

1 **LOUNSBERY FERGUSON ALTONA & PEAK LLP**  
KRISTEN S. STEINKE / SBN 256931  
2 **ALENA SHAMOS/SBN 216548**  
960 Canterbury Place, Suite 300  
3 Escondido, California 92025-3870  
TEL: 760-743-1201 / FAX: 760-743-9926  
4

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**01/30/2020** at 11:49:00 AM  
Clerk of the Superior Court  
By Carolina Miranda, Deputy Clerk

5 Attorneys for Respondents, City of Lemon Grove  
and City Council of Lemon Grove  
6  
7

**EXEMPT FROM FILING FEES**  
**[Government Code § 6103]**

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF SAN DIEGO – CENTRAL DIVISION**

10 CITRUS ST PARTNERS, LLC,

11 Petitioner,

12 v.

13 CITY OF LEMON GROVE; CITY COUNCIL  
OF THE CITY OF LEMON GROVE, and  
14 DOES 1 through 10,

15 Respondents.

16  
17 DOES 11-20,

18 Real Parties In Interest.  
19

Case No.: 37-2019-00064690-CU-MC-CTL

[UNLIMITED CIVIL]

**CITY OF LEMON GROVE AND CITY  
COUNCIL OF LEMON GROVE'S  
OPPOSITION TO CITRUS ST PARTNERS'  
ORDER TO SHOW CAUSE RE  
PRELIMINARY INJUNCTION**

[IMAGED FILE]

Date: February 14, 2020  
Time: 10:00 a.m.

Judge: Hon. Kenneth J. Medel  
Dept: C-66  
Complaint Filed: December 5, 2019  
Trial Date: Not Set

20  
21 The City of Lemon Grove and the City Council of Lemon Grove (jointly City) respectfully  
22 submit their Opposition to Citrus Street Partners, LLC's (Petitioner) Order to Show Case re  
23 Preliminary Injunction to restrain and enjoin the City from acting on the Harris Street MMD  
24 conditional use permit (CUP) application or taking any other action, discretionary or ministerial, that  
25 would disturb, extinguish, interfere with, or otherwise prejudice Zoning Clearance ZCM-180-0005,  
26 issued by the City on March 28, 2019, until the final adjudication of the present action.  
27  
28

TABLE OF CONTENTS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I. INTRODUCTION ..... 5

II. FACTUAL BACKGROUND..... 6

III. PETITIONER DOES NOT MEET THE STANDARD FOR A PRELIMINARY INJUNCTION  
AGAINST THE CITY ..... 8

    A. Petitioner Must Demonstrate It Will Prevail at Trial ..... 8

        i. *The City Council’s Decision is Entitled to Great Deference.* ..... 8

        ii. *The City Council Exercised Constitutionally Conferred Police Power in Making its  
Decision.....* 9

    B. Petitioner Cannot Demonstrate that its Harm Outweighs The Harm To The City And The  
Public. .... 10

        i. *The Rights Of Unknown Third-Parties, And The Public At Large, Will Be Infringed  
By The Requested Injunction.....* 10

        ii. *Petitioner Cannot Demonstrate the Imminent Threat of Harm or That Its Harm  
Outweighs the Harm to the City and Others.....* 13

IV. CONCLUSION..... 14

**TABLE OF AUTHORITIES**

**State Cases**

*Ancora-Citronelle Corp. v. Green* (1974) 41 Cal.App.3d 146 ..... 8

*Barnes v. Wong* (1995) 33 Cal.App.4th 390..... 11

*City & County of San Francisco v. Market St. Ry. Co.* (1950) 95 Cal.App.2d 648 ..... 13

*City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153 ..... 9

*City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.*  
 (2013) 56 Cal.4th 729 ..... 9

*City of Vallejo v. NCORP4, Inc.* (2017) 15 Cal.App.5th 1078..... 9

*Cota v. County of Los Angeles* (1980) 105 Cal.App.3d 282..... 11, 12

*County of San Joaquin v. State Water Resources Control Bd.* (1997) 54 Cal.App.4th 1144..... 13

*Fonseca v. City of Gilroy* (2007) 148 Cal.App.4th 1174..... 9, 11

*Harrington v. City of Davis* (2017) 16 Cal.App.5th 420 ..... 9

*IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63 ..... 8

*Korean Philadelphia Presbyterian Church v. California Presbytery*  
 (2000) 77 Cal.App.4th 1069 ..... 13

*O'Connell v. Sup.Ct. (Valenzuela)* (2006) 141 Cal.App.4th 1452..... 10

*Olszewski v. Scripps Health* (2003) 30 Cal.4th 798 ..... 12

*Pacific Decision Sci. Corp. v. Sup. Ct.* (2004) 121 Cal.App.4th 1100..... 13

*Robbins v. Sup.Ct. (County of Sacramento)* (1985) 38 Cal.3d 199 ..... 10

*Save Our Bay, Inc. v. San Diego Unified Port Dist.* (1996) 42 Cal.App.4th 686 ..... 12

*Smith v. Adventist Health System/West* (2010) 182 Cal.App.4th 729 ..... 8

*Tahoe Keys Property Owners' Assn. v. State Water Resources Control Bd.*  
 (1994) 23 Cal.App.4th 1459 ..... 11

*Thayer Plymouth Center, Inc. v. Chrysler Motors Corp.* (1967) 255 Cal.App.2d 300 ..... 13

*Xiloj-Itzep v. City of Agoura Hills* (1994) 24 Cal.App.4th 620 ..... 11

*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1 ..... 9

1	<b>State Constitution</b>	
2	Cal. Const., art. I, § 3 .....	12
3	Cal. Const., art. XI, § 7 .....	9, 11
4	<b>State Statutes</b>	
5	Civ. Code. § 3423(d), (f) .....	11
6	Code Civ. Proc., § 389(a) .....	12
7	Code Civ. Proc., § 425.16(e) .....	12
8	Code Civ. Proc., § 526(a)(2).....	8
9	Code Civ. Proc., § 526(a)(4).....	13
10	<b>Federal Cases</b>	
11	<i>Berman v. Parker</i> (1954) 348 U.S. 26 .....	10
12	<i>Vill. of Euclid, Ohio v. Ambler Realty Co.</i> (1926) 272 U.S. 365 .....	9
13	<b>Other Authorities</b>	
14	LGMC § 17.28.020 .....	8
15	LGMC § 17.28.050 .....	8, 10
16	LGMC § 2.14.090 .....	8
17	Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2018) CH	
18	9(II)-A, “Injunctions” .....	10, 11
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1     **I. INTRODUCTION**

2           As this Court pointed out at the January 14, 2020 hearing on Petitioner’s Temporary  
3 Restraining Order (TRO) Application, the scope of the Order that Petitioner seeks is overly broad, as  
4 it seeks to enjoin the City from doing anything that might possibly “prejudice” Petitioner’s CUP  
5 application. To that end, the Court narrowed the scope of the TRO; only enjoining the City from  
6 “finally approving conditional use permit CUP-190-0002 to establish a medical marijuana dispensary  
7 at 3515 Harris Street, Lemon Grove, California” and “issuing any building permits or certificates of  
8 occupancy for a day care facility at 3468 Citrus Street, Lemon Grove, California” until such time as  
9 this Court makes “a final determination on the OSC Re Preliminary Injunction.” (Order To Show  
10 Cause Re Preliminary Injunction And Order Re Ex Parte Application For Temporary Restraining  
11 Order, p. 2, ¶¶ 1 and 2.)

12           The City opposes the issuance of a preliminary injunction, as set forth herein. It is the City’s  
13 position that Petitioner cannot meet heightened burden for injunctive relief against a government  
14 entity. However, if the Court is inclined to issue a Preliminary Injunction against the City, the City  
15 would arguably be able to enforce the following preliminary injunction order, subject to any third-  
16 party objections:

17                   During the pendency of this action, Respondents CITY OF LEMON  
18 GROVE and CITY COUNCIL OF THE CITY OF LEMON GROVE  
19 (collectively, “City”) and their respective officers, agents, employees,  
representatives, and all persons acting in concert or participating with  
them:

- 20                   1.     Are enjoined and restrained from approving the application for  
21 conditional use permit CUP-190-0002 to establish a medical marijuana  
dispensary at 3515 Harris Street, Lemon Grove, California; and
- 22                   2.     Shall preserve and maintain in effect the City’s completeness  
23 determination for Zoning Clearance ZCM-180-0005 issued on March  
28, 2019 for Conditional Use Permit Application CUP-190-0001.

24           Any broader language would place the City is at risk of violating other, unknown third-party  
25 rights. As set forth herein, not only is the Court prohibited from ordering the City to act contrary to  
26 the law, but it cannot enjoin the City from performing its obligations to the public.

27     ///

28     ///

1           Accordingly, the City respectfully asks this Court to deny the request for a preliminary  
2 injunction, and if an injunction is issued, asks the Court to narrow its scope as requested herein.

3       **II. FACTUAL BACKGROUND**

4           As set forth in the moving papers, Petitioner submitted an application for a Zoning Clearance  
5 to the City on December 20, 2018. (Declaration of Kristen Steinke (Steinke Dec.), ¶ 2.) On March  
6 28, 2019, the City notified Petitioner that Zoning Clearance ZCM-180-0005 was deemed complete  
7 and Petitioner was eligible to proceed with an application for a CUP to establish a medical marijuana  
8 dispensary (MMD) at 7309 Broadway in Lemon Grove. (Declaration of Wayne Rosenbaum  
9 (Rosenbaum Dec.), Ex. B, p.2 and Ex. C.) Also, as set forth in the moving papers, the Zoning  
10 Clearance represents the City’s determination that no MMD or other protected use existed within  
11 1,000 feet of the proposed MMD. (Rosenbaum Dec., Ex. B, p. 2 and Ex. C.) Petitioner then filed the  
12 Application for a CUP to establish an MMD at 7309 Broadway in Lemon Grove on April 3, 2019,  
13 and City staff deemed the Application complete on October 9, 2019. (Rosenbaum Dec., Ex. B, p. 2;  
14 Steinke Dec., ¶ 2.)

15           Thereafter, on May 9, 2020, Kim Investments, LLC, filed an application for a CUP to establish  
16 an MMD within 1,000 feet from Petitioner’s MMD, at 3515 Harris Street in Lemon Grove (Harris  
17 Street MMD). (Rosenbaum Dec., Ex. D.) The Harris Street MMD application was deemed complete  
18 by City staff on November 7, 2019. (Rosenbaum Dec., Ex. D; Steinke Dec., ¶ 3.)

19           On November 19, 2019, the City voted to deny Petitioner’s CUP Application to establish an  
20 MMD. The City Council determined that the Petitioner’s proposed land use was not “compatible  
21 with the neighborhood or the community” and was “detrimental to the health, safety, convenience or  
22 general welfare of persons residing or working in the vicinity.” (Rosenbaum Dec., Ex. G, pp. 64-66.)  
23 The City determined that the parking provided by the Project was insufficient and on that basis denied  
24 the Application. (Rosenbaum Dec., Exs. F and G.) Following the City’s decision to deny Petitioner’s  
25 CUP Application, Petitioner filed the instant Petition for Writ of Mandate seeking to overturn the  
26 City’s denial of its CUP Application. Petitioner did not name Kim Investments as a party to the  
27 action. (Steinke Dec., ¶ 4.)

28 ///

1 On January 21, 2020, the City was set to hear and decide the Harris Street MMD CUP  
2 application. (Rosenbaum Dec., Ex. A.) The City published notice of the hearing on January 9, 2020;  
3 thereafter, on January 13, 2020 Petitioner filed and served the instant application for a TRO and Order  
4 to Show Cause (OSC) re Preliminary Injunction, setting an ex parte hearing for January 14, 2020.  
5 The City filed an Opposition, and appeared at the ex parte hearing. Counsel for Kim Investments also  
6 appeared at the hearing and requested an opportunity to intervene in the action as interested parties.  
7 (Steinke Dec., ¶ 5.)

8 At the January 14, 2020 hearing, the Court granted a more narrowly tailored TRO and issued  
9 an OSC to hear the preliminary injunction on February 14, 2020. The Court also set a briefing  
10 schedule, which included a deadline for Kim Investments to seek intervention. Per the direction of  
11 the Court, the parties and Kim Investments met and conferred over the revised Order for a TRO and  
12 OSC, which the Court entered on January 16, 2020. (Steinke Dec., ¶ 6.)

13 On January 21, 2020 the public hearing for the Harris Street MMD CUP took place. Prior to  
14 the hearing, City Staff issued a Staff Report recommending the denial of Harris Street's application.  
15 (Steinke Dec., ¶ 7, Ex. A.) In addition, Kim Investments submitted a letter requesting a continuance  
16 of the hearing and a finding that its deemed complete Zoning Clearance prevented other sensitive  
17 uses from impeding it's CUP application pending the outcome of this preliminary injunction hearing.  
18 (Steinke Dec., ¶ 7, Ex. B.)

19 At the January 21, 2020 hearing the City voted to continue the hearing on the Harris Street  
20 CUP application to February 18, 2020 after the Court's ruling on the Preliminary Injunction is made  
21 and with direction that the application will not be prejudiced by the establishment of any sensitive  
22 uses within 1000 feet of the proposed Harris Street MMD until the matter is heard and in conformance  
23 with the TRO. The City will take action on February 18, 2020 to either continue the Harris Street  
24 CUP application or conduct the hearing on the CUP application depending upon the outcome of the  
25 motion for Preliminary Injunction here at issue. (Steinke Dec., ¶ 8.)

26 ///

27 ///

28 ///

1 **III. PETITIONER DOES NOT MEET THE STANDARD FOR A PRELIMINARY**  
2 **INJUNCTION AGAINST THE CITY**

3 “To issue an injunction is the exercise of a delicate power, requiring great caution and sound  
4 discretion, and rarely, if ever, should [it] be exercised in a doubtful case.” (*Ancora-Citronelle Corp.*  
5 *v. Green* (1974) 41 Cal.App.3d 146, 148.) “A superior court must evaluate two interrelated factors  
6 when ruling on a request for a preliminary injunction: (1) the likelihood that the plaintiff will prevail  
7 on the merits at trial and (2) the interim harm that the plaintiff would be likely to sustain if the  
8 injunction were denied as compared to the harm the defendant would be likely to suffer if the  
9 preliminary injunction were issued.” (*Smith v. Adventist Health System/West* (2010) 182 Cal.App.4th  
10 729, 749; see also; Code Civ. Proc., § 526(a)(2).)

11 **A. Petitioner Must Demonstrate It Will Prevail at Trial**

12 If Petitioner cannot establish reasonable probability that it will prevail at trial, the Court must  
13 deny the injunction. (*IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 72.) Here, Petitioner cannot  
14 meet that burden because the City Council was acting within its constitutionally authorized police  
15 power in denying the CUP on the basis that it **could not find** that the proposed land use “is  
16 **compatible with the neighborhood or the community**” [LGMC § 17.28.050 (C)(1)] and that it “is  
17 **not detrimental to the health, safety, convenience or general welfare of persons residing or**  
18 **working in the vicinity.**” (LGMC § 17.28.050 (C)(2); see Request for Judicial Notice for LGMC.)

19 ***i. The City Council’s Decision is Entitled to Great Deference.***

20 The LGMC authorizes the City Council as the “hearing body” to make a decision on the CUP  
21 and “impose such conditions or limitations as it deems necessary to serve the general purpose and  
22 intent of this title.” (LGMC § 17.28.020 (G)(3) and (H).) The City Council “**may**” consider as  
23 evidence the Staff recommendation, including any staff report. (LGMC § 2.14.090(D); emphasis  
24 added.) Ultimately, the City Council makes the decision to grant or deny the CUP, and is not bound  
25 by City Staff recommendations.

26 Accordingly, the grounds for the City’s inability to make those findings is clearly stated in  
27 Resolution 2019-3690 (Ex. F to the Rosenbaum Dec.) filed in support of the Petitioner’s Motion).



1 Those grounds acknowledge the findings in the Staff Report (Ex. B to the Rosenbaum Dec.) and  
2 articulate the City Council’s basis for disagreeing with those findings.

3 The established rule of law is that a “city’s interpretation of its own ordinance is “‘entitled  
4 to deference’ in our independent review of the meaning or application of the law.” (*Harrington v.*  
5 *City of Davis* (2017) 16 Cal.App.5th 420, 434.) “Greater deference is also appropriate where there  
6 are ‘indications of careful consideration by senior agency officials.’” (*Id.* at p. 435; quoting *Yamaha*  
7 *Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 13) And under the substantial  
8 evidence standard Petitioner argues is applicable to this case, “the City Council’s consistency findings  
9 are presumed to be supported by the administrative record, and [Petitioner] has the burden to show  
10 there is no substantial evidence whatsoever to support them.” (*Harrington v. City of Davis*, *supra*,  
11 (2017) 16 Cal.App.5th at p. 443.)

12 **ii. The City Council Exercised Constitutionally Conferred Police Power in**  
13 **Making its Decision.**

14 The California Constitution confers police power to local government and their electors to  
15 determine the allowable land uses within their jurisdictions. (Cal. Const., art. XI, § 7; *Vill. of Euclid*,  
16 *Ohio v. Ambler Realty Co.* (1926) 272 U.S. 365, 392, 47 S. Ct. 114, 120, 71 L. Ed. 303 [Zoning  
17 regulations are expressly within the City’s police power.]; *Fonseca v. City of Gilroy* (2007) 148  
18 Cal.App.4th 1174, 1181 [“It is from this fundamental power that local governments derive their  
19 authority to regulate land through planning, zoning, and building ordinances, **thereby protecting**  
20 **public health, safety and welfare.**” emphasis added].)

21 It is well-recognized that operation of a medical cannabis dispensary is a land use. (*City of*  
22 *Riverside v. Inland Empire Patients Health & Wellness Center, Inc.* (2013) 56 Cal.4th 729; *City of*  
23 *Claremont v. Kruse* (2009) 177 Cal.App.4th 1153; *City of Vallejo v. NCORP4, Inc.* (2017) 15  
24 Cal.App.5th 1078, 1081, 1088.) And a City’s regulation of medical cannabis dispensaries is a land  
25 use function within its police power. (*City of Vallejo v. NCORP4, Inc.*, *supra*, (2017) 15 Cal.App.5th  
26 at pp. 1081, 1088.) California law recognizes that cities retain land use authority over cannabis  
27 dispensaries. California law “**does not... mandate** that local governments authorize, allow, or  
28 accommodate the existence of” marijuana dispensaries.” (*Id.* at p. 1082; bold font added.)

1 The scope of police power is broad. As stated by the US Supreme Court, “[p]ublic safety,  
2 public health, morality, peace and quiet, law and order—these are some of the more conspicuous  
3 examples of the traditional application of the police power to municipal affairs. **Yet they merely**  
4 **illustrate the scope of the power and do not delimit it.**” (*Berman v. Parker* (1954) 348 U.S. 26, 32;  
5 emphasis added.) The Supreme Court went on to say:

6 The concept of the public welfare is broad and inclusive. The values it  
7 represents are spiritual as well as physical, aesthetic as well as  
8 monetary. It is within the power of the legislature to determine that the  
9 community should be beautiful as well as healthy, spacious as well as  
10 clean, well-balanced as well as carefully patrolled. In the present case,  
11 the Congress and its authorized agencies have made determinations that  
12 take into account a wide variety of values. It is not for us to reappraise  
13 them. (*Id.* at p. 33; internal citations omitted.)

14 Thus it is indisputable that the City Council exercised its police power in determining that the  
15 Petitioner’s proposed land use **was not** “compatible with the neighborhood or the community”  
16 [LGMC § 17.28.050 (C)(1)] and was “detrimental to the health, safety, convenience or general  
17 welfare of persons residing or working in the vicinity.” (LGMC § 17.28.050 (C)(2).) The Council  
18 stated the same for the record at the time of the hearing, indicating that the lack of sufficient parking  
19 and increased burden on traffic in the area were sufficient to deny the CUP. (Rosenbaum Dec., Ex.  
20 G, pp. 64-66.) Thus, under the deferential standard of review applicable to this matter, Petitioner  
21 cannot show that it will prevail at trial.

22 **B. Petitioner Cannot Demonstrate that its Harm Outweighs The Harm To The City  
23 And The Public.**

24 ***i. The Rights Of Unknown Third-Parties, And The Public At Large, Will Be  
25 Infringed By The Requested Injunction***

26 If the Court finds a reasonable likelihood that Petitioner will prevail, the court must balance  
27 the respective harms produced by issuing and denying the injunction. (Weil & Brown, Cal. Practice  
28 Guide: Civil Procedure Before Trial (The Rutter Group 2018) CH 9(II)-A, “Injunctions” ¶ 9:505;  
citing *Robbins v. Sup.Ct. (County of Sacramento)* (1985) 38 Cal.3d 199, 205.)

Due to the “separation of powers doctrine,” the standard for enjoining a governmental act is  
unusually restricted. (*O’Connell v. Sup.Ct. (Valenzuela)* (2006) 141 Cal.App.4th 1452, 1464

1 ["principles of comity and separation of powers place significant restraints on courts' authority to  
2 order or ratify acts normally committed to the discretion of other branches or officials."].)

3 In fact, the Court is **prohibited** from issuing injunctions "[t]o prevent the execution of a public  
4 statute by officers of the law for the public benefit" or prevent the lawful "execution of a public  
5 office" (Code Civ. Proc., § 526(b)(4); Civ. Code. § 3423(d), (f).) Courts likewise "lack jurisdiction"  
6 to enjoin implementation and enforcement of "validly adopted constitutional ordinances." (*Xiloj-Itzep*  
7 *v. City of Agoura Hills* (1994) 24 Cal.App.4th 620, 635.) And there can be no dispute that the  
8 processing of applications submitted to the City pursuant to the Lemon Grove Municipal Code  
9 (LGMC) is mandated by that Code.

10 Moreover, the Court cannot control the discretion of the City, as such action is beyond the  
11 scope of this writ of mandate action. (*Barnes v. Wong* (1995) 33 Cal.App.4th 390, 395 ["Mandamus  
12 is **not available to control the discretion exercised by a public official or board**, it is available to  
13 correct an abuse of discretion by such party."]; emphasis added.)

14 To the extent that injunctive relief is allowed as against a government entity, it requires a  
15 "significant" showing of irreparable injury because there is a 'general rule against enjoining public  
16 officers or agencies from performing their duties.'" (Weil & Brown, Cal. Practice Guide: Civil  
17 Procedure Before Trial (The Rutter Group 2018), supra, at ¶ 9:512 [emphasis added], quoting *Tahoe*  
18 *Keys Property Owners' Assn. v. State Water Resources Control Bd.* (1994) 23 Cal.App.4th  
19 1459, 1471.].) And, "[w]here injury would result to the public, an additional reason arises for refusal  
20 to grant injunctive relief." (*Cota v. County of Los Angeles* (1980) 105 Cal.App.3d 282, 292.) Such a  
21 policy is sound because improper restrictions result in significant constitutional and legal  
22 consequences for the City and the public.

23 The regulation and processing of licenses and permits is within the City's constitutionally  
24 mandated police power as those licenses and permits are in place for the benefit of the overall health,  
25 welfare and safety of the city and its populace. (Cal. Const., art. XI, § 7 ["A county or city may make  
26 and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in  
27 conflict with general laws"]; see, *Fonseca v. City of Gilroy*, supra, (2007) 148 Cal.App.4th at p.  
28 1181.) The requested injunction improperly infringes upon such power by restricting the City's

1 ability to perform its obligations to the public and improperly restricts the public's access to City  
2 processes.

3 Furthermore, submittal of permit applications to government entities is constitutionally  
4 protected petitioning activity. (Cal. Const., art. I, § 3; Code Civ. Proc., § 425.16, subd. (e).<sup>1</sup>) The  
5 Court should not allow Petitioner to halt all such petitioning activity within 1,000 feet of Petitioner's  
6 Property to protect Petitioner's CUP application. Doing so improperly requires the City to place  
7 Petitioner's rights above the rights of other members of the public.

8 As the City argued in opposition to the TRO<sup>2</sup>, Kim Investments, the applicant for the Harris  
9 Street MMD CUP has not been named as a party to the present action despite having a beneficial  
10 interest in the outcome thereof. "Where the Petitioner seeks some type of affirmative relief which, if  
11 granted, would injure or affect the interest of a third person not joined, that third person is an  
12 indispensable party." (*Save Our Bay, Inc. v. San Diego Unified Port Dist.* (1996) 42 Cal.App.4th  
13 686, 692; *Olszewski v. Scripps Health* (2003) 30 Cal.4th 798, 808-809; Code Civ. Proc., § 389(a).)  
14 While Kim Investments appeared at the *ex parte*, it still is not a party to this action. Thus it is not  
15 within the jurisdiction of this court and lacks standing to appeal any order issued in this action that  
16 impacts its rights.

17 Petitioner likewise cannot join in this action every other indispensable/beneficially interested  
18 party that would be impacted by the Order sought; like the daycare impacted by the TRO. The parties  
19 and the Court cannot predict what applications will be submitted to the City for business licenses,  
20 permits or CUPs, or by whom, during the pendency of this action. The Court should not issue a  
21 Preliminary Injunction that improperly infringes upon those third parties' rights. (see, *Cota v. County*  
22 *of Los Angeles*, supra, (1980) 105 Cal.App.3d at p. 292.) As equity is a significant factor to be  
23

---

24 <sup>1</sup> Section 425.16, subd (e) states: "As used in this section, "act in furtherance of a person's right of petition or free  
25 speech under the United States or California Constitution in connection with a public issue" includes (1) any written or  
26 oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding  
27 authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or  
28 review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written  
or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public  
interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional  
right of free speech in connection with a public issue or an issue of public interest."

<sup>2</sup> To avoid repetition, the City incorporates by reference its argument in opposition to the TRO.

1 considered by the Court, it should also prevent issuance of injunctive relief where such third parties  
2 are not named and will be materially impacted by the result. (*County of San Joaquin v. State Water*  
3 *Resources Control Bd.* (1997) 54 Cal.App.4th 1144, 1151-1153.)

4 ***ii. Petitioner Cannot Demonstrate the Imminent Threat of Harm or That Its***  
5 ***Harm Outweighs the Harm to the City and Others.***

6 Petitioner cannot demonstrate the requisite irreparable harm for a TRO, that would outweigh  
7 the risks to the City. As a preliminary matter, an injunction requires imminent threat of irreparable  
8 harm. (*Korean Philadelphia Presbyterian Church v. California Presbytery* (2000) 77 Cal.App.4th  
9 1069, 1084.) While the City has shown the extensive harm it, and the public will suffer if the requested  
10 relief is granted Petitioner has only demonstrated a speculative harm, thereby failing to meet its  
11 burden. (*City & County of San Francisco v. Market St. Ry. Co.* (1950) 95 Cal.App.2d 648, 655  
12 [injunctive relief "should rarely, if ever, be exercised in a doubtful case."].)

13 The City's Staff Report for the Harris Street MMD CUP recommends denial thereof. (Steinke  
14 Dec., ¶ 7, Ex. A.) Thus, it remains unknown whether the City will approve that CUP. Moreover,  
15 Petitioner has not presented evidence of other applications that are presently pending before the City  
16 that would interfere with Petitioner's claim rights.

17 In addition, underlying all of Petitioner's arguments is Petitioner's fear of monetary loss  
18 associated with the inability to obtain a CUP for its proposed cannabis dispensary. Injunctive relief  
19 properly issues only where, "the right to be protected is clear, injury is impending and so immediately  
20 likely as only to be avoided by issuance of the injunction." (*East Bay Municipal Dist. v. Dept. of*  
21 *Forestry & Fire Protection* (1996) 43 Cal.App.4th 1113, 1126.) No injunction will issue when a  
22 monetary remedy will provide adequate relief. (Code Civ. Proc., § 526(a)(4); *Thayer Plymouth*  
23 *Center, Inc. v. Chrysler Motors Corp.* (1967) 255 Cal.App.2d 300, 307.) The difficulty of  
24 determining damages is not a sufficient basis for injunctive relief. (*Pacific Decision Sci. Corp. v.*  
25 *Sup. Ct.* (2004) 121 Cal.App.4th 1100, 1110.)

26 In this instance, the balancing of interests demands that the TRO be denied. Petitioner cannot  
27 demonstrate how its rights should supersede the rights of other third parties, or the legal duties and  
28 obligations of the City.

1 **IV. CONCLUSION**

2 For the foregoing reasons, the City respectfully requests that the Court deny Petitioner's  
3 motion for preliminary injunction, or in the alternative, grant a more narrowly tailored injunction  
4 along the parameters set forth above.

5  
6  
7 DATED: 1/30/2020

LOUNSBERY FERGUSON ALTONA & PEAK, LLP

8  
9 By: 

Kristen S. Steinke, City Attorney  
Alena Shamos,  
Attorneys for Respondents,  
CITY OF LEMON GROVE and  
CITY COUNCIL OF LEMON GROVE