

<p>DISTRICT COURT, DENVER COUNTY, COLORADO  Court Address: 1437 Bannock Street  Denver, CO 80202</p> <hr/> <p><b>Intervenor/Plaintiff:</b> INTER-NEIGHBORHOOD COOPERATION, INCORPORATED, a Colorado non-profit corporation.</p> <p><b>Defendants:</b> CITY &amp; COUNTY OF DENVER, a municipal corporation; and SCHOOL DISTRICT NO. 1 IN THE CITY AND COUNTY OF DENVER, a public entity.</p> <hr/> <p>Attorney for Intervenor/Plaintiff:  John Case, Esq. Atty reg. # 2431  Benson &amp; Case, LLP  1660 So. Albion Street, Suite 1100  Denver, Colorado 80222  Phone Number: (303) 757-8300  FAX Number: (303) 753-0444  E-mail: case@bensoncase.com</p>	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p> <hr style="border-top: 1px dashed black;"/> <p style="text-align: center;">Case No.:  2013CV032444</p> <p style="text-align: center;">Courtroom 376</p>
<p><b>INTERVENOR’S COMPLAINT AND JURY DEMAND</b></p>	

Intervenor/Plaintiff Inter-Neighborhood Cooperation, Incorporated (“INC”), by and through counsel, BENSON & CASE, LLP, respectfully submits this Intervenor’s Complaint and Jury Demand.

**SUMMARY OF COMPLAINT**

INC’s First Claim for Relief seeks a declaratory judgment that Hampden Heights North Park (“HHNP”) is park land owned by Defendant City and County of Denver (“the City”). INC asserts that by signing a contract to trade part of the park land for an office building downtown, the City acted *ultra vires*, in violation of City Charter section 2.4.5, which prohibits the sale of any park land without a vote of the people. INC asks the Court to enjoin the City from transferring HHNP.

INC’s Second Claim for Relief seeks a Declaratory Judgment that on April 1, 2013 City Council subdivided HHNP into two separate parcels, each with different land uses, and designating 10.771 acres of open space for development by Defendant School District No. 1 in the City and County of Denver (“DPS”). INC asserts that subdividing HHNP constitutes new municipal policy and legislative action by the City.

INC's Third Claim for Relief seeks a Declaratory Judgment that DPS lacks good title to the aforementioned 10.771 acre parcel because the City lacked authority to sever the parcel from HHNP and sell it to DPS absent voter approval. INC seeks an injunction precluding DPS from making any use of the land inconsistent with its park status.

### **PARTIES, JURISDICTION AND VENUE**

1. INC is a private, non-profit corporation organized and existing under the laws of Colorado with its office located at P.O. Box 300684, Denver, CO 80218-0684.
2. INC's mission is to advocate for Denver citizens by bringing together various neighborhood organizations to cooperate in addressing City issues.
3. INC is a coalition of representatives from ninety-four Denver registered neighborhood organizations ("RNO"). An RNO is a group comprised of people residing in a particular neighborhood. RNOs register with the City and receive advanced notification of certain proposed actions in the neighborhood such as zoning changes, applications for landmark designations, liquor license applications, and other proposals that might affect the neighborhood.
4. Among the organizations participating in INC is Hampden Heights Civic Organization, the RNO for the area in which the land at issue in this case is located.
5. INC's mission is to advise City government on neighborhood issues, allowing neighborhoods to speak as one on issues such as zoning, transportation, education, parks and recreation, and public safety.
6. Preservation of park land is a key element of INC's mission. In January 2013, INC sent a letter to the City advising passage of an ordinance designating as park land all Denver public real property managed by the City's Parks and Recreation Department but not previously designated park land by ordinance. INC and the RNOs it represents take the position that maintaining park land is vital to Denver citizens' quality of life.
7. INC favors strict enforcement of Section 2.4.5. of the City Charter, which provides that the City cannot sell park land absent voter approval. As to land acquired by the City prior to 1955, it is INC's view that character and use of the land determines whether or not it qualifies as a park.
8. In this case, the City has arbitrarily and without authority split up a parcel of land acquired in 1936, property that clearly qualified as park land at the time of acquisition and thereafter, and sold part of the park land to DPS without approval of the electorate. INC and its member RNOs believe that the City's actions in this case pose a grave threat to both park land acquired before 1955 and the right of Denver citizens to vote on whether or not park land should be sold.

9. The City is a duly organized Colorado municipal corporation with its offices at 1437 Bannock Street, Denver, CO 80202.

10. DPS is a duly organized Colorado school district and public entity having its offices at 900 Grant Street, Denver, CO 80203.

11. This Court has jurisdiction over the subject matter of this action and personal jurisdiction over the City and DPS.

12. Venue lies in this Court pursuant to C.R.C.P. 98.

### **FACTS**

13. INC incorporates all other allegations of this Intervenor's Complaint as if fully rewritten.

14. This action concerns 26 acres of park land referred to on Denver city maps as "Hamden Heights North Park" ("HHNP").

15. HHNP is a triangular shaped parcel located immediately west of South Havana St. and immediately north of E. Girard Ave. in the city and county of Denver.

16. The City acquired title to HHNP on or about October 9, 1936 by deed recorded at Book 379, Page 65, in the records of Arapahoe County ("the 1936 Deed").

17. At all times relevant zoning authorities and the City zoned HHNP as "Public - Open Space - Park Land."

18. At all times from 1967 through and including April 1, 2013 the City identified HHNP as "Public - Open Space - Park Land" on its official zoning and planning maps that the city published and distributed to Denver citizens.

19. At all times from 1967 until 2012, city officials represented to the citizens of Denver and their predecessors in interest that HHNP was park land and would remain a park in perpetuity.

20. At all times relevant from October 1936 until present, the citizens of Denver, including the current citizens of Denver and their predecessors in interest, used HHNP for recreation and park purposes, including but not limited to horseback riding, hayrides, bicycling, walking, bird watching, observing native prairie grasses and fauna, wildlife watching, playing, wading and exploring in Cherry Creek, finding arrowheads and animal bones hunted by earlier civilizations, and enjoying the beautiful vistas along Cherry Creek.

21. At all times since 1936 HHNP has been owned and managed by the Denver Department of Parks and Recreation and its predecessor departments.

22. At all times since 1967 the city expended public funds to maintain HHNP, mow the grasses, control weeds, and control prairie dogs. The city expended public funds to construct physical improvements for the benefit of Denver citizens including but not limited to (1) asphalt bicycle trails, (2) concrete bicycle trails, (3) bridges over Cherry Creek and its tributaries for bicyclists and pedestrians, (4) a split rail fence to demarcate the west boundary of HHNP at the junction with the greenbelt trail to Hampden Heights Park; and (5) signs to post park rules for HHNP, signs prohibiting motor vehicles in HHNP, and signs providing directions to bicyclists and pedestrians.

23. HHNP and Paul A. Hentzell Park form a continuous, open space park and Natural Area within Denver. The Natural Area borders the banks of Cherry Creek. It includes a Historic Trail over which pioneers and gold prospectors traveled along Cherry Creek to Denver. It was formerly used as a Native American hunting ground for bison and deer. Motor vehicles are not allowed. The natural area is home to numerous and fascinating indigenous species of plant and animal life, including deer, fox, coyote, skunk, raccoon, muskrat, prairie dogs, rabbits, beaver, hummingbirds, chickadees, robins, sparrows, magpies, crows, woodpeckers, flickers, finches, doves, blackbirds, other small birds, butterflies, caterpillars, ant colonies, roly poly bugs, insects, crawdads, minnows, bull snakes, garter snakes, ducks, geese, heron, owls, and hawks, all of which are seen, heard and enjoyed on a regular basis by citizens of Denver and their children who walk and play and bicycle in the natural area.

24. Section 2.4.5 of the Denver City Charter states:

**Charter § 2.4.5 - Sale and leasing of parks.**

Without the approval of a majority of those registered electors voting in an election held by the City and County of Denver, no park or portion of any park belonging to the City as of December 31, 1955, shall be sold or leased at any time, and no land acquired by the City after December 31, 1955, that is designated a park by ordinance shall be sold or leased at any time, provided, however, that property in parks may be leased for park purposes to concessionaires, to charitable or nonprofit organizations, or to governmental jurisdictions. All such leases shall require the approval of Council as provided for in Article III of this Charter. No land acquired by the City after December 31, 1955, shall be deemed a park unless specifically designated a park by ordinance.

25. HHNP belonged to the city as of December 31, 1955.

26. HHNP was managed by the City for park and recreational purposes from October 9, 1936 through and including April 1, 2013.

27. At the invitation of City officials, HHNP was used by citizens of Denver for park and recreational purposes from October 9, 1936 through and including April 1, 2013.
28. The City Municipal Code, Sec. 39-191 (2) defines *City park land* as follows:

*City park land.* Any parks, parkways, mountain parks and other recreational facilities, as well as other land, waterways and water bodies, owned, operated or controlled by the department of parks and recreation.
29. At all times relevant, HHNP met the above definition of “*City park land.*”
30. The City Municipal Code 39-191 (1) defines *Natural Area* as follows:

*Natural area.* A geographical area of land of either geologic or biologic significance which retains, has had reestablished, or has the potential to reestablish many aspects of its natural character. Such an area could now or in the future support native vegetation, associated biological and geological features, or provide habitat for indigenous wildlife or plant species. Such an area could host geological, scenic, or other natural features of scientific, aesthetic, or educational value.
31. At all times relevant, HHNP met the above definition of “*Natural Area.*”
32. At all times since 1936 HHNP is and was a park.
33. HHNP has remained in its natural state and has been open to the use and enjoyment of the public since the City acquired HHNP in 1936.
34. At all times relevant the City allowed all citizens of Denver, and members of the public at large, to use HHNP and Paul A. Hentzell Park as a single, continuous, open space, Park and Natural Area.
35. HHNP has been designated by common law use as park land. *McIntyre v. Board of Commissioners of El Paso County*, 61 P. 237 (Colo. App. 1900)
36. The City owns all Denver park land in trust as trustee for the citizens of Denver.
37. The City owns HHNP in trust as trustee for the citizens of Denver.
38. In approximately 2011, agents of the City and DPS entered into a secret oral agreement to trade part of HHNP for an office building at 1330 Fox St., Denver, CO.

39. The City and DPS entered into the secret oral agreement without notice to the public or other interested parties, including but not limited to the citizens of Denver, Denver Parks and Recreation Advisory Board, INC, and members of the Denver City Council.

40. On April 1, 2013 the Denver City Council conducted a meeting at which it adopted two ordinances, numbered 168 and 170. The ordinances subdivided HHNP into two separate parcels, a north parcel consisting of approximately 16 acres, and a south parcel consisting of 10.771 acres.

41. Ordinance No. 168 designated the north 16 acres of HHNP as part of Paul A. Hentzell Park. The City mayor and Debra Johnson, the Clerk and Recorder, signed Ordinance 168 on April 2, 2013. Notice of Ordinance 168 was published in the Daily Journal March 29 and April 5, 2013.

42. Ordinance No. 170 approved transfer of the southern 10.771 acres HHNP to DPS pursuant to a written contract (“the Contract”). The Mayor and the Clerk and Recorder signed Ordinance 170 on April 2, 2013. Notice of Ordinance 170 was published in the Daily Journal March 29 and April 5, 2013.

43. The Contract trades 10.771 acres of HHNP for the office building at 1330 Fox St., Denver, CO.

44. On information and belief, the Contract was scheduled to close on or about July 10, 2013.

45. The right of Denver citizens to vote is a fundamental right guaranteed by the U.S. Constitution and the Constitution of Colorado.

46. The right of Denver citizens to vote prior to the sale of any city park land is a fundamental right guaranteed by Section 2.4.5. of the City Charter.

### **FIRST CLAIM FOR RELIEF**

**Against the City and DPS for Declaratory Judgment that (1) Hampden Heights North Park is park land owned by the City; (2) that the City violated City Charter Section 2.4.5 and acted *ultra vires* in contracting to transfer the park land without a vote of the people; and (3) for Injunctive Relief enjoining the City from transferring HHNP.**

47. INC incorporates all other allegations of this Intervenor’s Complaint as if fully rewritten.

48. Transfer of HHNP without a vote of the people violates City Charter section 2.4.5.

49. The City acted *ultra vires*, in excess of its lawful authority, by entering into a contract to sell park land without a vote of the people.

50. The Contract benefits the mayor and city officials, who avoid the obligation to pay full cash value for an office building at 1330 Fox St., by trading away park land that belongs to the people and cannot be replaced.

51. The Contract benefits DPS by providing DPS with open space park land that has commercial value and development potential, in exchange for property at 1330 Fox St. that DPS bondholders must value at more than \$7 Million, but which has actual market value of less than \$4 Million.

52. The Contract also benefits DPS by requiring the City to pay \$705,000 cash.

53. The City is estopped from denying the dedication and designation of HHNP as a Park and Natural Area.

54. Allowing the City or DPS to develop HHNP would be utterly inconsistent with the purpose for which HHNP was dedicated.

55. If HHNP is developed, its intended and dedicated use as a Park and Natural Area will be destroyed forever, not only for INC, but also for all future generations of Denver citizens.

56. Unless the Court grants the relief requested by INC, then INC, its constituent RNOs and the citizens of Denver will suffer imminent injury in fact to a legally protected interest fairly traceable to the Defendants' conduct.

**WHEREFORE**, on its First Claim for Relief, INC prays that this Honorable Court enter Declaratory Judgment that HHNP is and at all times was a dedicated park, owned by the City as trustee in trust for the benefit of Denver citizens; that HHNP is and at all times was a designated Park and Natural Area under the ownership and management of the Department of Denver Parks and Recreation; that transfer of HHNP without a vote of the people violates Charter section 2.4.5; that the City acted *ultra vires*, in excess of its lawful authority, by entering into a contract to transfer HHNP without a vote of the people; and that Ordinance 170, series 2013 and the Contract are null and void because they are *ultra vires* acts and violate Section 2.4.5 of the Denver Charter. INC prays further that the Court grant permanent injunctive relief enjoining the City from selling, transferring, leasing, developing, or alienating HHNP absent approval by the voters in accordance with Section 2.4.5. of the City Charter. INC prays further that the Court grant permanent injunctive relief enjoining the City from using, zoning, or listing HHNP in any way that is inconsistent with its intended and dedicated use as a Park, Natural Area, and Open Space; and commanding the City to restore HHNP to its intended state as a Park, Natural Area, and Open Space. INC prays further for costs including expert witness fees, for reasonable attorney fees, and for all other appropriate relief.

## SECOND CLAIM FOR RELIEF

**Against the City and DPS for Declaratory Judgment that on April 1, 2013 city council's subdivision of HHNP's into two separate parcels, each with different land uses, and designating 10.771 acres of open space for commercial development, constitutes new municipal policy, rezoning of open space land, and legislative action by the City.**

57. INC incorporates all other allegations of this Intervenor's Complaint as if fully rewritten.

58. The subdivision of HHNP into two parcels on April 1, 2013 constituted legislative action in that: (1) it reversed the City's land use policy in effect for 45 years, and established new land use policy; (2) it created two parcels with different land uses; (3) it effectively re-zoned 10.771 acres from "Public – Open Space – Park Land" to a commercial building site for a school or other commercial development.

59. The subdivision of HHNP into two parcels on April 1, 2013 established new precedent and new policy that the Manager of the Department of Parks and Recreation City could "de-designate" land from previously designated Natural Areas

60. The subdivision of HHNP into two parcels on April 1, 2013 established new precedent and new policy that the City, without a vote of the people, could sell or trade land that was used as a park and owned and managed by the Department of Parks and Recreation for 45 years.

61. The subdivision of HHNP into two parcels on April 1, 2013 established new precedent and new policy that, without a vote of the people, the City could sell or trade land that belonged to the city prior to December 31, 1955 after: (a) the City represented to the citizens of Denver that the land was public open space park land for 45 years, (b) the Department of Parks and Recreation used public funds from the Parks Department budget to manage and maintain the park for 45 years, (c) the Department of Parks and Recreation used public funds from the Parks Department budget to construct improvements consisting of modern bicycle and pedestrian trails and bridges; (d) at the invitation of the city, citizens of Denver used and enjoyed HHNP for park and recreation purposes for 45 years.

**WHEREFORE**, on its Second Claim for Relief, INC prays that this Honorable Court enter Declaratory Judgment that on April 1, 2013 city council's subdivision of HHNP's into two separate parcels, each with different land uses, and designating 10.771 acres of open space for commercial development, constitutes new municipal policy and legislative action by the City. INC prays further for costs including expert witness fees, for reasonable attorney fees, and for all other appropriate relief.

### **THIRD CLAIM FOR RELIEF**

#### **Against DPS for Declaratory and Injunctive Relief**

62. INC incorporates all other allegations of this Intervenor's Complaint as if fully rewritten.

63. DPS intends to take title to 10.771 acres of HHNP and develop it commercially, including construction of a two story elementary school for 500 students K-5, and an early learning center for 250 students pre-K.

64. Such action would be improper because DPS lacks good title to the 10.771 acres since the conveyance to DPS was an *ultra vires* act by the City in violation of City Charter Section 2.4.5.

65. At all times relevant, HHNP has been zoned Public Open Space Park land.

66. The proposed development of HHNP violates its zoning classification as Public Open Space Park land.

67. The 10.771 acres lies in a flood plain.

68. The 10.771 acres is bordered on the east by South Havana Street.

69. South Havana St. is a five lane highway with a 45 mph speed limit.

70. The location is unsafe and inappropriate for an elementary school.

71. DPS has other suitable locations to construct an elementary school, if there is an actual need for a new elementary school.

72. Development of HHNP by DPS will impair use of the historic Cherry Creek Trail by cyclists.

73. Approximately 2000 cyclists per week currently use the Cherry Creek Trail on HHNP and will be adversely affected by DPS's planned development.

74. Allowing DPS to develop HHNP would be utterly inconsistent with the purpose for which HHNP was dedicated.

75. If HHNP is developed, its intended and dedicated use as a Park and Natural Area will be destroyed forever, not only for INC, but also for all future generations of Denver citizens.

76. Unless the Court grants the relief requested by INC, then INC, its constituent RNOs, and the citizens of Denver, will suffer imminent injury in fact to a

legally protected interest fairly traceable to the Defendants' conduct.

**WHEREFORE**, on its Third Claim for Relief, INC prays that this Honorable Court find that HHNP is and at all times was a dedicated park, owned by the City as trustee in trust for the benefit of Denver citizens; that HHNP is and at all times was a designated Park and Natural Area under the jurisdiction of the Department of Denver Parks and Recreation; that transfer of HHNP without a vote of the people violates Charter section 2.4.5; that the City acted *ultra vires*, in excess of its lawful authority, by entering into a contract to transfer park land without a vote of the people; and that Ordinance 170, series 2013 and the Contract are null and void because they violate Section 2.4.5 of the Denver Charter. INC prays further that the Court grant permanent injunctive relief enjoining DPS from acquiring or developing HHNP absent voter approval. INC prays further that the Court grant permanent injunctive enjoining DPS from using HHNP in any way that is inconsistent with its intended and dedicated use as a Park, Natural Area, and Open Space; and that the Court command DPS to restore HHNP to its intended state as a Park, Natural Area, and Open Space. INC prays further for costs including expert witness fees, for reasonable attorney fees, and for all other appropriate relief.

**JURY DEMAND**

INC demands a trial by jury on all issues properly triable thereto.

Respectfully submitted July 17, 2013.

BENSON & CASE, LLP

*s/John Case*

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John Case #2431  
Attorney for Intervenor/Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that on July 17, 2013 true and correct copies of the foregoing **INTERVENOR'S COMPLAINT AND JURY DEMAND** were served on the following:

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*s/Karen Corner*  
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Karen Corner