13.	180-6341 Mod. 291	Closing off opening at top of ladder well in Room E-136 (safety requirement), and relocating light from north wall to south wall.	187.
14.	180-6342 Mod. 292	Changing keyboard locations for pocket pages and adding two outlets.	468.
15.	180-6345 Mod. 293	Modifying elevator door jambs to match doors in profile configuration.	1,238.
16.	180-6347	Providing cobblestone wall and topsoil at public market.	555.
17.	180-6348 Mod. 294	Modifying the rigging in the Theater to fly, open and close the house curtain.	4,427.

CHANGE ORDER #6 . continued

Reference		Amount
18.	180-6349 Mod. 295	Installing bronze plaque together with furnishing and installing ceiling light for the plaque. \$ 312.
19.	180-6350	Providing and applying an additional coat of sealer to the exposed aggregate walks. 1,861.
20.	180-6351 Mod. 296	Providing a dimmer in the production control panel in the Theater. 270.
21.	180-6352 Mod. 297	Providing a wall unit (item 53A), and receiving credit for (item 28) ticket file. Not available. 1,047.
22.	180-6353 Mod. 298	Providing lights and switches in storage rooms T-161 and T-162 (Theater). 582.
23.	180-6330	Restricting travel of arbor stops, installing sound deadening to rope lock cams, and relocating movie screen. 918.
24.	180-6335	A fifth level stop at elevation 12.25 of the orchestra stage lift. 1,128.
25.	180-6346	Changing safety switches on the ceiling units of the orchestra enclosure to contraflex ribbon switch #121-BD. 1,523.
26.	180-6354	Additional landscaping work. 15,686.
27.	180-6355	Painting aluminum sub-rail at the stair railings. 231.
28.	180-6360	Raising, lowering, relocating and providing new catch basins (Punch List item 209) and provide drain under concrete bench. (Punch List item 210) 7,110.
29.	180-6343	Elevator work required by Accident Prevention reports No. 58425, 58426, 58427, 58428 and 58434. 12,887.
30.	180-6314	Revised forestage canopy. 92,179.
31.	180-6294	Connecting drains from 20 food warmers to hopper drains. 1,196.
32.	180-6156	Providing spring isolators (pipe hangers). 4,955.
33.	180-6312	Sandblasting -- air pollution laws required the use of wet sandblasting as opposed to the dry sand method. 14,869.
TOTAL		\$186,654.

SACRAMENTO COMMUNITY CENTER AUTHORITY

September 19, 1974

REQUISITION NO. 38

To: Security Pacific National Bank
c/o Mr. Gary B. Nelson, Asst. Corp. Trust Officer
P. O. Box 7762
San Francisco, CA 94120

You are authorized to disburse from the Construction Fund provided for in Section 3.03 of Resolution No. 10-71 adopted July 28, 1971, authorizing the issuance of \$19,100,000 principal amount of Sacramento Community Center Authority 1971 Bonds of this Authority, on or after the date of delivery of and payment for said Bonds, the following sums to the following-named political subdivisions, municipal corporations, individuals, firms and corporations for expenses incident to the issuance of said Bonds and to the fulfillment of the authorized purpose for which they were issued:

<u>Item No.</u>	<u>Payee</u>	<u>Amount</u>	<u>Purpose</u>
1	City of Sacramento	\$12,849.77	Engineer's salaries
2	Security Pacific National Bank	3,266.87	Miscellaneous services

The obligations in the stated amounts have been incurred by the Authority and each item thereof is a proper charge against the Construction Fund. There has not been

filed with or served upon the Authority notice of any lien, right to lien or attachment upon, or claim affecting the right to received payment of, any of the moneys payable to any of the persons named hereinabove.

Very truly yours,

SACRAMENTO COMMUNITY CENTER AUTHORITY

By _____
Authorized Officer or Member of
said Authority

APPROVED:

By _____
Secretary

Director of Finance of the
City of Sacramento

September 17, 1974

The Honorable Anne Rudin
Councilwoman
District 4
1410 Birchwood Lane
Sacramento, California 95822

Walter Christensen, Chairman
Sacramento Community Center
Authority
1770 - 9th Avenue
Sacramento, California 95818

Dear Councilwoman Rudin and Mr. Christensen:

You have requested an opinion of counsel on the following matter.

QUESTION

Can the voters of Sacramento, acting by initiative, change the name of the Sacramento Earl Warren Community Center to another name?

CONCLUSION

Yes.

ANALYSIS

The California Constitution reserves to the electors of each city the power to adopt ordinances by the initiative (Calif. Const. Art. IV Section 25). The power of the initiative must be liberally construed to promote the democratic process. Farley v. Healey (1967) 67 Cal.2d 325, 328. City charters may not limit the initiative power, although they may increase it. Newport Beach Fire & Police Protection League v. City Council, (1961) 189 C.A.2d 17, 21. The Sacramento City Charter does not appear to increase the initiative power reserved to the electors by the California Constitution (Sacramento City Charter Sections 239, 248).

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Since there is a resolution (74-446) which has been adopted which named the community center, the question is presented as to the effect of an ordinance renaming the community center. In Central Manufacturing District, Inc. v. Board of Supervisors, (1960) 176 C.A.2d 850, 860, the court discussed the difference between an ordinance and a resolution:

"The difference between an ordinance and a resolution is well stated in 35 California Jurisprudence 2d, section 392, page 200: 'The enactments of a city's legislative branch are known as ordinances and resolutions. Strictly speaking, there is a difference between the two. An ordinance in its primary and usual sense means a local law. It prescribes a rule of conduct prospective in operation, applicable generally to persons and things subject to the jurisdiction of the city. 'Resolution' denotes something less formal. It is the mere expression of the opinion of the legislative body concerning some administrative matter for the disposition of which it provides. Ordinarily it is of a temporary character, while an ordinance prescribes a permanent rule of conduct or of government. However, for many purposes the two words are equivalent terms.' See also 37 American Jurisprudence, section 142, page 755.

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The foregoing appears to allow the electorate to accomplish indirectly by initiative that which the electorate could not accomplish directly by referendum; that is, the repeal of Resolution No. 74-446. (See opinion dated September 5, 1974) The opinion dated September 5, 1974, stated that Resolution No. 74-446 was probably not subject to referendum because the action of the City Council in adopting said resolution was an administrative act. The effect of the administrative - legislative distinction on the initiative differs conceptually from its effect upon the referendum. If the matter is classified as administrative, the referendum is not available to repeal the enactment. However, it appears that the initiative process is available to alter the original legislative policy where it is possible for the legislative body to do so by legislative act. Mueller v. Brown, supra. In Blotter v. Farrell, (1954) 42 Cal.2d 804, 810, the court discussed the implied power of a city council to make, amend and repeal legislation as follows:

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To put it another way, does the power to legislate on a particular subject include the power to repeal or amend such legislation or must such power be specifically spelled out in each instance?

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Thus it would appear that the power to legislate generally includes, by necessary implication, the power to amend or repeal existing legislation."

The Honorable Anne Rudin
Walter Christensen
September 17, 1974
Page -5-

Thus it appears that, while the electorate may not repeal Resolution No. 74-446 by use of the referendum power, because the resolution is an administrative act taken pursuant to legislation adopted at an earlier time, the electorate may adopt legislation by initiative which, in effect, amends the earlier action, supersedes the administrative act of the City Council of naming the convention center and, by implication, indirectly repeals Resolution No. 74-446. In order to avoid the possibility that a court might classify an initiative measure as a de facto referendum, (See Mueller v. Brown, supra) it would be necessary that the initiative actually confer a new name upon the community center.

Very truly yours,

JAMES P. JACKSON
City Attorney

By

LELIAND J. SAVAGE
Deputy City Attorney

LJS:ras