



Land Use: The New Arena in the Struggle between Independence and Accountability for Charter Schools by John R. Yeh

The California Charter Schools Act (Education Code section 47600 et seq.) remains an uneasy joust between two competing principles enunciated in the statute: independence and accountability. Charter schools were promised “freedom from bureaucracy.” (*Wilson v. State Bd. of Educ.* (1999) 75 Cal.App.4th 1125, 1129.) The statute provides that charter schools are intended to “operate independently from the existing school district structure” (Education Code section 47601) and are exempt from most of the Education Code provisions applying to school districts. (Education Code section 47610, known as the “mega-waiver.”) Yet, charter schools remain accountable to their authorizers for achieving performance outcomes and complying with the law. (Education Code sections 47601(f); 47607(c)(1)(D).) Outside the vortex of the “existing school district structure,” independence and freedom are constrained, as charter schools are subject to laws of general application in most other areas of operation, including those governing their school sites.

This conflict has now entered into the arena of municipal police power. As will be described below, cities throughout the state have taken measures to enforce charter school accountability in land use matters with respect to compliance with local zoning requirements in locating their school sites. In the judicial realm, two recent court cases confirm that only school districts can exercise Government Code section 53094’s power to exempt classroom facilities from local zoning requirements. The decisions in these two cases, which are now final, rebuffed attempts to seek special dispensation from local zoning requirements for the sole benefit of charter schools.

Municipal Actions

Last year, the City of Richmond (Contra Costa County) enacted Ordinance 15.03.260, requiring that all “[n]ew schools, including charter schools,” seeking to locate within the City obtain a conditional use permit, and that the Planning Commission find that “adjacent uses will not be adversely affected, adequate access, student drop-off areas and off-street parking is provided, and outdoor play areas are safe and secure.” The City’s actions, according to media reports, were

RICHMOND REQUIRES ALL NEW SCHOOLS, INCLUDING CHARTER SCHOOLS, TO OBTAIN A CONDITIONAL USE PERMIT. HUNTINGTON PARK IMPOSED A MORATORIUM ON CHARTER SCHOOL LAND USE

motivated by “a flurry of charter schools that have set up at former grocery stores, banks and even industrial parks.” (East Bay Times, May 14, 2016.)¹

The City of Huntington Park (Los Angeles County) recently passed Resolution No. 2016-950 calling for a temporary moratorium on the approval of “licenses, permits or other entitlements” for the establishment of charter schools. The Resolution states that “[t]he City has received numerous inquiries and requests for the establishment

and operation of charter schools within the City that may be incompatible with current land uses and the General Plan” (Resolution No. 2016-950, Section 6(A)), and that “[c]ertain locations within the City have already experienced adverse impacts” due to charter schools. (Id., Section 6(C).) According to media reports, the moratorium was issued in response to traffic problems, and concerns about maintaining open space in light of the proliferation of charter schools within the City. (Los Angeles Times, October 18, 2016.)² (See also, “Spending

Blind: The Failure of Public Policy Planning in California Charter School Funding,” (2017), In the Public Interest [concluding that public education funding is being wasted to build charter school facilities in areas where they are not needed.]³)

The School District Zoning Exemption Power

Government Code section 53094 ordinarily requires school districts to comply with local zoning ordinances if “the zoning ordinance makes provision for the location of public schools” and if “the city or county has adopted a general plan.” However, Government Code section 53094 creates a significant exception by expressly allowing a school district, by a vote of two-thirds of its board members, to “render a city or county zoning ordinance inapplicable to a proposed use of property by the school district,” as long as the exemption applies to classroom facilities, and subject to challenge by the city or county under the arbitrary and capricious standard.⁴ This statutory exemption power has been the subject of two cases of attempted misappropriation for the sole benefit of charter schools, resulting in the decisions discussed below.

¹ <http://www.eastbaytimes.com/2016/05/14/richmond-considering-regulations-of-charter-schools/>

² <http://lat.ms/2dpp8B7>

³ https://www.inthepublicinterest.org/wp-content/uploads/FINAL_ITPI_SpendingBlind_April2017.pdf

⁴ Government Code section 53097.3, not at issue in either case discussed here, allows a school district to exercise the exemption for a charter school facility within district boundaries.

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ZONING EXEMPTION CASES

City of Sunnyvale Case

In *City of Sunnyvale et al. v. Summit Public Schools et al.*, Santa Clara County Superior Court Case No. No. 1-13-CV-255504, the Court granted the City's Motion for Summary Adjudication challenging a charter school's attempt to exercise the zoning exemption on its own behalf, concluding that "the Legislature expressly provided that a 'school district,' as opposed to a charter school itself, may render an ordinance inapplicable to a 'charter school facility' under specified circumstances, but it did not amend the Government Code to allow charter schools themselves to issue an exemption ..."

After a bench trial in 2016, the Court entered judgment on the City's behalf, ruling that the charter school's ongoing operation in an industrial zone constituted a continuing nuisance since it constituted a nonconforming use. The charter school is not appealing the judgment and has moved to a new site. (A trial court decision is only binding between the parties and is not citable as binding precedent outside of that context.)

San Jose Unified School District Case

A recently published case, *San Jose Unified School District v. Santa Clara County Office of Education et al.* (2017) 7 Cal.App.5th 967, involved a county board of education's attempt to exercise the zoning exemption on behalf of a charter school under its authorization.

In rejecting the county board's argument that it was entitled to exercise the zoning exemption as a "school district," the Sixth District Court of Appeal affirmed the trial court's ruling, and stated as follows:

"... [I]t is local school districts that are obligated to provide facilities to charter schools ... The state has not tasked county boards of education with acquiring sites for charter schools; to the extent county boards of education do so, they are not carrying out a sovereign activity on behalf of the state. It follows, then, that empowering county boards of education to issue zoning exemptions for charter school facilities does not advance the purpose of section 53094—namely, preventing local interference with the state's sovereign activities. For the foregoing reasons, the legislative history convinces us that section 53094 does not authorize county boards of education to issue zoning exemptions for charter school facilities."

⁵Pink Floyd, "Another Brick in the Wall," Part 2 (1979).
⁶Origin unknown.

The court of appeal based its ruling on the decisions in *Hall v. City of Taft* (1956) 47 Cal.2d 177 and *Town of Atherton v. Superior Court* (1958) 159 Cal.App.2d 417, which established that "[t]he public schools of this state are a matter of statewide rather than local or municipal concern." The Government Code section 53094 zoning exemption is a result of an attempt to balance state sovereignty over the construction of public schools with municipal control over land use and zoning. The California Supreme Court has denied the Charter School's petition for review of the decision, and the court of appeal's decision is now final.

"We Don't Need No Education [Code]"⁵ v. "You Can't Fight City Hall"⁶

While charter schools are intended to "operate independently from the existing school district structure," enjoy "freedom from bureaucracy," and exemption from most laws governing school districts, outside the Education Code's cocoon of autonomy, the independence and freedom intended for charter schools do not translate into equal latitude. With respect to land use, charter schools, in establishing their school sites, remain subject to the police power of cities and counties to enforce orderly land use planning through their local zoning ordinances. The two cases discussed herein further demonstrate that school district sovereignty over school construction, and the Government Code zoning exemption power, cannot be usurped or violated to contrive special exceptions for charter schools facilities.

At the core of this struggle between independence and accountability is the extent to which the intended autonomy of charter schools from the "existing school district structure" translates to regulatory schemes outside of the ecosystem of the public school system and Education Code. Regulatory vigilance is required to ensure that the overreach fed by the supposedly animated and talismanic lure of "freedom" and "independence" does not exceed its intended boundaries.

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