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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

ARROYO SECO FOUNDATION, an)	Case No.
incorporated association)	
)
Petitioners,)	PETITION FOR WRIT OF
)
vs.)	MANDATE; AND COMPLAINT
)
	FOR DECLARATORY RELIEF
)
	AND INJUNCTIVE RELIEF;
)
)
))))))
CITY OF PASADENA, a Municipal)	(PASADENA CITY CHARTER
Corporation)	AND MUNICIPAL CODE)
Respondents,)	Hearing:
_____)	Time:
	Dept:
BOARD OF DIRECTORS OF KIDSPACE)	
MUSEUM, a private non-profit association)	
Real Party in Interest.)	
_____)	

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THE HONORABLE JUDGE OF THE SUPERIOR COURT:

1. Pursuant to Code of Civil Procedure sections 1085 and 1094.5, this suit challenges a 50-year lease between the City of Pasadena (“City”) and Kidspace Museum (“Museum”) and the approval of a conditional use permit (“CUP”) for a museum occupying dedicated park land in the City of Pasadena. Pasadena’s Municipal Code prohibits commercial and institutional uses such as private museums in the area of Pasadena park land which is the subject of the lease. Additionally, Pasadena’s Charter requires an election to be held before the sale, transfer or use of dedicated park land for other purposes. In violation of these provisions, the City approved the lease and the CUP without holding an election. Pasadena’s Charter also requires the provision of compensatory park land when park land is used for purposes other than park and recreation use, but no such land was provided to compensate for the land used by the Museum. Although Petitioner Arroyo Seco Foundation supports construction of a new Museum, and would support its construction at an appropriate location in the Pasadena area, construction of the Museum in the Arroyo Seco would be contrary to provisions of the Pasadena Charter and Municipal Code and would further reduce the natural park land open to the public in the Arroyo Seco.

PARTIES

1. The Arroyo Seco Foundation (“the Foundation”) is an incorporated non-profit association whose supporters include residents, taxpayers, and property owners throughout the Greater Pasadena area. The Foundation was formed in the 1980s to promote environmental education and action, including the reforestation and natural restoration of the Arroyo Seco from its headwaters in the San Gabriel Mountains through Pasadena to the Los Angeles River. The Foundation was also formed to promote recreational opportunities and a

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more harmonious approach to watershed management, flood control, water conservation and the protection of vital resources. The Foundation was formally incorporated in 1990.

2. The City of Pasadena is a duly incorporated charter city and a political subdivision of the State of California.

3. On information and belief, Real Party in Interest Board of Directors of the Kidspace Museum directs a non-profit 501(c)(3) organization incorporated in the State of California. The business address of the Museum is 390 South El Molino Avenue Pasadena, California 91101.

PROJECT DESCRIPTION AND HISTORY

1.The Development of Charter and Statutory Protection of the Arroyo Seco. The Arroyo Seco is a natural area of Pasadena which was set aside in 1964 with a City resolution which stated “...it shall be the policy of the City of Pasadena to preserve and maintain the Arroyo Seco lands owned by it as a natural park, in so far as such lands have not already been devoted to existing active recreational facilities....” The Arroyo Seco is a natural canyon which threads the western edge of the City of Pasadena. A 1912 article about the Arroyo Seco in the Craftsman magazine described the Arroyo Seco as follows:

In a setting of civilization and modern city improvements which creep to its very edges and look over, the Arroyo Seco’s woodland freshness and solitude are all the more remarkable. Linked to the Sierra Madre Mountains at the north of Pasadena, it winds and curves southward until it merges into the gaunt open-jawed Los Angeles River. It is deep-gashed in the earth, with a home-strewn mesa on the east, and hills walling it on the west.

(The Craftsman, Vol.22, No. 5, August 1912, “Parks for the People,” pp. 518-524.)

1. In 1979, a museum known as the Hall of Science Museum was proposed for construction in the Arroyo Seco. Significant public opposition was expressed to this

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proposal because a large segment of Pasadena's population believed the Arroyo should be preserved as a natural, undeveloped area rather than a location for construction of new buildings such as museums.

2. To assure no future museums or similar structures would be constructed in the Arroyo Seco without the approval of Pasadena's voters, after the Hall of Science Museum proposal was withdrawn in December of 1979, an amendment to the City Charter was proposed by Pasadena's Park and Recreation Commission. This Amendment added sections 1601, 1602, and 1603 to the City's Charter.

3. City Charter Section 1601 provides: "All dedicated park land owned by the City shall be used only for park and recreational purposes, and shall not be sold, transferred or used for other purposes, except upon the approval of a majority of the voters at an election held for such purpose."

4. City Charter section 1603 requires "When dedicated park land is sold or its use changed ... land of comparable area or value in the same region of the City shall be acquired or dedicated for park purposes, unless otherwise approved by the voters at said election [required by section 1601]."

5. In 1990, the City adopted sections of the Municipal Code applicable to the Arroyo Seco ("the Arroyo Seco Ordinance"). Section 3.32.060 of the Arroyo Seco Ordinance states "No portion of the lands of the Arroyo Seco shall be used for any commercial or institutional uses other than those which existed at the effective date of the ordinance." Section 17.16.040 of the Municipal Code defined the term "cultural institutions" as including but not limited to "museums." Section 17.16.040 defined "Park and Recreation Facilities" as "Noncommercial parks, playgrounds and recreational facilities, and open

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spaces officially designated as a park or recreation facility.”

6. By 1998, as a result of construction of large, restricted access facilities such as the Brookside Golf Course, the Rosemont Pavilion, the Tournament of Roses Float Construction hangar and adjacent park area, and the Aquatic Center, only approximately 14% of the flat land in the Arroyo Seco remained usable by the public as open park land without charge.

Review and Approval of the Museum Project.

1. In 1998, the City of Pasadena entered a lease of property within the Arroyo Seco Park with Kidspace Museum. The lease provided the Museum proponents would pay \$1 per year for 3 acres of land in the Arroyo Seco for a term of 50 years. This lease provided for restoration of three existing buildings known as the Fannie Morrison Center and construction of a fourth building as a replacement for one that had burned down. The historically significant Fannie Morrison Center had formerly been used for horticultural and botanical displays until its use for this purpose ceased on March 16, 1962. The Fannie Morrison Center is presently used for storage of park maintenance equipment.

2. Under the lease, real parties in interest Kidspace Museum are allowed to hold functions throughout the year to generate revenue to cover operating expenses. The Museum is a commercial enterprise which will charge an admission fee to the public.

3. Among the recitals made by the City Council in approving this lease were: “Whereas, these activities [establishing exhibits and programs] qualify as a ‘park and recreation use’ within the meaning of Article XVI of the Pasadena City Charter...”

4. No application for a specific plan for the Museum was filed until the Museum proponents applied for a CUP in 1999 for a project design which was much larger than that

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allowed under the lease. June 1999 was the first time the public became aware of the true dimensions and configuration of the Museum Project. In response to concerns expressed regarding the legality of the lease, the City Attorney prepared a memorandum dated December 9, 1999. That memorandum concluded the lease complied with the City Charter, did not violate the Arroyo Seco Ordinance, complied with requirements regarding disposition of surplus property, and was consistent with the City's General Plan and open space zoning requirements.

5. After encountering significant public opposition, the Museum proponents withdrew their application in order to modify their plans.

6. In August, 2000, the Museum proponents submitted an application for a CUP, which Pasadena numbered CUP #3579. The Museum proponents submitted revised plans which were more consistent with the size of the new building described in the lease. The City's Zoning Hearing Officer held a public hearing on September 20, 2000 to consider the CUP for the Museum. At the hearing, the attorney for the project proponent said that the Museum had already been reviewed and approved by the City Council and that all issues had been addressed at that time.

7. Petitioner Foundation and numerous individuals objected orally and in writing at the September 20, 2000 hearing. Before the hearing, the Foundation submitted a letter objecting to the Museum project and detailing the legal violations attendant upon its approval. In view of the significant opposition, the Zoning Hearing Officer continued the public hearing for one month in order to give neighbors and Museum proponents an opportunity to reach an agreement on mitigation measures. The Zoning Hearing Officer requested the City Attorney evaluate the legal objections which had been raised by the

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Foundation.

8. The continued hearing was held on October 18, 2000. One day before the hearing, the City Attorney submitted a two paragraph memorandum to the Zoning Hearing Officer which stated that the City Attorney's position regarding the permissibility of the Museum remained unchanged from the position previously stated in a memorandum dated December 9, 1999. At the October 18, 2000 hearing, the Zoning Hearing Officer stated he relied upon the advice of the City Attorney who opined the Museum was a permissible use. The Zoning Hearing Officer indicated he would approve the CUP but that he would make findings and decide upon the conditions of approval at some point afterward.

9. The Zoning Hearing Officer issued a written decision dated October 23, 2000 which stated "Based upon these findings, it was decided that the Conditional Use permit be granted in accordance with submitted plans to the Zoning Hearing Officer and stamped October 18, 2000." This written decision further stated "The decision becomes effective on the eleventh day from the date of the decision...The effective date of this case will be Tuesday, October 31, 2000."

10. Eight days after the October 23, 2000 decision letter, on Tuesday, October 31, 2000, the Foundation and 57 individuals attempted to appeal the Zoning Hearing Officer's decision. City Planning Department staff rejected the filing of the appeal, referring to Pasadena Municipal Code Section 17.104, which states any person aggrieved has a right to appeal the Zoning Hearing Officer's decision within ten days. Upon receiving written rejection of the filing of their appeal, the Foundation requested the Pasadena City Council to accept the filing of the appeal because it was timely, and even if untimely, the untimeliness was excusable. The Foundation attempted this appeal despite the fact it was futile. Upon

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receiving a written rejection of the appeal filing from the City Attorney, the Foundation filed this action.

11. Petitioner has no adequate remedy at law unless the Court grants the requested writ of mandate requiring the Board to set aside its approval of the lease and the CUP for the Museum Project. In the absence of such remedy, the Museum Project will be built in violation of the Pasadena City Charter and the Pasadena Municipal Code and Petitioner will suffer irreparable harm in its community because of the significant loss of usable open space in the Arroyo Seco which is available to the public at no charge.

FIRST CAUSE OF ACTION

(VIOLATION OF THE CITY OF PASADENA CHARTER)

1. Petitioner hereby incorporates by reference the allegations contained in paragraphs 1 through 26, inclusive.

2. The approval of the lease by the City Council and approval of the CUP by the Zoning Hearing Officer violate the Charter of the City of Pasadena for several reasons, including, but not limited to, the following:

3. No election was held before the lease or CUP were approved. Therefore, approval of the Museum lease and CUP violate City Charter Section 1601 which provides: “All dedicated park land owned by the City shall be used only for park and recreational purposes, and shall not be sold, transferred or used for other purposes, except upon the approval of a majority of the voters at an election held for such purpose.”

4. No land of comparable area or value was acquired or dedicated when the lease and CUP were approved. Therefore, approval of the Museum lease and CUP violate the terms of City Charter section 1603 which requires “When dedicated park land is sold or

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its use changed ... land of comparable area or value in the same region of the City shall be acquired or dedicated for park purposes, unless otherwise approved by the voters at said election [required by section 1601].”

5. City Charter Section 1601 states “‘park and recreation use’ means and includes active recreational uses... commercial activities incidental to park and recreational activities such as the sale of food and beverages...”

6. The Museum is not a use of park land for park and recreational purposes within the meaning of the Charter because it is an institutional use. Additionally, it is not a use of park land for park and recreational purposes within the meaning of the Charter because it is a commercial use which is not incidental to park and recreational activities.

7. The City Council and Zoning Hearing Officer approved transfer and use of park property for purposes other than park and recreation purposes, but this transfer and use was not approved by City-wide election as required by City Charter section 1601.

8. Approval of the lease and CUP exceed the authority of the City Council and Zoning Hearing Officer for several reasons, including, but not limited to, the fact that Charter section 1601 requires any transfer of park property for uses other than park and recreation purposes must be approved by a City-wide election.

9. The decision by Respondent to approve the lease and CUP is invalid because it exceeds Respondent’s jurisdiction and constitutes an abuse of Respondent’s discretion in that Respondent violated its legal duties under the Pasadena Charter.

10.

SECOND CAUSE OF ACTION

(VIOLATION OF THE CITY OF PASADENA MUNICIPAL CODE.)

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1. Petitioner hereby incorporates by reference the allegations contained in paragraphs 1 through 35, inclusive.

2. The Municipal Code imposes upon the City a clear, present and
3. mandatory prohibition against approving institutional or commercial uses in the Arroyo Seco.

4. Section 3.32.060 of the Arroyo Seco Ordinance states “No portion of the lands of the Arroyo Seco shall be used for any commercial or institutional uses other than those which existed at the effective date of the ordinance.” The effective date of the Arroyo Seco Ordinance was 1990.

5. Section 17.16.040 of the Municipal Code defines the term “cultural institutions” as including but not limited to “museums.” Therefore, the Museum project is an institutional use within the meaning of the Municipal Code. As such, it is prohibited from any portion of the lands of the Arroyo Seco by Section 3.32.060 of the Arroyo Seco Ordinance.

6. The Museum project is also a commercial use within the meaning of the Municipal Code. As such, it is prohibited from any portion of the lands of the Arroyo Seco by Section 3.32.060 of the Arroyo Seco Ordinance.

7. Section 17.16.040 defines “Park and Recreation Facilities” as “Noncommercial parks, playgrounds and recreational facilities, and open spaces officially designated as a park or recreation facility.” Therefore, as a commercial use, the Museum is not a park and recreation facility within the meaning of the Municipal Code.

8. The City violated the Municipal Code’s prohibition of institutional and commercial uses in the Arroyo Seco by approving the Museum lease and CUP for

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construction and operation of the Museum within the Arroyo Seco.

9. The decision by Respondent to approve the Museum lease and CUP is invalid because it exceeds Respondent's jurisdiction and constitutes an abuse of Respondent's discretion in that Respondent violated its legal duties under the Municipal Code.

10. WHEREFORE, Plaintiff Arroyo Seco Foundation prays that:

1. The lease entered by the City of Pasadena be declared void.
2. Conditional Use Permit number 3579 approved by the City of Pasadena be declared void.
3. Petitioner be awarded judgment in this action.
4. Petitioner be awarded attorneys' fees and costs of suit incurred herein.
5. Petitioner be granted such other relief as the Court deems proper.

Dated: November 21, 2000

CHATTEN-BROWN & ASSOCIATES

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Arroyo Seco Foundation