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September 19, 2000

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Dave Mercer  
Zoning Hearing Officer  
c/o Lola Workman Osborne  
Planning & Permitting Department  
175 North Garfield Ave.  
Pasadena, CA 91109

Re: Opposition to Kidspace Museum Conditional Use Permit  
Application; CUP # 3579.

Dear Mr. Mercer,

On behalf of the Arroyo Seco Foundation (“ASF”), we strongly object to approval of a Conditional Use Permit (“CUP”) for the Kidspace Museum (“Museum”) in Brookside Park. The Museum proposal cannot be approved because it would violate specific provisions of the City’s Municipal Code, the City Charter, the General Plan, and the Park Preservation Act as discussed below. In short, approval of the Museum project would violate the Municipal Code because, as an institutional use, it is not a permitted use in the Brookside Park area. Approval of a CUP without an election would violate the City Charter because an election is required before transfer or use of parkland for other purposes. Approval of the CUP would be inconsistent with the General Plan because institutional uses are not allowed in an area designated as open space. The threatened violations were called to the City’s attention in previous correspondence from representatives of ASF.

We realize that the City has entered into a lease of the property with Kidspace Museum but we do not believe this lease justifies approval of the CUP. The lease is not valid because it violates provisions of the City Charter requiring

voter approval of sales, transfers, or uses of City park lands for other purposes. The reasons the lease is invalid were set forth in detail in a letter dated February 2, 2000 from Jonathan Curtis (“the Curtis Letter”) and are fully incorporated here. See Enclosure 1. Therefore, we will not repeat those statements. Rather, we will explain why CUP approval is not possible under the legal constraints imposed on the City.

### **I. The Project.**

The July 31, 2000 CUP application states “The project involves adaptive reuse of three existing buildings and construction of a new 18,000 square foot, two-story building at the Fannie Morrison site located at 675 Rosemont Avenue.” Thus, the project will add an additional story to each of the three existing buildings and require new construction in Brookside Park. The area is zoned open space under the zoning code and designated open space in the general plan.

### **II. Findings Required By the Municipal Code for CUPs Cannot Be Made.**

The following three findings, required for approval of a CUP, cannot be made for the Museum project: (1) that the CUP complies with all provisions of the zoning title, Title 17 of the Municipal Code; (2) that the CUP is consistent with the general plan; and (3) that the location is consistent with the special purposes of the zoning title. Section 17.88.020 (B)(2) (All references to sections are to the Pasadena Municipal Code unless otherwise noted).

The four paragraph discussion of the basis for proposed findings set forth in the Staff Report is insufficient. See Staff Report, pp. 6-7. The findings cannot be made because the Museum project violates provisions of the Municipal Code prohibiting institutional uses in park areas, is inconsistent with the purposes of the zoning title, and is inconsistent with the general plan.

### **III. Approval of the CUP Would Violate the Municipal Code.**

Various provisions of the City’s Municipal Code would be violated by approval of the CUP. The Staff Report does not consider *any* Municipal Code provision which would be violated by CUP approval. Rather, it merely states “Noncompliance with any of the conditions of approval or any of the provisions of Title 17 would be cause for revocation of the conditional use permit.” In fact, the Museum project’s noncompliance with various provisions of Title 17, the Zoning Title of the Municipal Code, requires denial of the CUP.

The specific finding required in granting a CUP that it complies with provisions of the Municipal Code is not possible in light of the violations identified below.

**A. Section 3.32.060 General Regulations.**

Section 3.32.060(c) states “No portion of the lands within the Arroyo Seco shall be used for any commercial, industrial *or institutional* purposes other than those which existed at the effective date of the ordinance codified in this chapter.” (Emphasis added.) Section 17.16.040 (Public and semi-public use classifications) defines “cultural institutions” as including “museums.” The CUP application submitted by the proponent states this is an institutional project. Application, p. 3. Importantly, the project applicant does not assert this is a “commercial” type of project. *Id.* Since Kidspace Museum is undoubtedly an “institutional” purpose, it is prohibited within the Arroyo Seco by Section 3.32.060. Even if the Museum were a “commercial recreation” use as stated by the Staff Report (page 3), it would be prohibited by section 3.32.060(c) because it is a commercial purpose.

**B. Section 3.32.110 Natural Preservation Area- Permitted Uses on Public Lands.**

Section 3.32.110 (b) states “New structures shall be limited to those required for utility operations, park maintenance and protection of plant and animal communities.” Thus, the Project would violate subsection (b) because it includes a new structure (the fourth building), which is not among the types of new structures permitted.

Subsection (c) states “All existing uses may be allowed to remain but not allowed to expand.” The project would also violate subsection (c) because it expands to two stories what formerly were one story buildings.

Therefore, no approval of a CUP is possible for this project as it is presently configured, even if it were for a non-institutional use.

**C. Section 3.32.160 Brookside Park area- Permitted Uses.**

This section states “The following uses are permitted in the Brookside Park area: A. Active recreational uses including, but not limited to, organized sports, leisure sports and unorganized plan. B. Cultural events including plays, concerts,

festivals, exhibitions, shows....” No other uses are permitted. Thus, a museum is not among the permitted uses in the Brookside Park area because it is a cultural institution. It is not an active recreational use or a cultural event, as those terms are defined by the Municipal Code.

## **II. Granting the CUP Would Violate the City Charter and the Intent of the Zoning Title of the Municipal Code.**

Any act in violation of a City’s Charter is void, including a CUP approval. *Dynamic Ind. Co. v. City of Long Beach* (1958) 159 Cal.App.2d 294. Provisions of the City Charter requiring voter approval of transfer or use of parkland for other purposes were violated by the lease agreement, so the lease is unenforceable. Additionally, since the City Charter defines the City’s ability to act, CUP approval is not possible where the CUP would violate the Charter.

### **A. Approval of a CUP Without an Election Would Violate City Charter Section 1601.**

City Charter Section 1601 states that park land may neither be sold, transferred, or *used* for nonpark purposes except upon the approval of the majority of the voters of the City.

The CUP would allow “use” of City park land for nonpark, institutional purposes. Therefore, unless and until a City-wide vote approves a Museum use, the grant of a CUP for such a project would violate this section of the City Charter. The recitation in the lease that the Kidspace Museum is a park use within the meaning of Article XVI is contrary to the specific definition of park and recreation use contained in section 17.16.040 of the Municipal Code. Additionally, the view that the Museum is a park use is inconsistent with the Staff Report statement “The Zoning Code defines this use as commercial recreation.” Staff Report, p. 3.

We also note the history of this section of the Charter, which we understand was adopted in response to a “Hall of Science” museum proposed in the Arroyo Seco. This historical background proves the intent of this Charter provision was to prohibit museum use of Arroyo Seco land without a vote of the people of the City. No such vote has been taken. Therefore, no CUP should be approved which reduces the amount of parkland in the City.

### **B. Violation of City Charter Section 1603.**

City Charter Section 1603 requires that “When dedicated park land is sold or its use changed pursuant to the provision of section 1601, 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.” The proposed CUP would change the use of dedicated park land to institutional use as a Museum. Unless and until the City provides comparable land, it may not allow the subject property to be used as a Museum. Therefore, the CUP may not be granted.

### **III. The Museum Project is Not Consistent With the General Plan, and Thus Approval of the Project Would Violate the Government Code.**

A CUP may not be approved for the Museum project because it is not consistent with the City’s General Plan designation of the area as open space. This project is not consistent with important policies of the General Plan, contrary to the Staff Report’s conclusion. See Staff Report, p. 6. In fact, inconsistency of the Museum project with the open space designation is not even addressed by the staff.

The area where the project is proposed is designated open space. Open space designation permits use of an area for “commercial recreation” purposes, but the Museum is not a “commercial recreation” type of use. The Museum is a “cultural institution,” not a park and recreation or commercial recreation facility. Section 17.16.040 of the Municipal Code defines “cultural institutions” as including “museums,” but fails to include museums in its definition of “park and recreation facilities.” Thus, a museum is not a park and recreation facility.

The project application states this project is “Institutional,” not “Commercial.” Application Environmental Assessment, p. 3. Contrary to the Application’s clear statement, the Staff Report states “The Zoning Code defines this use as commercial recreation.” Staff Report, p. 3. Since the Municipal Code and the Application itself show the Museum is not a “commercial recreation” use, it may not be approved for an area designated as open space.

Although the project may be consistent with some policies of the general plan (see Staff Report, p. 6), it is inconsistent with the essential purpose of open space designation. Since this is a fundamental policy of the general plan, a CUP may not be approved for the project. The California Government Code requires

Dave Mercer

September 19, 2000

Page 6

“that the general plan and elements and parts thereof comprise an integrated, internally consistent and compatible statement of policies for the adopting agency.” (Government Code section 65300.5.) A city’s conditional use permit approvals must also be consistent with its general plan. (*Greenbaum v. City of Los Angeles* (1984) 153 Cal.App.3d 391, 407-408; Gov. Code §§ 66473.5, 66474.) Thus, the CUP should be denied.

#### **IV. Fundamental Fairness Requires Denial of the CUP.**

It would be unfair to approve the CUP because other nonprofit organizations have not received terms nearly as favorable as the Museum has. Not only have other institutions been required to pay more than \$1.00 per year as the Museum does, but they have been required to provide significant amounts of community services which have not been required thus far from the Museum. For example, we are informed the Armory for the Arts must provide a set number of community service hours as one the conditions for its continued operation. A similar requirement should be imposed on the Museum.

The legislative preferential treatment of certain entities must reasonably be related to a legitimate government interest. “A classification which rests upon no reasonable basis and which bears no substantial relation to a legitimate purpose to be accomplished is purely arbitrary and patently discriminatory.” *Loof v. City of Long Beach* (1951) 153 Cal.App.2d 174. It would be unfair for the Museum to be accorded special treatment, which other institutions in the City have not received. Therefore, the CUP should be denied.

#### **IX. The Park Preservation Act Would Be Violated by Approval of the CUP.**

Approval of CUP for the Museum without provision of compensatory park land violates California’s Park Preservation Act. Pub. Res. Code §§ 5400 et seq. The Park Preservation Act requires a public entity to provide adequate compensation when transferring park land to nonpark purposes. Since it clear from the City’s Municipal Code and the CUP application that the Museum is an institutional use rather than a “park and recreation” facility, adequate compensation is required before a CUP may be approved.

#### **Conclusion.**

We hope the City does not intend to approve the requested CUP. This proposal has been submitted and withdrawn in the past because it is inappropriate

Dave Mercer  
September 19, 2000  
Page 7

for the area. If it is not withdrawn before a decision is required, the Museum project should be denied.

Sincerely,

Douglas P. Carstens

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