

CHATTEN-BROWN, CARSTENS & MINTEER LLP

Amy Minter, SBN 223832

Michelle N. Black, SBN 261962

Sunjana Supekar, SBN 328663

2200 Pacific Coast Highway, Suite 318

Hermosa Beach, CA 90254

310.798.2400; FAX 310.798.2402

acm@cbcearthlaw.com; mnb@cbcearthlaw.com

sss@cbcearthlaw.com

Attorneys for Petitioner Committee to Relocate of Marilyn

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

MAR 19 2021

L. VILLANUEVA

KKL

MAR 25 2021

02

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

COMMITTEE TO RELOCATE MARILYN,

CASE NO.: **CVRI 2101435**

Petitioner,

v.

CITY OF PALM SPRINGS

**PETITION FOR WRIT OF MANDATE
AND COMPLAINT**

Respondent;

PS RESORTS and DOES 1-10,

Real Parties in Interest

RECEIVED

INTRODUCTION

1. Petitioner Committee to Relocate Marilyn seeks to halt the installation of a 26-foot tall, 34,000-pound statue of Marilyn Monroe in the middle of a public street in the City of Palm Springs ("City") until the City has followed proper procedures to close this publicly funded street.

2. The City is closing off a public street, which was paid for by residents of Palm Springs through the voter-approved Measure J sales tax increase and was deemed essential to traffic flow based on the premise that this public street has a better backdrop for photographs with the Forever Marilyn statue than the park location designated from the statue in the City's recently adopted Downtown Palm Springs Specific Plan

3. When citizens voted for the Measure J sales tax increase to help fund downtown development, one of the major decisions made in the Downtown Palm Springs Specific Plan was that a clear and open street (Museum Way) would connect Palm Canyon Drive to the Palm Springs Art Museum, which is a Class 1 historic site listed on the National Register of Historic Places. Museum Way's intended purpose was to integrate the landmark museum into downtown, providing an unobstructed view of the Museum from Palm Canyon Drive. The City's decision to close this street to vehicular traffic for three years, and likely longer, eliminates this circulation connection and substantially blocks the view corridor for the historic Palm Springs Art Museum.

4. When first directing City staff to enter a license agreement with Real Party in Interest PS Resorts, the Palm Springs City Council also directed staff to commence street vacation proceedings for Museum Way. Members of the public relied on that direction, awaiting the public proceedings required to vacate a public street within the City.

5. The City has since reversed course and now plans to close this public street to vehicular street without holding a public hearing for a street closure under the Vehicle Code or a street vacation proceeding under the Streets and Highways Code. The City has not, and cannot, make findings required to close this public street to vehicular traffic so that it can instead be used as a platform for a massive statue.

6. The City has also failed to follow its own Municipal Code requirements for street closure. Moreover, the Municipal Code's provisions, which cannot provide any basis for public

1 street closures beyond those allowed by the state legislature, cannot allow this lengthy street
2 closure for the purpose of installing a statue in the street, particularly when alternative locations
3 exist that would not require closure of a public street.

4 7. The closure of Museum Way and installation of the Forever Marilyn statue in the
5 middle of the street would also result in a violation of Planning and Zoning Law because these
6 actions would be inconsistent with the Downtown Palm Springs Specific Plan.

7 8. For all of these reasons, Petitioner seeks issuance of a writ of mandate and
8 injunctive and declaratory relief to prevent the imminent closure of Museum Way and installation
9 of the Forever Marilyn statue in this roadway.

10 **JURISDICTION**

11 9. This Court has jurisdiction over the writ action under section 1085 and 1094.5 of the
12 Code of Civil Procedure ("CCP").

13 **PARTIES**

14
15 10. Petitioner Committee to Relocate Marilyn ("CReMa") is an unincorporated
16 association of current and former Palm Springs residents, property owners and business owners
17 and Coachella Valley residents seeking compliance with existing land use plans in the City of
18 Palm Springs and public access to publicly funded streets. CReMa and its hundreds of grassroots
19 supporters are seeking to locate the Forever Marilyn statue in the park designed for its display, or
20 other sites that would not result in the closure of a publicly funded street and would not eliminate
21 a visual corridor for the historically significant Palm Springs Art Museum that was deemed to be
22 of vital importance by the 2016 Downtown Palm Springs Specific Plan.

23 11. Respondent City of Palm Springs ("City") is a political subdivision of the state of
24 California.

25 12. Real Party in Interest PS Resorts a California mutual benefit corporation, consisting
26 of representatives from each of the resort hotels within the City of Palm Springs who charge
27 "resort fees" to guests staying at their hotels. PS Resorts has leased the Forever Marilyn
28

1 statue and entered into a license agreement with the City of Palm Springs to place the statue in
2 the middle of the public street, Museum Way.

3 13. Real Parties in Interest named as Does 1 to 10 are given fictitious names because their
4 names and capacities are presently unknown to Petitioner.

5
6 **STATEMENT OF FACTS**
7

8 **Downtown Palm Springs Specific Plan**

9 14. The City began work on an updated plan to redevelop and revitalize downtown
10 Palm Springs approximately 15 years ago, first adopting the Museum Market Plaza Specific Plan
11 in 2009. This Specific Plan was intended to direct commercial and residential development in
12 downtown Palm Springs after the removal of the Desert Fashion Plaza mall.

13 15. The Museum Market Plaza Specific Plan was updated several times in the years
14 following its adoption, culminating the 2016 adoption of the Downtown Palm Springs Specific
15 Plan.

16 16. The Downtown Palm Springs Specific Plan covers approximately 20 acres in the
17 center of the City's Central Business District. The area is irregular in shape, and encompasses
18 lands bounded by the Hyatt Suites Hotel and Belardo Road on the north, Tahquitz Canyon Way
19 on the south, Museum Drive on the west, and North Palm Canyon Drive on the east, as well as
20 lands directly east, between North Palm Canyon and Indian Canyon Drives

21 17. The Downtown Palm Springs Specific Plan divides this downtown area into Blocks
22 A through K, designating uses and development standards for each Block. The Specific Plan also
23 created a new roadway alignments and circulation plan for downtown.

24 18. The Downtown Palm Springs Specific Plan provides for retail and office
25 commercial space, public plazas, professional office space and residential development in a
26 cohesive, master planned setting envisioned to bring life back to the center of Palm Springs.

27 19. One of the central features of downtown Palm Springs around which the Downtown
28 Palm Springs Specific Plan was designed is the historically significant Palm Springs Art Museum.

1 The Museum was designed by renowned architect E. Stewart Williams and is designated by the
2 City as a Class 1 Historic Site, the City's highest designation for historic resources. The Palm
3 Springs Art Museum building is also listed on the National Register of Historic Places.

4 20. The Specific Plan states that it is intended to "restore the circulation grid in the
5 Downtown area, including a new east-west oriented public street, called [Museum Way]
6 connecting Palm Canyon Drive to ... the entry of the Palm Springs Art Museum. This important
7 vista westerly along [Museum Way] will provide the visual presence for the Palm Springs Art
8 Museum and the San Jacinto Mountains which did not exist with development of the former
9 Desert Fashion Plaza." (DPSSP p. II-3.) The main focal point of the entire Specific Plan area is
10 the Palm Springs Art Museum. (DPSSP p. III-32.)

11 21. The new street, Museum Way, which was referred to as Main Street in the 2016
12 Downtown Palm Springs Specific Plan, was designated to be 22 feet wide between Museum
13 Drive, located parallel to and directly in front of the Palm Springs Art Museum, and Belardo
14 Road. (DPSSP p. IV-5.) The extension of Museum Way to the Palm Springs Art Museum was
15 found to be "essential to improved traffic circulation in the Specific Plan." (DPSSP p. III-24.)

16 22. Lining Museum Way along this stretch are Blocks E, F, H1 and H2. Block F is
17 designated for commercial and residential uses. Blocks H1 and H2 are permanently dedicated for
18 City-owned public purposes. Block E is planned as a central public park branded as the
19 "Downtown Palm Springs Park" with limited development beyond support facilities for the park.

20 23. To fund the City's purchase of land within the Downtown Specific Plan area for the
21 extension of Museum Way and the creation of the Downtown Palm Springs Park, the City sought
22 to impose a one percent sales tax increase.

23 24. This sales tax increase was deemed "Measure J" and was approved by the City's
24 voters in November 2011 with 59 percent of the vote.

25
26 **Forever Marilyn Statue**

27 25. The Forever Marilyn statue is a 26-foot-tall statue that weighs approximately 34,000
28 pounds made of painted stainless steel and aluminum.

1 26. The statue was designed by Seward Johnson as a tribute to Marilyn Monroe's iconic
2 scene from the 1955 comedy, The Seven Year Itch, with the figure capturing the instant a blast of
3 air from a New York City subway grate raises her white dress.

4 27. The statue was created in 2011 and first displayed in Chicago's Pioneer Court.

5 28. In May 2012, Real Party in Interest PS Resorts acquired Forever Marilyn on loan
6 from the Sculpture Foundation and it was placed at the corner of Palm Canyon Way and Tahquitz
7 Canyon Way in the City of Palm Springs.

8 29. The statue was removed from Palm Springs in May 2014 to allow for planned
9 construction under the Downtown Palm Springs Specific Plan that occurred from 2014 through
10 2016.

11 30. Forever Marilyn has since been on display in Australia and other areas of this
12 country. The statue is currently located in New Jersey.

13 31. In planning the new Downtown Park for Palm Springs as envisioned by the
14 Downtown Palm Springs Specific Plan, the City reserved a place for Forever Marilyn along the
15 east side of the park on the west side of Belardo Road. On August 3, 2016, the City Council
16 approved placement of the Forever Marilyn statue in the Downtown Park.

17 32. Construction of the Downtown Park is in progress and a space for the Forever
18 Marilyn statue has been reserved. The Downtown Park is scheduled for completion in
19 approximately August 2021.

20
21 **Current Plan for Forever Marilyn Statue**

22 33. In November 2020, Real Party in Interest PS Resorts was working to finalize
23 an acquisition of Forever Marilyn from The Sculpture Foundation.

24 34. Despite having planned for and reserved a location for Forever Marilyn within the
25 Downtown Palm Springs Park, in November 2020, the City abruptly changed course at the behest
26 of Real Party in Interest PS Resorts.

27 35. PS Resorts lobbied the City to instead allow for the statue to be located in the middle of
28 a public street based on its belief that the Downtown Palm Springs Park "is not ideal as

1 it does not provide the appropriate backdrop that the sculpture had in the position displayed at
2 Palm Canyon Drive and Tahquitz Canyon Way with the mountains in the background.” On
3 October 29, 2020, PS Resorts submitted a letter to the City Council requesting the City allow the
4 placement of the statue on Museum Way between Belardo Road and Museum Drive as a more
5 prominent location for a public tourism exhibition, which provides a dynamic backdrop for
6 pictures on social media.

7 36. On November 12, 2020, the City Council considered the request by PS Resorts. The
8 staff report for this item stated “placing the sculpture on the public street will require the City
9 Council to formally vacate vehicular public access rights on Museum Way through a street
10 vacation process - requiring a future Public Hearing. Through that process, easements would be
11 reserved for public pedestrian access and public utilities, but the legal access rights for vehicles
12 would be eliminated until restored by the City Council.”

13 37. Numerous comments were submitted objecting to the placement of the statue in this
14 location. Many opposed the placement of the statue in a location that would block views of the
15 historically significant Palm Springs Art Museum and pointed out the existing planned location
16 for Forever Marilyn or other locations within the City such as Frances Stevens Park.

17 38. City Council members expressed concerns about the requested location for the
18 statue in the middle of Museum Way and requested that any license agreement include a provision
19 allowing for the removal of the statue at time during the license period. The Council provided
20 direction to City staff on the following:

- 21 • “Placement of the Forever Marilyn sculpture created by the artist Seward Johnson within
22 Museum Way between Museum Drive and Belardo Road adjacent to the Downtown Park;
- 23 • Authorize the City Manager to execute a three-year License Agreement with PS Resorts in
24 a form approved by the City Attorney authorizing the placement of the Forever Marilyn
25 sculpture within Museum Way;
- 26 • Authorize the City Engineer to proceed with the process of vacating the public's vehicular
27 access rights on a portion of Museum Way between Museum Drive and Belardo Road.”

1 39. While the City Council provided direction to staff, it did not adopt a resolution or
2 ordinance on any of the items related to the placement of Forever Marilyn.

3 40. On December 2, 2020, the City entered into a License Agreement with PS Resorts to
4 allow PS Resorts to install the Forever Marilyn statue onto a portion of Museum Way between
5 Museum Drive and Belardo Road.

6 41. The area designated in the License Agreement for the statue is substantially
7 different than the location proposed for the statue in the staff report and associated documents
8 presented to the City Council. In the License Agreement, the licensed area is much closer to
9 Belardo Road, whereas at the City Council meeting, the statue was presented as being proposed
10 for the location midway between Belardo Road and Museum Drive.

11 42. While the License Agreement provides the City with the ability to terminate the
12 agreement and require removal of the statue from the Museum Way without cause, the City is
13 required to give at least 365 days written notice to PS Resorts before the agreement can be
14 terminated.

15 43. The License Agreement has a three-year term, but the agreement indicates that it
16 may be extended.

17 44. The City issued a notice of exemption from environmental review under the
18 California Environmental Quality Act on December 29, 2020. This notice of exemption states:
19 “The project consists of the placement of the ‘Forever Marilyn’ statue, which is a 26-foot-tall
20 sculpture, within an existing street, which requires the City to enter into a License Agreement with
21 PS Resorts to authorize the placement the statue and vacate the public's vehicular access rights on
22 a portion of Museum Way.”

23 45. The public had relied on the City Council’s direction to City staff to commence
24 street vacation proceedings through the required public hearing process. Having yet to receive
25 notice of such a public hearing, on January 27, 2021 Petitioner CReMA submitted a letter to the
26 City requesting clarification of the street vacation process the City intended to follow and an
27 update on when the public hearing on the street vacation would be held.

1 46. On February 24, 2021, the City responded to CReMA's letter, stating: "Despite the
2 November 12, 2020 Staff Report indicating that the City would conduct a public hearing in order
3 to permanently vacate vehicular access to Museum Way, City staff and the City Attorney's Office
4 believe that it may be difficult, if not impossible, for the City Council to make the statutorily
5 required findings that are necessary for a street vacation. Specifically, California Streets and
6 Highways Code section provides that a street may be vacated by a City Council only if the City
7 Council finds "from all the evidence submitted, that the street... is unnecessary for present or
8 prospective public use". (St. & Hwy, § 8324(b).)" This letter also indicated that the City did not
9 believe a street vacation was required for the three-year closure of this public street.

10 47. It is CReMa's understanding that PS Resorts has reached a final agreement with the
11 current owners of Forever Marilyn in February 2021 to lease this statue with an option to buy.
12 PS Resorts plans to begin hauling the 34,000-pound statue from New Jersey to Palm Springs on
13 April 4, 2021 and that it will arrive in Palm Springs on or about April 12, 2021.

14 48. Installation of the statue is an expensive and time-consuming process, taking over a
15 week to complete. The expensive and time-consuming process for installing and removing the
16 Forever Marilyn statue make it less likely it will be removed after the three-year term of the
17 License Agreement expires.

18 49. The unveiling of the statue on Museum Way is currently planned for April 25, 2021,
19 but that date has already been moved back several times.

20 50. Despite the existing three-year term of the License Agreement, PS Resorts has
21 indicated that Museum Way would become the permanent location of the Forever Marilyn statue.

22 51. As of the filing date of this Petition, the City has not sought to vacate the
23 public's vehicular access to Museum Way.

24 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**
25 **AND INADEQUATE REMEDIES AT LAW**
26

27 52. Petitioner CReMa and its members objected to this project in comments to the
28 City Council and letters submitted to the City, fully exhausting their administrative remedies.

1 53. Petitioner CReMa has also submitted a letter to the City notifying the City of
2 Petitioner's intent to commence litigation in this matter regarding the legal violations set forth in
3 this Petition.

4 **FIRST CAUSE OF ACTION**
5 **(VIOLATION OF VEHICLE CODE)**
6

7 54. Petitioner incorporates by reference herein each and every allegation contained in
8 the previous paragraphs.

9 55. The City's closure of Museum Way to vehicular traffic without vacating the
10 public's vehicular access to this public street or making findings allowing for a street closure is a
11 violation of the Vehicle Code.

12 56. In California, the state legislature has preempted the field of motor vehicle traffic
13 regulation. (Vehicle Code § 21; *Rumford v. City of Berkeley* (1982) 31 Cal.3d 545, 548, 549–550;
14 *City of Lafayette v. County of Contra Costa* (1979) 91 Cal.App.3d 749, 755.)

15 57. Thus, local jurisdictions have no authority over vehicular traffic control except as
16 expressly provided by the state legislature. (*Rumford v. City of Berkeley, supra*, 31 Cal.3d 545,
17 550; *City of Hawaiian Gardens v. City of Long Beach* (1998) 61 Cal.App.4th 1100, 1106–1107.)

18 58. The Vehicle Code does not provide local jurisdictions with the authority to close
19 public streets to vehicular traffic for a three year or longer period of time for the purpose of
20 installing a statue in the highly visible location that provides a dynamic backdrop for photographs
21 with the statue.

22 59. Thus, the City's decision to close Museum Way for the three-year License
23 Agreement term, and possibly longer with contemplated extensions, is a violation of the Vehicle
24 Code. The City does not have the authority to close Museum Way to install the Forever Marilyn
25 statue in the public street.

26 60. While Vehicle Code § 21101.4 does provide local jurisdictions with the authority to
27 temporarily close a public street, specific procedures must be followed and findings must be
28 adopted. The City has not followed the specific procedures under this code section, which require

1 findings be made at a public hearing addressing the street closure. The City has not held a public
2 hearing on the closure of Museum Way, despite the fact the City previously informed the public
3 that it would do so.

4 61. The City is also unable to make the findings required for a temporary street closure
5 under the Vehicle Code. The City must be able to find that the street closure “will not
6 substantially adversely affect traffic flow, safety on the adjacent streets or in the surrounding
7 neighborhoods, the operation of emergency vehicles, the performance of municipal or public
8 utility services, or the delivery of freight by commercial vehicles in the area of the highway
9 proposed to be temporarily closed.” (Vehicle Code § 21101.4, subd. (a)(4).) The City has
10 presented no evidence that would support such a finding. To the contrary, the recently adopted
11 2016 Downtown Palm Springs Specific Plan found the section of Museum Way planned for
12 closure is necessary to address previously existing traffic flow problems: “The existing grid
13 circulation of Main Street [renamed Museum Way] extending to Belardo Road [renamed Museum
14 Drive at this location] **is essential to successful traffic circulation**, and the extension completes
15 the grid circulation pattern essential to improved traffic circulation in the Specific Plan”
16 (Downtown Palm Springs Specific Plan, p. III-24, emphasis added.)

17 62. Further, Vehicle Code § 21101.4 considers a temporary closure to be 18 months or
18 less. (*Id.*, subd. (b) [an extension may be allowed at the end of 18 months, but only after a new
19 public hearing and adoption of additional findings].) The City’s planned three-year and
20 potentially longer closure of Museum Way exceeds this definition of “temporary” closure.

21 63. “With a minor exception not here applicable, a city is not expressly authorized to
22 close a street for any purpose other than that it is unnecessary for present or future uses as a street.
23 (*Citizens Against Gated Enclaves v. Whitley Heights Civic Assn.* (1994) 23 Cal.App.4th 812, 821,
24 28 Cal.Rptr.2d 451.) “What the City cannot do is wave the magic wand and declare a public street
25 not to be a public street.” (*Ibid.*) To do so is a legally invalid.

26 /

27 /

28 /

1 **SECOND CAUSE OF ACTION**

2 **(VIOLATION OF STREETS AND HIGHWAYS CODE)**

3
4 64. Petitioner incorporates by reference herein each and every allegation contained in
5 the previous paragraphs.

6 65. The Streets and Highways Code sets for the street vacation process required for a
7 local agency to fully or partially abandon or terminate the public right to use a street, highway or
8 public service easement. (See Sts. & Hy. Code, § 8309 [definition of street vacation].)

9 66. A local agency may initiate street vacation proceedings either by its own initiative
10 or pursuant to a request of an interested person. The street vacation proceeding commences with
11 the clerk of the legislative body setting an administrative hearing for the street vacation and
12 providing public notice of that hearing. (Sts. & Hy. Code, § 8320.)

13 67. At that public hearing, the legislative body shall hear evidence from the public
14 regarding the street vacation. "If the legislative body finds, from all the evidence submitted, that
15 the street, highway, or public service easement described in the notice of hearing or petition is
16 unnecessary for present or prospective public use, the legislative body may adopt a resolution
17 vacating the street, highway, or public service easement. The resolution of vacation may provide
18 that the vacation occurs only after conditions required by the legislative body have been satisfied
19 and may instruct the clerk that the resolution of vacation not be recorded until the conditions have
20 been satisfied." (Sts. & Hy. Code, § 8324.)

21 68. In November 2020, the City Council provided direction to City staff to commence
22 street vacation proceedings for Museum Way. The City has yet to hold a public hearing on street
23 vacation as required by the Streets and Highways Code. The City has not adopted a resolution
24 vacating any public right to use Museum Way.

25 69. Subsequent to receiving that direction from the City Council and informing the
26 public a hearing would be held on the street vacation, the City has determined it will not follow
27 the street vacation procedures set forth in the Streets and Highways Code. The City has
28 acknowledged that it is unlikely it could make the findings required to vacate Museum Way.

1 70. The City's plan to eliminate vehicular traffic from Museum Way between Belardo
2 Road and Museum Drive for a period of three years or longer without complying with street
3 vacation procedures is a violation of the Streets and Highways Code.

4
5 **THIRD CAUSE OF ACTION**
6 **(VIOLATION OF PALM SPRINGS MUNICIPAL CODE)**
7

8 71. Petitioner incorporates by reference herein each and every allegation contained in
9 the previous paragraphs.

10 72. Under Vehicle Code § 21101, local authorities are allowed to adopt rules and
11 regulations by ordinance or resolution for specified matters. One of those specified matters for
12 which a local authority may adopt rules and regulations is: "Temporarily closing a portion of any
13 street for celebrations, parades, local special events, and other purposes when, in the opinion of
14 local authorities having jurisdiction or a public officer or employee that the local authority
15 designates by resolution, the closing is necessary for the safety and protection of persons who are
16 to use that portion of the street during the temporary closing." (Veh. Code, § 21101, subd. (e).)

17 73. The City has adopted an ordinance addressing street closures pursuant to this section
18 of the Vehicle Code. Palm Springs Municipal Code section 12.80.010 provides:

19 (a) The director of community development for the city of Palm Springs may close a
20 portion of any highway, street or public way for celebrations, parades, local special events,
21 and other purposes when, in the opinion of such director, the closing is necessary for the
22 safety and protection of persons who are to use that portion of the highway, street or public
23 way during the closing. In addition the police department may close any highway, street,
24 public way or any portion thereof affected by traffic congestion upon a determination by
25 the ranking peace officer on duty within the area of the following: (1) That such
26 assemblage or procession of vehicles threatens injury to persons gathered in the area for the
27 purpose of celebrating a holiday or other special event; or (2) That the traffic load on a
28 particular highway, street, public way or a portion thereof, is such that little or no vehicular

1 flow is occurring and a significant number of vehicles are not promptly moving when an
2 opportunity arises to do so.

3 (b) Any highway, street, or public way, or any portion thereof closed pursuant to this
4 section shall remain closed only for the time and distance that a threat to the public peace,
5 health, safety or welfare exists. (Ord. 1372 § 1, 1991)”

6 74. Despite having set forth these procedures, the City’s Director of Community and
7 Economic Development has not issued an approval of the closure of Museum Way between
8 Belardo Road and Museum Drive to allow for the installation of the Forever Marilyn statue in this
9 roadway. Thus, the City has failed to follow its own procedures for street closure.

10 75. Had the City Director of Community Development issued an approval of the closure
11 of Museum Way between Belardo Road and Museum Drive to allow for the installation of the
12 Forever Marilyn statue in this roadway, members of the public would have had the opportunity to
13 appeal this determination to the City Council pursuant to Palm Springs Municipal Code section
14 2.05. The City’s failure to follow its own procedures has prevented the public from addressing
15 the issue of street closure.

16 76. Additionally, the street closure contemplated by the City is not allowed by the
17 Vehicle Code § 21101, subd (e) and the City does not have the authority to adopt a Municipal
18 Code section that expands its ability to close public streets. Thus, in addition to failing to follow
19 its own procedures, the City is also not allowed to approve the planned closure of Museum Way
20 pursuant to this section.

21 77. While Vehicle Code § 21101, subd (e) does not specifically define the term that
22 would be considered a temporary, the examples it provides make clear that only a very short
23 closure term is allowed. The examples provided are celebrations, parades, and local special
24 events, all of which would typically last a day or a few days at most. There is nothing in this code
25 section that would support an interpretation of temporary to include a three-year or possibly
26 longer closure.

27 78. Moreover, in setting forth rules of a temporary street closure after a public hearing
28 and adoption of findings pursuant to Vehicle Code § 21101.4, the state legislature defined a

1 temporary closure as less than 18 months. It would be antithetical to the purposes of the Vehicle
2 Code and the state legislature's reserved jurisdiction of public streets and highways to require a
3 public hearing for street closures of up to 18 months when it can be shown that the closure "will
4 not substantially adversely affect traffic flow, safety on the adjacent streets or in the surrounding
5 neighborhoods," but not require any public hearing process or findings to close a public street for
6 three years based on a desire to place a statue in a location with the most photogenic backdrop.

7
8 **FOURTH CAUSE OF ACTION**

9 **(VIOLATION OF STATE PLANNING AND ZONING LAW)**

10 79. Petitioner incorporates by reference herein each and every allegation contained in
11 the previous paragraphs.

12 80. Under State Planning and Zoning Law "No local public works project may be
13 approved, no tentative map or parcel map for which a tentative map was not required may be
14 approved, and no zoning ordinance may be adopted or amended within an area covered by a
15 specific plan unless it is consistent with the adopted specific plan." (Gov. Code, § 65455.)

16 81. Publics works projects is not specifically defined by the Government Code, but is a
17 broad term covering public infrastructure projects. The closure of a public street should be
18 considered a public works work project, and thus must comply with the Downtown Palm Springs
19 Specific Plan.

20 82. The three-year or longer closure of Museum Way between Belardo Road and
21 Museum Drive is inconsistent with the Downtown Palm Springs Specific Plan in a number of
22 respects, resulting in a violation of Government Code § 65455.

23 83. Museum Way was created by the 2016 Downtown Palm Springs Specific Plan as a
24 22 feet wide public street between Museum Drive and Belardo Drive. (DPSSP p. IV-5.) The
25 extension of Museum Way to the Palm Springs Art Museum was found to be "essential to
26 improved traffic circulation in the Specific Plan." (DPSSP p. III-24.) The Specific Plan
27 "restore[s] the circulation grid in the Downtown area, including a new east-west oriented public
28 street, called [Museum Way] connecting Palm Canyon Drive to ... the entry of the Palm Springs

1 Art Museum. (DPSSP p. II-3.) Thus, the City's closure of this street to vehicular traffic is
2 inconsistent with the Specific Plan's circulation plan for Downtown Palm Springs.

3 84. Museum Way was also created to serve as a view corridor for the main visual focal
4 point of the entire Specific Plan area—the Palm Springs Art Museum. (DPSSP p. III-32.) This
5 street was planned to as an “important vista westerly along [Museum Way] [that] will provide the
6 visual presence for the Palm Springs Art Museum and the San Jacinto Mountains which did not
7 exist with development of the former Desert Fashion Plaza.” (DPSSP p. II-3.) The placement of
8 the 26-foot-tall Forever Marilyn statue in the middle of this designated view corridor will
9 substantially block westerly views of the Palm Springs Art Museum, making it inconsistent with
10 the Specific Plan.

11 **FIFTH CAUSE OF ACTION**

12 **(DECLARATORY RELIEF)**

13
14 85. Petitioner incorporates by reference herein each and every allegation contained in
15 the previous paragraphs.

16 86. An actual controversy exists between Petitioner and the City because the City has
17 failed to comply with the Vehicle Code, the Streets and Highways Code, the City's Municipal
18 Code and Planning and Zoning Law.

19 87. Petitioner is beneficially interested in having the City comply with all applicable
20 provisions of law and their legal duties, as set forth herein.

21 88. A judicial declaration and determination is necessary and appropriate at this time in
22 order that the parties ascertain their rights and obligations with respect to the City's obligations
23 under the Vehicle Code, the Streets and Highways Code, the City's Municipal Code and Planning
24 and Zoning Law and in order to resolve all controversies between the parties hereto regarding
25 such rights and duties.

26 89. Therefore, Petitioner seeks a declaration that the City's action to close Museum
27 Way is an abuse of discretion, or otherwise fails to comply with the law.

90. Unless declaratory relief is granted, the City may attempt to close other public streets in violation of the Vehicle Code, the Streets and Highways Code, the City's Municipal Code and Planning and Zoning Law.

PRAYER FOR RELIEF

In each of the respects enumerated above, the City has violated its duties under law, abused its discretion, failed to proceed in the manner required by law, and decided the matters complained of without the support of substantial evidence.

WHEREFORE, Petitioner prays for relief as follows:

1. For a peremptory writ of mandate ordering the City:
 - a. to void any approval requiring closure of Museum Way to public access, including vehicular access, in relation to the installation of the Forever Marilyn statue in this public street, including but not limited to the License Agreement;
 - b. to comply with the requirements of the Vehicle Code, the Streets and Highways Code, and the City's Municipal Code before approving any closure of Museum Way to public access, including vehicular access, in relation to the installation of the Forever Marilyn statue in this public street; and
 - c. to require any street closure in the Downtown Palm Springs Specific Plan area to be consistent with the Downtown Palm Springs Specific Plan.
2. For an order enjoining the City and Real Parties in Interest from taking any action in furtherance of the installation of the Forever Marilyn statue in Museum Way, including but not limited to closure of Museum Way to vehicular or other public access and construction of a base pedestal for the statue in Museum Way until the

1 City has complied with the Vehicle Code, the Streets and Highways Code, the
2 City's Municipal Code and Planning and Zoning Law.

3
4 3. For a declaration that the City's closure of Museum Way to public access, including
5 vehicular access, in relation to the installation of the Forever Marilyn statue in this
6 public street, is a violation of the Vehicle Code, the Streets and Highways Code, the
7 City's Municipal Code and Planning and Zoning Law.

8
9 4. For Petitioner's costs and attorney fees pursuant to Code of Civil Procedure section
10 1021.5; and

11
12 5. For other and further relief as the Court finds proper.
13
14

15 Date: March 18, 2021

Respectfully Submitted,

16 CHATTEN-BROWN, CARSTENS & MINTEER LLP

17
18 By: 

19 Amy Minter, Attorneys for Petitioner
20
21
22
23
24
25
26
27
28

VERIFICATION

I, Nickie McLaughlin, declare that I am a founding member of the Committee to Relocate Marilyn, the petitioner in this matter. I have read the above Petition for Writ of Mandate and Complaint and know the contents. I am informed and believe that the matters in this petition and complaint are true and, on that ground, allege that the matters stated in the petition and complaint are true.

I declare under penalty of perjury of the laws of California that the foregoing is true and correct. Executed this 15th day of March 2021, in Rancho Mirage, Riverside County, California.

