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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF SAN DIEGO, CENTRAL COUNTY DIVISION**

15 **CITRUS ST PARTNERS, LLC**

16 PETITIONER,

17 v.

18 **CITY OF LEMON GROVE; CITY**
19 **COUNCIL OF THE CITY OF LEMON**
20 **GROVE; AND DOES 1-10,**

21 RESPONDENTS.

22 **DOES 11-20,**

23 REAL PARTIES IN INTEREST.

) **CASE NO: 37-2019-00064890-CU-MC-CTL**

)
) **VERIFIED PETITION FOR WRIT OF**
) **MANDATE AND COMPLAINT FOR**
) **DECLARATORY AND INJUNCTIVE**
) **RELIEF**

) [CODE CIV. PROC. §§ 1060, 1085, 1094.5]

24
25 Petitioner Citrus St Partners, LLC (“Petitioner” or Citrus St”) files this Petition for Writ
26 of Mandate and Complaint (“Petition”) against defendants and respondents, City of Lemon
27 Grove, the City Council of the City of Lemon Grove, and Does 1-10 inclusive (collectively
28 “City” or “Respondents”) as follows:

INTRODUCTION

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2 1. This action challenges the November 19, 2019 decision of the City to deny
3 Conditional Use Permit Application CUP-190-0001 (“Application”), a request to establish a
4 medical marijuana dispensary at 7309 Broadway in the General Commercial Zone, submitted by
5 Petitioner.

6 2. In denying the Application, the City ignored the recommendations of City staff
7 and evidence in the record to reach a decision based on findings not supported by the weight of
8 the evidence.

9 3. The City’s denial of the Application constitutes an abuse of discretion and must
10 be overturned.

11 4. Petitioner files this action seeking a writ of mandate under Code of Civil
12 Procedure sections 1085 and 1094.5 and declaratory relief under Code of Civil Procedure section
13 1060, directing the City to vacate its November 19, 2019 decision to deny Petitioner’s
14 Application, and to revise its decision to conform with the law.

PARTIES

15
16 5. Petitioner Citrus St Partners, LLC is a California limited liability corporation
17 incorporated under the laws of the State of California, having its principal place of business in
18 Lemon Grove, California.

19 6. Respondent City of Lemon Grove is, and at all times herein mentioned was, a
20 political subdivision of the State of California responsible for regulating and controlling land use
21 within the City, including but not limited to implementing and complying with the provisions of
22 the California Planning and Zoning Law, the City’s General and Specific Plans, and the City’s
23 Municipal Code.

24 7. Respondent City Council of the City of Lemon Grove is the legislative authority
25 of the City responsible for enacting ordinances, resolutions, and orders necessary for governing
26 the affairs of the City.

27 8. Petitioner is unaware of the true names and capacities of Respondents fictitiously
28 named DOES 1 through 10 and sue such respondents by fictitious names. Petitioner is informed

1 and believes, and on the basis of such information and belief, alleges the fictitiously named
2 respondents are also responsible for the actions described in this Petition. When the true
3 identities and capacities of these respondents have been determined, Petitioner will amend this
4 Petition, with leave of the court if necessary, to insert such identities and capacities.

5 9. Petitioner is unaware of the true capacities of Real Parties in Interest Does 11
6 through 20 and sues such real parties in interest by fictitious names. Petitioner is informed and
7 believes, and thereon alleges, that the fictitiously named real parties in interest are directly and
8 materially affected by the actions described in this Petition. When the true identities and
9 capacities of these real parties in interest have been determined, Petitioner will amend this
10 Petition, with leave of the court if necessary, to insert such identities and capacities.

11 10. Petitioner is beneficially interested in CUP-190-0001 and, therefore, has standing
12 to assert the claim alleged in this action. Petitioner's interests were adversely affected when the
13 City arbitrarily and unlawfully denied CUP-190-0001.

14 11. Petitioner is a business owner within the City of Lemon Grove and has a
15 significant stake in ensuring that the City proceeds in accordance with law.

16 12. Petitioner seeks to compel a public duty in the form of the City complying with
17 state and local land use and zoning laws. Petitioner is concerned that the City's failure to
18 adequately perform its required duties is injurious to all property owners within the City of
19 Lemon Grove.

20 13. Petitioner has a direct and beneficial interest in the City's compliance with laws
21 bearing upon the approval or denial of permits for the establishment of medical marijuana
22 dispensaries in the City of Lemon Grove. These interests are directly and adversely affected by
23 the denial of the Application, which constitutes an abuse of discretion and a violation of Lemon
24 Grove Municipal Code section 17.28.050 as set forth in this Petition. The maintenance and
25 prosecution of this action will protect Petitioner's property rights and promote consistency and
26 transparency in the City Council's decision-making process.

27 14. Petitioner has performed any and all conditions required by law prior to filing the
28 instant action and has exhausted any and all available administrative remedies to the extent

1 required by law, including attendance a relevant public meetings and hearings, submitting
2 comments, and presenting oral testimony.

3 15. Respondents have taken final agency actions with respect to denying the
4 Application. Petitioner possesses no effective remedy to challenge the approvals at issue in this
5 action other than by means of this lawsuit.

6 16. On December 4, 2019, Petitioner provided notice to Respondents of Petitioner’s
7 intent to file a Petition for Writ of Mandate seeking to invalidate Respondents’ denial of the
8 Application.

9 17. Petitioner has filed this Petition within the deadlines established under Code of
10 Civil Procedure section 1094.5 and Lemon Grove Municipal Code (“LGMC”) section 1.16.030.

11 18. Petitioner has no plain, speedy, or adequate remedy in the course of ordinary law
12 unless this Court grants the requested writ of mandate to require Respondents to set aside their
13 denial of the Application. In the absence of such remedies Petitioner will be irreparably harmed.
14 No money damages or legal remedy could adequately compensate Petitioner for that harm.

15 **JURISDICTION AND VENUE**

16 19. Petitioner realleges and incorporates by reference the preceding paragraphs in
17 their entirety.

18 20. Pursuant to Code of Civil Procedure sections 526, 527, 1085, 1087, and 1094.5,
19 the San Diego County Superior Court has jurisdiction to issue a writ of mandate to set aside
20 Respondents’ decision to deny the Application.

21 21. Venue for this action properly lies in the Superior Court for the State of California
22 in and for the County of San Diego because Respondents’ main offices are located in, and the
23 actions complained of, have occurred and will occur in the County of San Diego.

24 **STATEMENT OF FACTS**

25 22. Petitioner realleges and incorporates by reference the preceding paragraphs in
26 their entirety.

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1 23. In 1996, California voters approved Proposition 215, also known as the Medical
2 Use of Marijuana Initiative and the Compassionate Use Act, giving seriously ill Californians the
3 right to obtain and use cannabis for medical purposes.

4 24. In 2003, the California State Legislature adopted Senate Bill 420, the Medical
5 Marijuana Program Act, to help clarify and implement Proposition 215 in part by authorizing
6 patients and primary caregivers to cultivate cannabis for medical purposes.

7 25. In 2015, the California State Legislature adopted Assembly Bill 243, Assembly
8 Bill 266, and Senate Bill 643, collectively known as the Medical Marijuana Regulation and
9 Safety Act, to establish a statewide regulatory framework and establish the Bureau of Medical
10 Marijuana Regulation for the regulation of medical marijuana activity in California.

11 26. In 2016, voters in the City of Lemon Grove passed Measure V, an initiative
12 removing the City’s prohibition of medical marijuana dispensaries (“MMDs”) and establishing
13 performance standards and a permit process by which MMDs may be established. The passage
14 of Measure V added Chapter 17.32 to the LGMC.

15 27. LGMC section 17.32.090 allows MMDs to be established by conditional use
16 permit (“CUP”) in general commercial zones according to certain performance standards.

17 28. LGMC section 17.32.090(B) prohibits the establishment of an MMD within 1,000
18 feet of a “regulated use” (other MMDs) or a “protected use” (public parks, playgrounds, licensed
19 day care facilities, schools, and alcohol and substance abuse treatment centers).

20 29. On April 3, 2019, Petitioner filed Conditional Use Permit Application CUP-190-
21 0001 to establish a MMD at 7309 Broadway (the “Project”), which the City deemed complete on
22 October 9, 2019.

23 30. On May 9, 2019, Kim Investments, LLC filed a Conditional Use Permit
24 Application CUP-190-0002 to establish a MMD at 3515 Harris Street (the “Harris Street
25 Project”), less than 1,000 feet from 7309 Broadway. The City deemed CUP-190-0002 complete
26 on November 7, 2019.

27 31. Due to the LGMC’s 1,000 foot distance requirement between regulated uses, the
28 approval of CUP-190-0001 for the Project necessitates the denial of CUP-190-0002 for the

1 Harris Street Project. Conversely, the approval of the Harris Street Project would preclude
2 Petitioner from obtaining a CUP for a MMD for the Project location at 7309 Broadway.

3 32. 7309 Broadway is a 0.13 acre (5,722 square feet) rectangular lot with a vacant
4 1,614 square foot commercial building fronting an improved portion of Broadway between
5 Citrus and Alford Streets. The Application requests authorization to operate the existing building
6 as a MMD and proposes an interior tenant improvement to create a 229 square foot reception and
7 security area facing Broadway, a 733 square foot access-controlled sales floor, and separate,
8 secure back office areas.

9 33. The Project also incorporates exterior improvements including landscaping,
10 fencing, lighting, parking, and signage, as well as public street improvements such as a regional
11 standard driveway, sidewalk, and street tree.

12 34. The Project is located in the General Commercial – Retail land use designation,
13 intended uses of which include retail operations providing a wide range of goods and services.

14 35. The Project is consistent with the General Plan and all applicable LGMC sections,
15 including those related to appropriate land uses, development standards, parking, traffic, street
16 improvements, loading, landscaping, screening, lighting, and signage.

17 36. In the City Council Staff Report, City staff recommended that the City Council
18 adopt a Resolution conditionally approving the Application.

19 37. On November 19, 2019, the City Council voted to deny the Application.

20 **FIRST CAUSE OF ACTION**

21 **Writ of Mandate - Code of Civil Procedure § 1094.5**

22 **(Against all Defendants)**

23 38. Petitioner realleges and incorporates by reference the preceding paragraphs in
24 their entirety.

25 39. In accordance with LGMC section 1.16.020, judicial review of any decision of the
26 City may be had pursuant to Code of Civil Procedure section 1094.5. Pursuant to Code of Civil
27 Procedure section 1094.5 subd. (c), this Court is directed to exercise its independent judgment on
28

1 the evidence to determine if the City Council’s findings are supported by the weight of the
2 evidence.

3 40. Under LGMC section 17.28.050(C), the approval of a CUP is predicated on four
4 findings: (1) the use is compatible with the neighborhood or the community; (2) the use is not
5 detrimental to the health, safety, convenience, or general welfare of persons residing or working
6 in the vicinity; (3) the use complies with performance standards according to LGMC section
7 17.24.080; and (4) the use is consistent with applicable provisions of the particular zoning
8 district and with policies and standards of the General Plan.

9 41. In denying the Application for CUP-190-0001, the City improperly determined
10 that findings (1) and (2) of LGMC section 17.28.050 (C) could not be made.

11 42. The City found that the Project “is not compatible with the neighborhood or the
12 community” (Finding 1) because it determined that a) the parking provided by the Project is
13 insufficient to meet the demand generated by the employees, and b) the Project’s parking lot
14 design would encourage customers to utilize vacant parking spaces in front of neighboring
15 businesses and residences.

16 43. The City also found that the Project “is detrimental to the health, safety,
17 convenience or general welfare of persons residing or working in the vicinity” (Finding 2)
18 because it determined that vehicle maneuverability limitations and customer traffic would result
19 in increased vehicle traffic and overflow parking.

20 44. The traffic and parking engineering analyses provided by the Project applicant,
21 correspondence with the City, and other documents, establishes that the parking and traffic
22 impacts anticipated by the Project were sufficiently addressed by the Project design.

23 45. LGMC section 17.24.010, which regulates off-street parking and provides
24 standards to ensure adequate accessibility and parking accommodations, specifically
25 countenances these concerns by requiring one parking space per five hundred square feet of floor
26 area for retail buildings.

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1 46. As the commercial building located at the Project is 1,614 square feet, no more
2 than four off-street parking spaces are required by regulation. Nevertheless, the Project provides
3 five off-street parking spaces.

4 47. The Project is further conditioned on employees parking at off-site Park and Ride
5 locations and using rideshare services to arrive at the business.

6 48. At no time during the November 19, 2019 public hearing did the City introduce
7 evidence or support for the Finding that the Project “is not compatible with the neighborhood or
8 the community” (Finding 1).

9 49. At no time during the November 19, 2019 public hearing did the City introduce
10 evidence or support for the Finding that the Project “is detrimental to the health, safety,
11 convenience or general welfare of persons residing or working in the vicinity” (Finding 2).

12 50. In making its Findings, the City failed to comply with the provisions of the
13 LGMC, and ignored the weight of the evidence in the record which established that all four
14 Findings of LGMC section 17.28.050(C) could be made.

15 51. The City abused its discretion under Code of Civil Procedure section 1094.5 and
16 failed to proceed in the manner required by law when it reached its decision to deny the
17 Application because its decision did not comport with findings that could be supported by the
18 evidence, and its findings did not comport with the evidence in the record.

19 52. The City acted arbitrarily, capriciously, and unreasonably, without any substantial
20 evidence, without advancing any legitimate public purpose, and in a manner which is
21 inconsistent with the requirements of law, thereby constituting a prejudicial abuse of discretion,
22 when the City denied the Application for CUP-190-0001.

23 53. Good cause exists for this Court to issue a writ of mandate directing the City to
24 vacate its November 29, 2019 decision denying CUP-190-0001 and enter a new decision in its
25 stead approving CUP-190-0001.

26 54. Petitioner has no plain, speed, and adequate remedy in the ordinary course of law
27 other than this writ of mandate.

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PRAYER FOR RELIEF

WHEREFORE, Petitioner prays for judgment as follows:

1. A peremptory writ of mandate commanding Respondent to vacate and set aside the November 19, 2019 decision denying CUP-190-0001 and enter a new decision in its stead approving CUP-190-0001;

2. A peremptory writ of mandate directing the City, in any further consideration of a new decision on the Application, to rely on and incorporate the state of the Project surroundings, solely with regard to the distance requirements set forth in LGMC section 17.32.090(B), that existed at the time of the November 19, 2019 City Council hearing;

3. For a temporary stay, temporary restraining order, and preliminary and permanent injunctions restraining the City and its agents, servants, and employees, and all others acting in concert with the City or on its behalf, from taking any action related to the approval of any CUPs for the operation of MMDs or any other regulated or protected uses pursuant to LGMC section 17.32.090(B), which might impair or prejudice Petitioner's ability to obtain a CUP, until the final ruling of this Court has been carried out;

4. For a declaration that the City failed to proceed in a manner required by law when it denied the Application for CUP-190-0001;

5. For costs of the suit;

6. An order awarding Petitioner its attorneys' fees under Code of Civil Procedure section 1021.5, Government Code section 800, and other applicable authority; and

7. For such other and further relief as the Court deems just and proper.

DATE: DECEMBER 5, 2019

VARCO & ROSENBAUM
ENVIRONMENTAL LAW GROUP LLP

BY: 

SUZANNE R. VARCO
ATTORNEYS FOR PETITIONER, CITRUS ST
PARTNERS, LLC

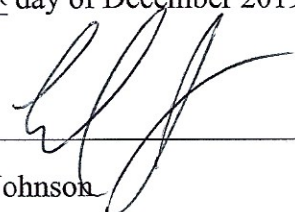
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VERIFICATION

I, Ebon Johnson, am a Manager of Citrus St Partners, LLC in the above-entitled action. I have read the foregoing complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed in San Diego, California, this 5th day of December 2019.



Ebon Johnson