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

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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.

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

[UNLIMITED CIVIL]

**CITY OF LEMON GROVE AND CITY  
COUNCIL OF LEMON GROVE'S REQUEST  
FOR JUDICIAL NOTICE IN SUPPORT OF  
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 **I. REQUEST FOR JUDICIAL NOTICE**

22 Respondents, the City of Lemon Grove and the City Council of Lemon Grove (jointly City),  
23 respectfully request that the Court take judicial notice of the following government records:

- 24 1. Lemon Grove Municipal Code § 2.14.090;  
25 2. Lemon Grove Municipal Code §17.28.020; and  
26 3. Lemon Grove Municipal Code § 17.28.050.

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1 **II. AUTHORITY FOR JUDICIAL NOTICE**

2 The City respectfully requests that the Court take judicial notice of these records, which are  
3 attached hereto, based on the following authority:

4 Government records are judicially noticeable pursuant to Evidence Code sections 451, subd.  
5 (a) and 452, subds. (b) and (c). Section 451 provides that the Court shall take judicial notice of “the  
6 decisional, constitutional, and public statutory law of this state”. (Evidence Code § 451, subd. (a);  
7 *People v. Moore* (1997) 59 Cal.App.4th 168, 178.) Evidence Code section 452 provides that the  
8 Court may take judicial notice of “(b) Regulations and legislative enactments issued by or under the  
9 authority of the United States or any public entity in the United States” and “(c) Official acts of the  
10 legislative, executive, and judicial departments of the United States and of any state of the United  
11 States.” (*Trinity Park v. City of Sunnyvale* (2011) 193 Cal.App.4th 1014, 1027, [applying Evid. Code,  
12 § 452, subd. (b) and (c) to “local ordinances and the official resolutions, reports, and other official  
13 acts of a city.”].)

14 The City of Lemon Grove is a public entity. (Evid. Code, § 200). The provisions of Evidence  
15 Code section 452 have long been interpreted to enable the courts to take judicial notice of enactments  
16 of a public entity, government records and reports, laws and official acts. (*California Ass'n for Health*  
17 *Services at Home v. Department of Health Services* (2007) 148 Cal.App.4th 696, 702 n.2; see also,  
18 *As You Sow v. Conbraco Industries* (2005) 135 Cal.App.4th 431, 438 n.3; *Jordan v. County of Los*  
19 *Angeles* (1968) 267 Cal.App.2d 794, 798.) The authority to take judicial notice, includes those  
20 government records published on the internet. (*People ex rel. Totten v. Colonia Chiques* (2007) 156  
21 Cal.App.4th 31, 38 fn. 3.)

22 The records attached hereto are properly the subject of judicial notice and directly relevant to  
23 this proceeding for the reasons set forth in the accompanying Opposition To Citrus St Partners' Order  
24 To Show Cause Re Preliminary Injunction. (*Rea v. Blue Shield of California* (2014) 226 Cal.App.4th  
25 1209, 1224.)

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1 **III. CONCLUSION**

2 For the reasons set forth herein, the City respectfully requests that the Court take Judicial  
3 Notice of the records attached hereto as Exhibits 1 through 3.

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DATED: 1/30/2020

LOUNSBERY FERGUSON ALTONA & PEAK, LLP

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

**EXHIBIT "1"**

### **2.14.090 Hearings.**

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A. The term “hearing” includes all public hearings required by state or local law, employee disciplinary proceedings, and proceedings for the revo-cation, suspension, or reinstatement of permits, licenses, and franchises.

B. Public hearings are conducted in the following order:

1. Hearing opened by the mayor;
2. Staff reports presented;
3. Public comments received;
4. Hearing closed by majority vote;
5. Deliberation by the city council; and
6. Action taken by majority vote.

C. At the time and place designated in the notice, the city council must afford any interested person or that person’s authorized representative, or both, the opportunity to present witnesses, documentary evidence, statements, arguments, or contentions, orally or in writing, subject to the rules in this chapter.

D. All statements, documents, exhibits, communications, petitions, maps, and other items submitted at the hearing may be considered by the city council as evidence and, in that event, retained as part of the record. Whenever practical, a written staff report must be prepared and presented as part of the staff presentation. Evidence may not be taken outside the council chambers and may not be considered by the city council, except when, during the hearing, the meeting is adjourned to a particular place and time for the purpose of taking visual or demonstrative evidence.

E. If a councilmember is absent for a hearing that is continued to a subsequent meeting, that councilmember may participate in the matter at the subsequent meeting, if otherwise qualified, upon stating for the record that the councilmember has listened to the tape recording of the prior portions of the hearing and is prepared to participate.

F. Any hearing may, by minute action, be continued to any subsequent regular or adjourned meeting of the city council in compliance with the laws of the State of California. (Ord. 335 § 1, 2004)

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**“EXHIBIT “2”**

[Title 17 ZONING](#)[Chapter 17.28 PROCEDURE AND ADMINISTRATION](#)**17.28.020 Application procedures.**

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A. Purpose. This section establishes procedures for submitting and processing applications for proposed *uses, structures, and/or improvements* of real property, and related matters subject to this title; authorize the city to establish, modify, and collect fees, and set time limits for processing.

1. Definitions. *Italicized* words and terms found in this chapter are defined in Chapter 17.08.

2. Interpretation. In interpreting and applying the provisions of this title, *uses, structures, and/or improvements* shall be held to be the minimum requirements adopted for the promotion of the public health, safety, and general welfare.

3. Conflicts. Except as specifically provided, this title is not intended to impair or interfere with any previously issued permits or approvals relating to matters subject to this title. This title is not intended to interfere with, abrogate, or annul any *easement, covenant, or other agreement* between parties, provided that in cases in which this title imposes a greater restriction than is imposed or required by existing provisions of law or ordinance or by such *easements, covenants, or agreements*, the provisions of this title shall control.

B. Initiation. A *proposed* action may be initiated by application of the property owner, owner's agent, or another interested party, by the city council.

C. Pre-Application Conference. Prior to submission of an *application package* for a complicated or multi-faceted *project*, an applicant may request an unofficial conference with city staff to review the proposed *project*. Staff will evaluate the *project* in light of applicable city regulations, indicate possible concerns, identify required information, and note probable environmental impacts and possible mitigation requirements. Nothing in this conference shall be construed as actual or implied approval of any aspect of the proposed *project*.

D. Application Submittal. Prior to submitting *application packages* for permits or other approvals, the applicant shall obtain a zoning clearance according to Section 17.28.070. Thereafter, *application packages* shall be submitted to the development services department upon a prescribed form, accompanied by applicable fees according to subsection (D)(1), and related materials necessary to show that the proposed *use, structures, and/or improvements* of the property comply with applicable provisions of this *code*, state law, federal law and the requirements and conditions of any associated permit. Each application filed by, or on behalf of, one or more property owners shall be verified by at least one such owner or the owner's authorized agent attesting to the truth and correctness of all facts, statements, and information presented.

1. Fees. The city council shall establish and modify, by resolution, a schedule of fees and deposits for matters subject to this title. All applicable fees and deposits shall be paid in full prior to processing any application, appeal, or other matter for which a fee is required.

Applicable fees and/or deposits may be waived for charitable, youth or nonprofit organization activities upon approval by the city manager.

No fee shall be refundable except in any case where the development services director determines and certifies any such fee or portion thereof has been received in error, in which case the amount of money received in error shall be refunded to the proper party. Refunds will be processed in the same manner as other demands against the city.

2. Concurrent Processing. Applicants with more than one application related to the same *project* may have all applications processed simultaneously.

E. Time Limits.

1. Staff Review. Upon initial submittal, *application packages* shall be distributed to applicable departments for review. No more than thirty *days* following the date of initial submittal, *application packages* shall be *deemed complete* or incomplete with a request for more information. Once the requested information is received, the thirty day staff review cycle restarts. No action shall be taken on applications not yet *deemed complete*.

2. Deemed Complete Applications. Once *deemed complete*, applications then progress, in accordance with specific permit regulations in this title, to notices according to subsection F, to public hearing according to subsection G, then to

*decisions* according to subsection H.

F. Notices. The notice shall state the purpose of the notice, a *project* description, and an explanation of the permit process, and be given by a date certain to affected parties according to subsections (F)(1), (2) and (3), as appropriate.

1. Public Hearings. Notices for public hearings shall also state the time, place, and purpose of the public hearing and shall be given by publication at least ten *days* prior to the public hearing. Notices to affected property owners shall be given at least ten *days* prior to the public hearing according to subsection (F)(2).

2. Affected Property Owners. The notice shall be mailed to all real property owners within five hundred feet or the maximum distance separation requirement for a regulated *use* where applicable, whichever is greater, of all exterior boundaries of the subject property at least ten *days* prior to the *decision*. Notices shall be mailed using the names and addresses of the owners as shown on the latest equalized assessment roll in the office of the county assessor. Where the address of such owner is not shown on such assessment roll, failure to send notice by mail to such property owner shall not invalidate any proceedings in connection with such action. In the event that the number of owners to whom notice would be sent according to this subsection is greater than one thousand, then notices may, instead, be given by placing a display advertisement of at least one-eighth page in a newspaper having general circulation within the affected area.

In addition, temporary on-site sign(s) along the properties' street frontage(s) and legible from across the street on pedestrian pathways shall be posted on the property at least ten days prior to the public hearing and until certificate of occupancy is granted for the proposed land *use*, but not to exceed a period of one year. The signs shall be a minimum of six feet high, six feet wide, and not to exceed seventy-two square feet total for two sides or thirty-six square feet for one side. Such sign shall include the permit numbers, property location and APN number, a site plan and description of the project, project name, and the applicant's name, address and telephone number to the satisfaction of the development services director. Signs shall be maintained in good condition at all times.

3. California Environmental Quality Act (CEQA) and State Law. Notices shall be made according to Government Code Sections 65090 through 65091, as amended. Processing time frames will apply unless extended environmental review is required by state law or this *code*.

G. Public Hearings. A public hearing is the opportunity for the *advisory body*, the *hearing body*, or the *appellate body* to obtain public testimony or comments prior to making a *decision*. The public hearing shall be conducted in accordance with this chapter and Section 2.14.090 of this *code*. Public hearings may be continued to another time without requiring further public notice, so long as the future time and place are announced before adjournment of the hearing.

1. Scheduling. Public hearings of the city council shall be subject to the rules regarding the placing of matters on its agenda, respectively. Subject to state planning and environmental laws, public hearings shall not be held earlier than ten or later than sixty *days* following submission of an appeal application or a *deemed complete* application according to subsection (E)(2). The time limit specified in this subsection may be extended by mutual consent of the applicant and the development services director; however, in no case shall this time period exceed one hundred eighty *days*.

2. Notice. Notices of public hearings shall be given according to subsection (F)(1).

3. Outcome. At the close of the public hearing, the *advisory body* may recommend approval, conditions, limitations, or denial; while the *hearing body* or the *appellate body* may make a *decision*. The *hearing body* may impose such conditions or limitations as it deems necessary to serve the general purpose and intent of this title. The matter may also be referred back to the lower body for further consideration or action. The *appellate body* may sustain, modify, deny or reverse, wholly or in part, any *decision* by a lower body. The *decision* may also be referred back to the lower body for further consideration or action.

H. Decisions and Effective Date of Decisions. Development services director *decisions* are made within thirty *days* of applications being *deemed complete*. City council and city council *decisions* are made within twenty *days* of the close of the public hearing. *Decisions* shall become effective ten *days* following the *decision* date, unless an appeal has been filed according to subsection K.

Unless otherwise stated in the approval or permit, or in the conditions of approval, approvals and permits shall run with the land and shall continue to be valid upon a change of ownership of the *site* or *structure*.

1. Conditions of Approval. The development services director, the city council may attach such conditions as deemed necessary to ensure compliance with this *code*.

2. Response to Referral. Where an application, appeal or other matter is referred to a lower body for further consideration, a response to that referral shall be submitted to the applicant and the referring body within forty *days*



following said referral.

I. Appeals. Any applicant or other interested person who is dissatisfied with the denial, approval, conditional approval, or other application *decision* made in the administration of this title may appeal the *decision*. *Decisions* made by the development services director are appealed to the city council. *Decisions* made by the city council are final.

Appeal applications, accompanied by the filing fee, shall be filed within ten *days* following the date a *decision* is made, on forms provided by the development services department. Appeals of development services director *decisions* shall be submitted to the city clerk. Appeals will be heard at a public hearing that has been noticed according to subsection F and conducted according to subsection G. Failure of the *appellate body* to make a *decision* according to subsection H shall be deemed in agreement with the previous *decision*.

All rights of appeal are exhausted when the proceedings set forth herein have been completed. An applicant shall not apply for the same or similar use affecting all or part of the property within twelve months of the *effective date* of the *decision* of denial, or as otherwise specified at the time of the *decision* of denial.

J. Expirations. Applications, approvals and permits issued according to this title will expire in accordance with the following:

1. Application Expiration. Unless there has been *substantial activity* toward submitting a *deemed complete application package* according to subsection D, such *application package* shall expire after a continuous twelve-month period of inactivity. Thereafter, the applicant may submit a new *application package* according to subsection D.

2. Approval and Permit Expiration.

a. Any *temporary use* permit expires at the conclusion of the permitted *use*.

b. Other approvals or permits subject to this title shall expire:

i. Twelve months from the *effective date* of the *decision*, unless construction and/or *use* in reliance has commenced or as otherwise stated in the conditions of approval; or

ii. If the *use* for which it was issued is discontinued for a continuous period of twelve months.

K. Time Extensions. At any time prior to the expiration of approvals or permits subject to this title, the permittee for such approval or permit may file a written request for an extension of time. The development services director may grant an initial extension of the term of the permit. The city council shall consider all subsequent requests for time extensions, according to subsection (F)(2), and if:

1. The form and intensity of the *project* for which the approval or permit was issued have not been significantly altered, and

2. The conditions or circumstances which supported the findings of fact required for the original approval or permit have not changed and appear unlikely to change within the period of the proposed extension of time.

L. Substantial Conformance Review. Any *project* submittal made subsequent to obtaining a use permit authorized by this title shall be in substantial conformance with that use permit. At the request of the owner, or in the event that submittals or field conditions are found to not be in conformance, a substantial conformance review application, accompanied by the filing fee, shall be filed and processed according to subsection D. If the *project* is found to not be in substantial conformance, the applicant may request a modification of the use permit according to subsection M.

M. Permit Modifications. Permit modification applications, accompanied by the filing fee, may be filed at any time prior to the initial expiration date of the *project's* use permit. Applications shall be processed according to subsection D.

N. Revocation of Approvals and Permits. Any *structures* and/or *improvements* constructed, erected, altered, moved, or maintained contrary to a *use* permit and/or other provisions of this title, and any *use* of any land or *structure* established, conducted, or maintained contrary to an approval, permit and/or other provisions of this title, shall be declared to be unlawful and a public *nuisance*.

1. Procedure. The development services director shall immediately commence action or proceedings for the *abatement* of a violation of this title, according to Chapter 1.24. If the owner, operator or other responsible entity fails or refuses to abate any public *nuisance* according to subsection N, the development services director may schedule a public hearing, according to subsection G, to consider the following actions:

a. Requiring whatever assurance deemed appropriate to guarantee that such violation will be corrected in a timely manner and will not occur again;

- b. Imposing additional conditions or limitations affecting the physical design of the property or its use;
- c. Revoking any approvals or permits subject to this title, according to the appeals provisions of subsection K.

In the event the development services director refers an enforcement matter to the city council, the city attorney shall, upon order of the city council, immediately apply to such courts as may have jurisdiction to grant such relief as will abate and remove such *building* or *structure* and restrain and enjoin any person from erecting, maintaining, or using any property contrary to the provisions of this title.

O. **Early Separation Findings.** Separation findings required as a part of any permit described in this chapter may be made early, prior to application materials being submitted and prior to a decision by the development services director, planning commission and/or city council with a minor use permit application for the sole purpose of finding that the application meets or does not meet the required separation requirements. Land uses or land use applications initiated after the filing of an early separation finding application would not be grounds for denial of the permit. Should land use changes or land use applications which would conflict with an early separation finding determination be established or filed in advance of an application for an early separation finding, the land use would be considered as grounds for denial of the early separation finding permit.

No other approval may be granted as a part of this permit. Applications made pursuant to this subsection must give additional notice by way of advertisement in a newspaper having general circulation within the affected area at least ten days prior to the decision. This finding that the application meets separation requirements shall be valid for up to one year before the early finding expires.

P. The remedies provided for in this title shall be cumulative and not exclusive. Nothing herein is intended to conflict with applicable state laws or federal laws. (Ord. 450 § 2, 2018; Ord. 434 § 5, 2015; Ord. 386 § 3, 2009)

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**EXHIBIT "3"**

### **17.28.050 Conditional use permits.**

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A. Purpose. This section establishes procedures for accommodating proposed *uses* with special *site* or design requirements, operating characteristics, or potential adverse effects on surroundings that are otherwise prohibited in this *code*. This section assures that any area will assume or retain the characteristics intended by zoning. This section also establishes procedures for processing *conditional use* permit applications.

B. *Uses* Subject to These Provisions.

1. *Uses* outlined in specific zoning districts.

C. Findings. A *conditional use* permit may be approved if all of the following findings are made:

1. The *use* is compatible with the neighborhood or the community;

2. The *use* is not detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity;

3. The *use* complies with performance standards according to Section 17.24.080;

4. The *use* is consistent with applicable provisions of the particular zoning district and with policies and standards of the *general plan*.

D. Application. *Application packages* for *conditional use* permits shall be processed according to Section 17.28.020. The city council shall hear and decide all *conditional use* permit applications during the course of at least one public hearing, conducted according to Section 17.28.020(G). (Ord. 434 § 5, 2015; Ord. 386 § 3, 2009)

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