



City of Lemon Grove City Council Regular Meeting Agenda

Tuesday, March 1, 2022, 6:00 p.m.

Lemon Grove Community Center
3146 School Lane, Lemon Grove, CA 91945

For everyone's protection, all attendees must maintain a safe social distance and face coverings will be required to attend the meeting

City Council

Racquel Vasquez, Mayor
Jerry Jones, Mayor Pro Tem
Jennifer Mendoza, Councilmember
Liana LeBaron, Councilmember
George Gastil, Councilmember

A complete agenda packet is available for review on the [City's website](#)

The City Council also sits as the Lemon Grove Housing Authority, Lemon Grove Sanitation District Board, Lemon Grove Roadway Lighting District Board, and Lemon Grove Successor Agency

Call to Order

Pledge of Allegiance

Changes to the Agenda

Presentation(s)

SANDAG – The Plan, Hasan Ikhata, Chief Executive Officer and Coleen Clementson, Deputy Chief Executive Officer

Public Comment

Digitally submitted public comments received by the City Clerk at amalone@lemongrove.ca.gov will not be read out-loud during the meeting. However, they will be provided to the City Council and remain part of the meeting's records. Per the Lemon Grove Municipal Code Section 2.14.150, live comments are allotted a maximum of three (3) minutes.

Consent Calendar

(Note: The items listed on the Consent Calendar will be enacted in one motion unless removed from the Consent Calendar by Council, staff, or the public.)

1.A Waive Full Text Reading of All Ordinances on the Agenda

Reference: Kristen Steinke, City Attorney

Recommendation: Waive the full text reading of all ordinances included in this agenda; Ordinances shall be introduced and adopted by title only.

1.B City of Lemon Grove Payment Demands

Reference: Rod Greek, Interim Administrative Finance Director

Recommendation: Ratify Demands

Appeal Hearing

- 2. Public Hearing to Consider an Appeal of the Community Development Manager’s Decision to approve Minor Use Permit MUP-210-0007, a Request to Establish Early Separation Findings for a Medical Marijuana Dispensary at 8280 Broadway in the Heavy Commercial Zone

Reference: Bill Chopyk, Interim Community Development Manager
 Recommendation: 1) Conduct the Public Hearing; 2) Receive Public Comment; and 3) Adopt a Resolution denying the appeal or approving the appeal. Denial of the appeal would approve Minor Use Permit (MUP) MUP-210-0007 to establish early separation findings for a medical marijuana dispensary (MMD) pursuant to Municipal Code Chapter 17.32 at 8280 Broadway in the Heavy Commercial (HC) zone. Approval of the appeal would deny Minor Use Permit MUP-210-0007.

City Council Reports on Meetings Attended at the Expense of the City

(GC 53232.3 (d)) (53232.3. (d) states that members of a legislative body shall provide brief reports on meetings attended at the expense of the local agency at the next regular meeting of the legislative body.)

City Manager Report

Closed Session:

- a. Conference with Legal Counsel - existing litigation (Govt C §54956.9(d)(1))
 Shawn Farson and Rosalinda Legge v. City of Lemon Grove (SDSC Case No.: 37-2020-00029569-CU-OR-CTL)
- b. Conference with Legal Counsel – anticipated litigation (Govt C §54956.9(d)(2)-(4));

Adjournment

AFFIDAVIT OF NOTIFICATION AND POSTING

STATE OF CALIFORNIA)
 COUNTY OF SAN DIEGO) SS
 CITY OF LEMON GROVE)

I, Audrey Malone, City Clerk of the City of Lemon Grove, hereby declare under penalty of perjury that a copy of the above Agenda of the Regular Meeting of the City Council of the City of Lemon Grove, California, was delivered and/or notice by email not less than 72 hours, before the hour of 6:00 p.m. on February 24, 2022 to the members of the governing agency, and caused the agenda to be posted on the City’s website at www.lemongrove.ca.gov and at Lemon Grove City Hall, 3232 Main Street Lemon Grove, CA 91945.

/s/: Audrey Malone
 Audrey Malone, City Clerk

In compliance with the Americans with Disabilities Act (ADA), the City of Lemon Grove will provide special accommodations for persons who require assistance to access, attend and/or participate in meetings of the City Council. If you require such assistance, please contact the City Clerk at (619) 825-3800 or email amalone@lemongrove.ca.gov. A full agenda is available for public review at City Hall.



CITY OF LEMON GROVE

CITY COUNCIL STAFF REPORT

Item No. 1.A
Meeting Date: March 1, 2022
Submitted to: Honorable Mayor and Members of the City Council
Department: City Manager's Office
Staff Contact: Kristen Steinke, City Attorney
Item Title: **Waive the Full Text Reading of all Ordinances**

Summary: Waive the full text reading of all ordinances included in this agenda. Ordinances shall be introduced and adopted by title only.

Environmental Review:

- Not subject to review Negative Declaration
 Categorical Exemption, Section | Mitigated Negative Declaration

Fiscal Impact: None.

Public Notification: None.



CITY OF LEMON GROVE

CITY COUNCIL STAFF REPORT

Item No. 1.B
Meeting Date: March 1, 2022
Submitted to: Honorable Mayor and Members of the City Council
Department: City Manager's Office
Staff Contact: Rod Greek, Interim Administrative Services Director;
rgreek@lemongrove.ca.gov
Item Title: **City of Lemon Grove Payment Demands**

Recommended Action: Ratify Demands.

Environmental Review:

- Not subject to review Negative Declaration
 Categorical Exemption, Section | Mitigated Negative Declaration

Fiscal Impact: None.

Public Notification: None.

City of Lemon Grove Demands Summary

Approved as Submitted:

Yolanda Cerezo, Interim Finance Manager
For Council Meeting: 03/01/22

ACH/AP Checks 02/09/22-02/16/22 293,658.33

Payroll - 02/08/22 119,025.53

Total Demands 412,683.86

CHECK NO	INVOICE NO	VENDOR NAME	CHECK DATE	Description	INVOICE AMOUNT	CHECK AMOUNT
ACH	Dec29-Jan25 22	California Public Empl Retirement System	02/09/2022	Pers Retirement 12/29/21-01/25/22	64,876.53	64,876.53
ACH	12806877	LEAF	02/09/2022	Ricoh C3502 Copier System-PW Yard - Jan'22	138.27	138.27
ACH	12/22/2022 1/22/2022 4038100884 82111043 82113386 12/11/2021 12/1/2021 12/9/2021 12/19/2021 Fax-CH-12/18/21 12/1/2021 11/30/2021 12/30/2021 Fire 12/1/21 11/27/2021 12/27/2021 11/30/2021 12/3/2021 200011748 200011807 8802 3105137471 9894239605 9894951465 9894951466 9894951982	Wells Fargo	02/10/2022	AT&T - Backup City Hall Internet- 11/23/21-12/22/21 AT&T - Backup City Hall Internet- 12/23/21-1/22/22 Canon Solutions - Canon Maintenance-Copier Usage 8/27/21-11/26/22 Corelogic - Realquest Graphics Package - Nov21 Corelogic - Realquest Graphics Package - Dec21 Cox - Calsense Modem Line: 2259 Washington 12/11/21-1/10/22 Cox - Calsense Modem Line: 7071 Mt Vernon/Berry St Pk 12/1-31/21 Cox - Calsense Modem Line:8235 Mt Vernon/Berry St Pk 12/9/21-1/8/22 Cox - Phone/PW Yard/2873 Skyline- 12/19/21-1/18/22 Cox - City Manager Fax Line- 12/18/21-1/17/22 Cox - Phone/City Hall 12/1/21-12/31/21 Cox - Internet/Comm Ctr- 11/30/21-12/29/21 Cox - Internet/Comm Ctr- 12/30/21-1/29/22 Cox - MainPhone/Fire 12/1/21-12/31/21 Cox - City Hall Fire Alarm 11/27/21-12/26/21 Cox - City Hall Fire Alarm 12/27/21-1/26/22 Cox - PEG Circuit Svc- 11/30/21-12/29/21 Cox - Phone/Internet/Rec Ctr/3131 School Ln- 12/4/21-1/3/22 CSMFO - CSMFO Conf Registration/Greek 2/16/22-2/18/22 CSMFO - CSMFO Conf Registration/Cerezo 2/16/22-2/18/22 Govt Finance Ofcrs Assn - Cert of Achievement Review Fee FY21 Pitney Bowes - Postage Meter Rental 9/30/21-12/29/21 Verizon - Modems - Cardiac Monitors - 11/4/21-12/3/21 Verizon - City Phone Charges- 11/13/21-12/12/21 Verizon - PW Tablets- 11/13/21-12/12/21 Verizon - Mobile Broadband Access- 11/13/21-12/12/21	85.60 85.60 875.34 300.00 300.00 27.54 23.78 80.39 212.77 4.34 824.24 111.89 110.39 440.64 37.08 92.99 2,923.23 339.31 470.00 470.00 530.00 178.65 42.32 203.77 151.36 7.64	8,928.87
ACH	Jan22	Wells Fargo	02/10/2022	Credit Card Processing-Mo.Svc - Jan'22 Credit Card Transaction Fees - Jan'22	9.95 908.84	918.79
ACH	Feb8 22	Employment Development Department	02/10/2022	State Taxes 2/8/22	7,806.83	7,806.83
ACH	007960	Aflac	02/10/2022	AFLAC Insurance 2/9/22	1,863.02	1,863.02
ACH	Jan22	Wells Fargo	02/11/2022	Bank Service Charge - Jan'22	262.06	262.06
ACH	Jan26-Feb8 22	Calpers Supplemental Income 457 Plan	02/11/2022	457 Plan 1/26/22-2/8/22	8,352.38	8,352.38
ACH	Feb8 22	US Treasury	02/15/2022	Federal Taxes 2/8/22	26,044.36	26,044.36
ACH	Jan22	Home Depot Credit Services	02/16/2022	Home Depot Purchases - Jan'22	843.78	843.78
15340	L1072895WB	American Messaging	02/09/2022	Pager Replacement Program 2/1/22-2/28/22	50.46	50.46
15341	17655182	AT&T	02/09/2022	Fire Backup Phone Line- 12/22/21-1/21/22	43.11	43.11
15342	5656817597 5656818145 5656835475	AutoZone, Inc.	02/09/2022	High Mileage Motor Oil/Transmission Fluid -LGPW#17 '99 Ford F350 Duralast Battery - LGPW#28 '08 Chevy Colorado Lightbulbs/Fuel Filter/Grease/Valve Caps/Funnel- PW Fleet Supply	67.11 168.97 80.39	316.47
15343	Oct-Dec 2021	California Building Standards Commission	02/09/2022	BSA Fees: Oct-Dec'21	149.40	149.40
15344	23955	City of La Mesa	02/09/2022	Household Hazardous Waste Event- 12/4/21	1,115.36	1,115.36
15345	1000322336	City of San Diego	02/09/2022	Fuel Services-PW: Jan'22	2,458.38	2,458.38
15346	02012220560	DAR Contractors	02/09/2022	Animal Disposal- Jan'22	174.00	174.00
15347	Oct-Dec 2021	Department of Conservation	02/09/2022	Qtrly SMIP Fees - Oct-Dec'21	627.70	627.70
15348	Oct-Dec 2021	Division of the State Architect	02/09/2022	State CASP Fee (\$4) - 10/1/21-12/31/21 State CASP Fee (\$1) - 10/1/21-12/31/21	159.20 1.50	160.70
15349	1/24-27/22	Esgil Corporation	02/09/2022	75% Building Fees- 1/24/22-1/27/22	6,299.74	6,299.74
15350	IN295603	Geotab USA, Inc.	02/09/2022	Monthly ProPlus Plan	197.50	197.50
15351	SIN014397	HDL Coren & Cone	02/09/2022	Contract Services Property Tax - Jan - Mar 2022	2,310.49	2,310.49
15352	66228	Horrocks Engineers Inc	02/09/2022	Prof Eng Svcs: FY19/20 Sewer Rehab Proj thru 12/31/21	3,119.00	3,119.00

15353	2/8/22	ICMA	02/09/2022	ICMA Deferred Compensation Pay Period Ending 2/8/22	780.77	780.77
15354	1722	Janazz, LLC SD	02/09/2022	IT Services- City Hall- Jan'22	2,500.00	2,500.00
15355	641224	League of California Cities	02/09/2022	League Membership Dues for 2022	11,002.00	11,002.00
15356	202201	Lemon Grove Car Wash, Inc.	02/09/2022	Oil Change/Fuel Injection Service/Wash - LGPW#31 '14 Ford Escape	202.22	202.22
15357	5260628 5260633 5264959 5275219	Mallory Safety and Supply, LLC	02/09/2022	Nitrile Gloves Nitrile Gloves/Drivers Gloves Nitrile Gloves/Safety Glasses/Earmuffs/Hi-Vis Vests Masks	247.83 1,450.33 709.17 80.82	2,488.15
15358	4373558	McNamara Pump and Electric Inc	02/09/2022	Duplex Sewage Pump Stn Svc- 6-Mo Maintenance Svc- 6794 Central	285.78	285.78
15359	INV-000203	Municipal Sewer Tools	02/09/2022	Nozzle Extensions/5 Point Socket - Sanitation	348.26	348.26
15360	3010356754	Parkhouse Tire Inc	02/09/2022	E310 4 Tires & Installation/Fleet Service	1,901.68	1,901.68
15361	PD-50228	Plumbers Depot Inc	02/09/2022	Sewer Camera- Replace 4 Wheels - LGPW#26	1,924.63	1,924.63
15362	32483345 32497939	RCP Block & Brick, Inc.	02/09/2022	Bulk Concrete Sand - Fire Stn Bulk Concrete Sand - Fire Stn	265.94 290.50	556.44
15363	3568860625/0222 4154920380/0222	SDG&E	02/09/2022	Electric Usage:St Light 1/1/22-1/31/22 Electric Usage:St Light 1/1/22-1/31/22	2,091.88 3,057.27	5,149.15
15364	115545576-001 115677240-001	SiteOne Landscape Supply, LLC	02/09/2022	Lifeguard Hat/Rubber Boots/Raingear - PW Playground Mulch - LG Park	111.03 2,528.97	2,640.00
15365	506852	South Coast Emergency Vehicle Services	02/09/2022	Replace Oil Cooler/Trans/Lockdown Bracket/Seat Belt/2"PSI - E310	9,299.89	9,299.89
15366	8065053248	Staples Advantage	02/09/2022	Office Supplies & Copy Paper - City Hall	358.45	358.45
15367	121445214-0001 121500332-0001 121685884-0001 121723391-0001 121892248-0001 122047402-0001 122272156-0001	Sunbelt Rentals Inc.		Propane Rental - 45' Art Manlift with Jib - Holiday Ornaments Propane Propane Propane Propane Propane	15.09 510.35 11.31 8.67 16.22 12.07 15.09	588.80
15368	12978	T-Man Traffic Supply	02/09/2022	Sign Supplies - Streets	616.50	616.50
15369	00114502	The East County Californian	02/09/2022	Notice of Decision - MUP-210-0007 1/28/22	217.00	217.00
15370	02/08/22	Van Lant & Fankhanel, LLP	02/09/2022	FY2021 Audit & Related Reports- Final Billing	18,500.00	18,500.00
15371	11-1559293 11-1564805	Vortex Industries, Inc.	02/09/2022	Repair Bay Door - Fire Station Repair Bay Door #1 - Fire Station	940.00 1,350.00	2,290.00
15372	73172126 73172127 73175180 73177791 73177792 73181662 73184524 73184525 73191391 73191392	Vulcan Materials Company	02/09/2022	Asphalt Asphalt Asphalt/SS1H 4.5 Gallon Bucket Asphalt Asphalt Asphalt Asphalt/SS1H 4.5 Gallon Bucket Asphalt/SS1H 4.5 Gallon Bucket Asphalt/SS1H 4.5 Gallon Bucket Asphalt	112.87 158.93 166.74 114.92 112.87 163.03 217.92 213.83 214.85 162.00	1,637.96
15373	0001475105-IN	WEX Health, Inc.	02/09/2022	COBRA - Monthly/Jan'22	85.00	85.00
15374	14VH-KPHW-4MJQ	Amazon Capital Services, Inc.	02/16/2022	16GB USB Flash Drive	28.74	28.74
15375	14067	Balestreri, Potocki & Holmes	02/16/2022	Legal Svcs; File 1019-224 - thru 12.31.21	28,110.55	28,110.55
15376	Mar 2022	California Dental Network Inc	02/16/2022	California Dental Insurance -Mar'22	168.33	168.33
15377	0000016076 0000016076 0000016076	Overtime Reimbursement - Hays 1/26/22	02/16/2022	Overtime Reimbursement - Hays 1/26/22 Overtime Reimbursement - Lopez 1/27/22 Overtime Reimbursement - Wrisley 1/22/22	1,319.28 1,255.71 1,255.71	3,830.70
15378	299	CityPlace Planning, Inc.	02/16/2022	Prof Svcs: Density Bonus Ordinance/ARDU Ordinance	2,875.00	2,875.00
15379	22CTOFLGN07	County of San Diego- RCS	02/16/2022	800 MHZ Network - Jan'22	2,251.50	2,251.50
15380	6809 7080	D- Max Engineering Inc	02/16/2022	2135 Washington TPM-0194 8/1/21-8/30/21 D-Max Stormwater Prof Svcs 1/1/22-1/31/22	971.50 6,424.70	7,396.20
15381	OSIP 69153	Department of Industrial Relations	02/16/2022	Workers Comp Admin Assessment 7/1/21-6/30/22	990.44	990.44
15382	AR011897	Grossmont Union High School District	02/16/2022	Business Cards	51.00	51.00
15383	1165303	Life-Assist, Inc.	02/16/2022	Nitrile Exam Gloves	617.03	617.03
15384	909	Local Government Consultants, LLC	02/16/2022	State Mandated Cost Svc-FY21-22 Claims Prep	1,600.00	1,600.00

15385	1138210	Michael Baker International	02/16/2022	Prof Eng Svcs: FY18/19 Sewer CIP Rehab Proj Design thru 12/31/21	7,896.00	7,896.00
15386	166043Ret 166057Ret	MIC Construction	02/16/2022	Retention - Demolition of 121 LF of Sound Wall - Pub Works Yard Retention - Installation of Concrete Sidewalk-Berry St Pk Phase2	4,501.20 3,724.80	8,226.00
15387	74265476	Occupational Health Centers of CA, A Medical Cor	02/16/2022	Medical Exam - 1/26/22	149.00	149.00
15388	INV-15-119422	Paymentus Group Inc.	02/16/2022	Transaction Fees - Jan'22	9.95	9.95
15389	3197	PIC Plumbing Services Inc	02/16/2022	Installation of Water Fountain/Bottle Filler - Rec Ctr	2,195.00	2,195.00
15390	2551	Prestige Doors Inc	02/16/2022	Repair Exit Doors - Rec Ctr Gym	295.00	295.00
15391	TM INV-004959	SBRK Finance Holdings, Inc.	02/16/2022	Prof Svcs: Financial Software Proj Mgmt thru 1/30/22	268.50	268.50
15392	Jan22	SDG&E	02/16/2022	Gas & Electric 12/22/21-1/21/22	25,607.15	25,607.15
15393	115831386-001 115831386-001	SiteOne Landscape Supply, LLC	02/16/2022	Herbicide/Roundup Promax/Speedzone E-Z Reachers/Burlap Totes/Gardner Benders Electrical Tape	365.98 232.38	598.36
15394	561040	State of California- Department of Justice	02/16/2022	Fingerprint Apps - Jan'22	64.00	64.00
					293,658.33	293,658.33



CITY OF LEMON GROVE

CITY COUNCIL STAFF REPORT

Item No. 2.

Meeting Date: March 1, 2022

Submitted to: Honorable Mayor and Members of the City Council

Department: Community Development Department

Staff Contact: Bill Chopyk, Interim Community Development Manager;
bchopyk@lemongrove.ca.gov

Item Title: **Public Hearing to Consider an Appeal of the Community Development Manager’s Decision to approve Minor Use Permit MUP-210-0007, a Request to Establish Early Separation Findings for a Medical Marijuana Dispensary at 8280 Broadway in the Heavy Commercial Zone**

Recommended Action:

- 1) Conduct the Public Hearing;
- 2) Receive Public Comment; and
- 3) Adopt a Resolution denying the appeal (**Attachment A**) or approving the appeal (**Attachment B**). Denial of the appeal would approve Minor Use Permit (MUP) MUP-210-0007 to establish early separation findings for a medical marijuana dispensary (MMD) pursuant to Municipal Code Chapter 17.32 at 8280 Broadway in the Heavy Commercial (HC) zone. Approval of the appeal would deny Minor Use Permit MUP-210-0007.

Summary:

The Applicant, Pick Axe Holdings LLC, submitted its first MUP application for early separation findings on August 21, 2019. On November 4, 2019 the City approved the first MUP with an expiration date of November 4, 2020. The Applicant submitted its second MUP application on November 4, 2020 for early separation findings, and a Conditional Use Permit (CUP) application on November 30, 2020 to operate a MMD at 8280 Broadway. The City provided three incomplete notices on the Applicant’s CUP application on 12-23-20, 12-21-21 and 1-20-22.

On January 12, 2021 the Community Development Manager (CDM) published a Notice of CDM Decision to approve MUP-210-0007. No appeals were filed at that time. The applicant reapplied for the MUP on November 16, 2021 prior to its expiration date of January 12, 2022. On January 27, 2022 the CDM published a Notice of CDM Decision to again approve MUP-210-0007.

An appeal of the CDM Decision to approve Minor Use Permit MUP-210-0007 was filed by Rita Hirmez & Sabah Toma (Appellants) on February 1, 2022. The Appellants also filed a Conditional Use Permit (CUP) application for a proposed MMD at 8290 Broadway on December 9, 2021. The proposed MMD at 8290 Broadway is located directly southwest and adjacent to Applicant's property at 8280 Broadway.

This is a request to establish early separation findings for a proposed MMD at 8280 Broadway in the HC zone. Municipal Code Section 17.32.090 B.1. requires a minimum distance of 1,000 feet of any other regulated use. The operation of the subject MMD is not authorized through this MUP. The proposed MMD use requires an application for a CUP and a public hearing by the City Council to grant approval of a CUP to operate a MMD.

Discussion:

Municipal Code Chapter 17.32 allows MMDs via a CUP application in commercial and industrial zoning districts. To be eligible, proposed MMD sites must be separated by 1,000 feet from the regulated and protected uses described in Municipal Code Section 17.32.090 B.1., including MMDs, parks, playgrounds, licensed daycare facilities, schools and alcohol and substance abuse treatment centers.

Municipal Code Section 17.28.020 O. states: "*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.*"

Required Findings:

Municipal Code Section 17.28.052 C. requires the following findings to be made to approve a MUP:

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 the applicable provisions of the particular zoning district and with the policies and standards of the *general plan*.

In addition to the findings required for the granting of a MUP by Section 17.28.052 C., the decision making authority shall consider the following:

- A. Whether the approval of the proposed use will violate the minimum requirements set forth in this chapter for distance separations between establishments which dispense, process or cultivate cannabis; and separations between establishments which dispense, process or cultivate cannabis and other specific regulated or protected land uses as set forth in this chapter.
- B. Whether the proposed use complies with Title 17 of the Lemon Grove Municipal Code. (Ord. 458 § 2, 2021; Ord. 443 § 1, 2016)

Findings made by staff

The CDM decision is based on the following findings and determinations:

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

No use is authorized with this MUP application submitted pursuant to 17.28.020(O). The proposed use as a MMD requires application for a CUP, the approval of which requires the applicant to demonstrate compliance with all applicable provisions of the Municipal Code and will be subject to site specific conditions of approval to ensure that the site is compatible with the neighborhood or community to the greatest extent practicable.

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

No use is authorized with this MUP application submitted pursuant to 17.28.020(O). The proposed use as a MMD requires application for a CUP, the approval of which requires the applicant to demonstrate compliance with all applicable provisions of the Municipal Code and will be subject to site specific conditions of approval to ensure the use is not detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity to the greatest extent practicable. Environmental impacts associated with the project will

be assessed and mitigated, if necessary, pursuant to the California Environmental Quality Act (CEQA) review of the CUP application.

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

No use is authorized with this MUP application submitted pursuant to 17.28.020(O). The proposed use as a MMD requires application for a CUP, the approval of which requires the applicant to demonstrate compliance with applicable performance standards in Section 17.24.080 of the Municipal Code, including, but not limited to: noise, glare, traffic circulation and parking, waste, and fire hazards.

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

No use is authorized with this MUP application submitted pursuant to 17.28.020(O). The proposed use as a MMD requires application for a CUP, the approval of which requires the applicant to demonstrate compliance with applicable provisions of the particular zoning district and with policies and standards of the general plan.

5. A. Whether the approval of the proposed use will violate the minimum requirements set forth in this chapter for distance separations between establishments which dispense, process or cultivate cannabis; and separations between establishments which dispense, process or cultivate cannabis and other specific regulated or protected land uses as set forth in this chapter.

The proposed location for a MMD at 8280 Broadway would not violate the minimum distance separations between MMD establishments and other protected uses because approval of this MUP would establish early separation findings at this location. The property at 8280 Broadway is approximately 5,894 feet from the nearest operating, or conditionally permitted, or proposed regulated use at 3515 Harris Street. Staff found no evidence of any protected uses, including public parks, playgrounds, licensed day care facilities, schools and alcohol and substance abuse treatment centers as defined in the LGMC, within 1,000 feet. Furthermore, the nearest protected use is approximately 1,065 feet from the proposed dispensary site when taking into account natural topographical barriers.

5. B. *Whether the proposed use complies with Title 17 of the Lemon Grove Municipal Code. (Ord. 458 § 2, 2021; Ord. 443 § 1, 2016).*

No use is authorized with this MUP application. The proposed use as a MMD requires application for a CUP, the approval of which requires the applicant to demonstrate compliance with Title 17 of the Municipal Code. A MMD at 8280 Broadway could be established in compliance with Title 17 of the Municipal Code with approval of a CUP.

Conclusion:

The City Council must make the MUP findings as stated above in order to approve or deny the appeal. The Council may deny the appeal and approve MUP-210-0007. Alternately, the Council may approve the appeal and deny MUP-210-0007.

Environmental Review:

- Not subject to review Negative Declaration
 Categorical Exemption, Section | | Mitigated Negative Declaration

The MUP is proposed for the sole purpose of determining if a MMD at 8280 Broadway meets separation distance requirements. The proposed MUP for Early Separation Findings is not subject to Environmental Review under CEQA because it does not constitute a project as defined by Section 15378 of the CEQA Guidelines.

Fiscal Impact:

No fiscal impact.

Public Notification: Notice of Public Hearing for this item was given in accordance with Municipal Code Section 17.28.020(F) on February 18, 2022. The City of Lemon Grove did not receive any comments in response to the Notice of Public Hearing. Staff will provide the City Council with any comments received after publication of the Staff Report.

Staff Recommendation:

- 1) Conduct the public hearing;
- 2) Receive Public Comment; and
- 4) Adopt a Resolution denying the appeal (**Attachment A**) or approving the appeal (**Attachment B**). Denial of the appeal would approve MUP-210-0007 to establish early separation findings for a MMD at 8280 Broadway in the HC zone. Approval of the appeal would deny Minor Use Permit MUP-210-0007.

Attachments:

Attachment A – Draft Resolution Denying the Appeal

Attachment B – Draft Resolution Approving the Appeal

RESOLUTION NO. 2022-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE, CALIFORNIA, DENYING AN APPEAL OF THE COMMUNITY DEVELOPMENT MANAGER DECISION TO APPROVE MINOR USE PERMIT MUP-210-0007 FOR EARLY SEPARATION FINDINGS IN ACCORDANCE WITH SECTION 17.28.020(O) FOR A PROPOSED MEDICAL MARIJUANA DISPENSARY AT 8280 BROADWAY, LEMON GROVE, CALIFORNIA.

WHEREAS, the California voters approved Proposition 215 in 1996 to ensure that seriously ill Californians have the right to obtain and use cannabis for medical purposes and to encourage elected officials to implement a plan for the safe and affordable distribution of medicine; and

WHEREAS, the California State Legislature adopted Senate Bill 420, the Medical Marijuana Program Act, in 2003 to help clarify and further implement Proposition 215 in part by authorizing patients and Primary caregivers to associate within the State of California in order to collectively or cooperatively cultivate cannabis for medical purposes; and

WHEREAS, the California State Legislature adopted Assembly Bill 243, Assembly Bill 266, and Senate Bill 643, collectively known as the Medical Marijuana Regulation and Safety Act, in 2015 to establish a statewide regulatory framework and establish the Bureau of Medical Marijuana Regulation for the regulation of medical marijuana activity occurring in jurisdictions across California; and

WHEREAS, on November 8, 2016, voters in the City of Lemon Grove passed Measure V, an initiative removing the City's prohibition of medical marijuana dispensaries and establishing performance standards and a permit process by which medical marijuana dispensaries (MMDs) may be established which is codified as Chapter 17.32 in the Lemon Grove Municipal Code (LGMC); and

WHEREAS, LGMC Section 17.32.090(B) establishes the distance requirements between dispensaries (including MMDs) as a regulated use and protected land uses, including public parks, playgrounds, licensed day care facilities, schools and alcohol and substance abuse treatment centers as defined in the LGMC; and

WHEREAS, the Applicant, Pick Axe Holdings LLC, submitted a Minor Use Permit application on November 4, 2020 for early separation findings, and a Conditional Use Permit application on November 30, 2020 to operate a MMD at 8280 Broadway. On January 12, 2021 the Community Development Manager (CDM) published a Notice of CDM Decision to approve MUP-210-0007. No appeals were filed at that time. The CUP application was incomplete and was not approved prior to the one-year expiration of the MUP. The applicant reapplied for the MUP prior to its expiration date of January 12, 2022. On January 27, 2022 the CDM published a Notice of CDM Decision to again approve MUP-210-0007; and

WHEREAS, an appeal of the CDM Decision to approve Minor Use Permit MUP-210-0007 was filed by Rita Hirmez & Sabah Toma (Appellants) on February 1, 2022; and

WHEREAS, Notice of the Public Hearing was given in compliance with LGMC Section 17.28.020(F). On February 18, 2022, the Notice of Public Hearing for MUP-210-0007 was published in the East County Californian and mailed to all property owners within 1,000 feet of the subject property. Staff confirmed the presence of the required on-site public notice sign on February 18, 2022; and

WHEREAS, on March 1, 2022, City Council held a duly noticed public hearing to consider and appeal of the CDM decision to approve Minor Use Permit application MUP-210-0007; and

WHEREAS, all findings outlined in LGMC 17.28.050(C) and 17.32.080 must be made in order for the City Council to deny the appeal and approve the request for a Minor Use Permit for Early Separation Findings; and

WHEREAS, if all findings outlined in LGMC 17.28.050(C) and 17.32.080 cannot be made then the City Council must approve the appeal and deny the request for a Minor Use Permit for Early Separation Findings; and

WHEREAS, the City Council determined that all of the findings outlined in LGMC Section 17.28.052(C) and 17.38.080 can be made and provided its reasoning as follows:

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

No use is authorized with this MUP application submitted pursuant to 17.28.020(O). The proposed use as a MMD requires application for a CUP, the approval of which requires the applicant to demonstrate compliance with all applicable provisions of the Municipal Code and will be subject to site specific conditions of approval to ensure that the site is compatible with the neighborhood or community to the greatest extent practicable.

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

No use is authorized with this MUP application submitted pursuant to 17.28.020(O). The proposed use as a MMD requires application for a CUP, the approval of which requires the applicant to demonstrate compliance with all applicable provisions of the Municipal Code and will be subject to site specific conditions of approval to ensure the use is not detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity to the greatest extent practicable. Environmental impacts associated with the project will be assessed and mitigated, if necessary, pursuant to the California Environmental Quality Act (CEQA) review of the CUP application.

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

No use is authorized with this MUP application submitted pursuant to 17.28.020(O). The proposed use as a MMD requires application for a CUP, the approval of which requires the applicant to demonstrate compliance with applicable performance standards in Section 17.24.080 of the Municipal Code, including, but not limited to: noise, glare, traffic circulation and parking, waste, and fire hazards.

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

No use is authorized with this MUP application submitted pursuant to 17.28.020(O). The proposed use as a MMD requires application for a CUP, the approval

of which requires the applicant to demonstrate compliance with applicable provisions of the particular zoning district and with policies and standards of the general plan.

5. A. Whether the approval of the proposed use will violate the minimum requirements set forth in this chapter for distance separations between establishments which dispense, process or cultivate cannabis; and separations between establishments which dispense, process or cultivate cannabis and other specific regulated or protected land uses as set forth in this chapter.

The proposed location for a MMD at 8280 Broadway would not violate the minimum distance separations between MMD establishments and other protected uses because approval of this MUP would establish early separation findings at this location. The property at 8280 Broadway is approximately 5,894 feet from the nearest operating, or conditionally permitted, or proposed regulated use at 3515 Harris Street. Staff found no evidence of any protected uses, including public parks, playgrounds, licensed day care facilities, schools and alcohol and substance abuse treatment centers as defined in the LGMC, within 1,000 feet. Furthermore, the nearest protected use is approximately 1,065 feet from the proposed dispensary site when taking into account natural topographical barriers.

5. B. Whether the proposed use complies with Title 17 of the Lemon Grove Municipal Code. (Ord. 458 § 2, 2021; Ord. 443 § 1, 2016).

No use is authorized with this MUP application. The proposed use as a MMD requires application for a CUP, the approval of which requires the applicant to demonstrate compliance with Title 17 of the Municipal Code. A MMD at 8280 Broadway could be established in compliance with Title 17 of the Municipal Code with approval of a CUP.

WHEREAS, *the minor use permit is proposed for the sole purpose of determining if a MMD at 8280 Broadway meets separation distance requirements. The proposed minor use permit for Early Separation Findings is not subject to Environmental Review under the California Environmental Quality Act (CEQA) because it does not constitute a project as defined by Section 15378 of the CEQA Guidelines; and*

NOW, THEREFORE, INCORPORATING THE ABOVE STATEMENTS HEREIN AND BASED ON THE RECORD OF THE PROCEEDING, BE IT RESOLVED that the City Council of the City of Lemon Grove, California, hereby denies the appeal of the Community Development Manager’s decision to approve Minor Use Permit MUP-210-0007 to establish early separation findings for a MMD at 8280 Broadway, thereby approving Minor Use Permit MUP-210-0007, based on the findings above.

PASSED AND ADOPTED on _____, 2022, the City Council of the City of Lemon Grove, California, adopted Resolution No. _____, passed by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Racquel Vasquez, Mayor

Attest:

Audrey Malone, City Clerk

Approved as to Form:

Kristen Steinke, City Attorney

RESOLUTION NO. 2022-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE, CALIFORNIA, APPROVING AN APPEAL OF THE COMMUNITY DEVELOPMENT MANAGER DECISION TO APPROVE MINOR USE PERMIT MUP-210-0007 FOR EARLY SEPARATION FINDINGS IN ACCORDANCE WITH SECTION 17.28.020(O) FOR A PROPOSED MEDICAL MARIJUANA DISPENSARY AT 8280 BROADWAY, LEMON GROVE, CALIFORNIA.

WHEREAS, the California voters approved Proposition 215 in 1996 to ensure that seriously ill Californians have the right to obtain and use cannabis for medical purposes and to encourage elected officials to implement a plan for the safe and affordable distribution of medicine; and

WHEREAS, the California State Legislature adopted Senate Bill 420, the Medical Marijuana Program Act, in 2003 to help clarify and further implement Proposition 215 in part by authorizing patients and Primary caregivers to associate within the State of California in order to collectively or cooperatively cultivate cannabis for medical purposes; and

WHEREAS, the California State Legislature adopted Assembly Bill 243, Assembly Bill 266, and Senate Bill 643, collectively known as the Medical Marijuana Regulation and Safety Act, in 2015 to establish a statewide regulatory framework and establish the Bureau of Medical Marijuana Regulation for the regulation of medical marijuana activity occurring in jurisdictions across California; and

WHEREAS, on November 8, 2016, voters in the City of Lemon Grove passed Measure V, an initiative removing the City's prohibition of medical marijuana dispensaries and establishing performance standards and a permit process by which medical marijuana dispensaries (MMDs) may be established which is codified as Chapter 17.32 in the Lemon Grove Municipal Code (LGMC); and

WHEREAS, LGMC Section 17.32.090(B) establishes the distance requirements between dispensaries (including MMDs) as a regulated use and protected land uses, including public parks, playgrounds, licensed day care facilities, schools and alcohol and substance abuse treatment centers as defined in the LGMC; and

WHEREAS, the Applicant, Pick Axe Holdings LLC, submitted a Minor Use Permit application on November 4, 2020 for early separation findings, and a Conditional Use Permit application on November 30, 2020 to operate a MMD at 8280 Broadway. On January 12, 2021 the Community Development Manager (CDM) published a Notice of CDM Decision to approve MUP-210-0007. No appeals were filed at that time. The CUP application was incomplete and was not approved prior to the one-year expiration of the MUP. The applicant reapplied for the MUP prior to its expiration date of January 12, 2022. On January 27, 2022 the CDM published a Notice of CDM Decision to again approve MUP-210-0007; and

WHEREAS, an appeal of the CDM Decision to approve Minor Use Permit MUP-210-0007 was filed by Rita Hirmez & Sabah Toma (Appellants) on February 1, 2022; and

WHEREAS, Notice of the Public Hearing was given in compliance with LGMC Section 17.28.020(F). On February 18, 2022, the Notice of Public Hearing for MUP-210-0007 was published in the East County Californian and mailed to all property owners within 1,000 feet of the subject property. Staff confirmed the presence of the required on-site public notice sign on February 18, 2022; and

WHEREAS, on March 1, 2022, City Council held a duly noticed public hearing to consider and appeal of the CDM decision to approve Minor Use Permit application MUP-210-0007; and

WHEREAS, all findings outlined in LGMC 17.28.050(C) and 17.32.080 must be made in order for the City Council to deny the appeal and approve the request for a Minor Use Permit for Early Separation Findings; and

WHEREAS, if all findings outlined in LGMC 17.28.050(C) and 17.32.080 cannot be made then the City Council must approve the appeal and deny the request for a Minor Use Permit for Early Separation Findings; and

WHEREAS, the City Council determined that the findings outlined in LGMC Section 17.28.050(C)(1) and (2) could not be made as follows:

1. The use is not compatible with the neighborhood or the community;

2. The use is detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity;

WHEREAS, the remaining findings identified in LGMC 17.28.050(C)(3) and (4) were not addressed by the City Council since the findings in LGMC 17.28.050(C)(1) and (2) could not be made, which has the result of requiring a denial of the MUP for early separation findings; and

WHEREAS, the findings identified in LGMC 17.32.080(A) and (B) were not addressed by the City Council since the findings in LGMC 17.28.050(C)(1) and (2) could not be made, which has the result of requiring a denial of the MUP for early separation findings; and

WHEREAS, the minor use permit is proposed for the sole purpose of determining if a MMD at 8280 Broadway meets separation distance requirements. The proposed minor use permit for Early Separation Findings is not subject to Environmental Review under the California Environmental Quality Act (CEQA) because it does not constitute a project as defined by Section 15378 of the CEQA Guidelines; and

NOW, THEREFORE, INCORPORATING THE ABOVE STATEMENTS HEREIN AND BASED ON THE RECORD OF THE PROCEEDING, BE IT RESOLVED that the City Council of the City of Lemon Grove, California, approves the appeal of the Community Development Manager's decision to approve Minor Use Permit MUP-210-0007 to establish early separation findings for a MMD at 8280 Broadway, thereby denying Minor Use Permit MUP-210-0007, based on the findings above.

PASSED AND ADOPTED on _____, 2022, the City Council of the City of Lemon Grove, California, adopted Resolution No. _____, passed by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Racquel Vasquez, Mayor

Attest:

Audrey Malone, City Clerk

Approved as to Form:

Kristen Steinke, City Attorney

AUSTIN LEGAL GROUP

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February 22, 2022

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City Council
City of Lemon Grove
3232 Main Street,
Lemon Grove, CA 91945

VIA EMAIL

**RE: March 1, 2022 City Council Meeting Agenda Item - MUP-210-0007;
Appeal of Request for Early Separation Findings for MMD CUP at 8280 Broadway**

Dear City Council:

Austin Legal Group represents the appellants, Rita Hirmez and Sabah Toma ("Appellants"), with respect to this appeal of the City of Lemon Grove's tentative decision to approve Pick Axe Holdings LLC's ("Pick Axe") third minor use permit application for early separation findings for its proposed medical marijuana dispensary at 8280 Broadway, Lemon Grove, CA 91945 ("8280 Broadway MMD" or "Project").

As detailed below, MUP-210-0007 cannot be approved for the following reasons: (1) the required early separation findings cannot be made and (2) Pick Axe has and will continue to act in bad faith with respect to its improper and unilateral delays of this Project. In light of this, Appellants respectfully requests that the City Council grant the appeal and deny MUP-210-0007. This letter is expressly intended to be a part of the administrative record.

BACKGROUND

Pick Axe has unilaterally delayed this Project for approximately 2 years and 4 months. To the best of our office's knowledge, the following demonstrates the processing timeline for the 8280 Broadway MMD project.

In or about October 2019, Pick Axe submitted its first request for early separation findings for the 8280 Broadway MMD ("First MUP"). On November 4, 2019, the City approved the First MUP with an expiration date of November 4, 2020. The City's applicable notice of decision provided that:

Any conflicting land use, or land use application, that commences between November 4, 2019 and November 4, 2020 will not be grounds to disqualify a MMD CUP application at this address.

On November 4, 2020, the Pick Axe had yet to submit a conditional use permit application to the City. A few weeks later, on November 30, 2020, Pick Axe submitted a conditional use permit application to the City which was significantly incomplete ("MMD CUP"). On December 23, 2020, the City provided a notice

of incomplete letter to Pick Axe stating that Pick Axe failed to provide the required materials needed for the City to review the application.

In or about December 2020, Pick Axe submitted its second request for early separation findings for the 8280 Broadway MMD (“Second MUP”). On January 13, 2021, the City approved the Second MUP with an expiration date of January 13, 2022. Again, the City’s notice of decision provided that:

Any conflicting land use, or land use application, that commences between January 13, 2021 and January 13, 2022 will not be grounds to disqualify a MMD CUP application at this address.

On or about November 16, 2021, Pick Axe submitted its third request for early separation findings for the 8280 Broadway MMD (“Third Request”). At this time, Pick Axe had not provided any additional materials to the City with respect to its MMD CUP application originally submitted on November 30, 2020 and had in fact not bothered to respond to the City’s December 23, 2020 Notice of Incomplete. The Lemon Grove Municipal Code (“LGMC”) 17.28.020(j)(1) provides that a CUP application shall expire after a continuous 12-month period of inactivity. In an attempt to game the system, Pick Axe submitted plans on November 22, 2021 (6 days short of the one-year mark) but failed to include the other required materials identified in the December 23, 2020 Notice of Incomplete. Due to Pick Axe’s lack of substantial activity toward submitting a complete application package, Pick Axe’s CUP application was set to expire on November 30, 2021.

On December 9, 2021, Appellants submitted a conditional use permit application for a cannabis dispensary to be located at 8290 Broadway. The Appellants’ CUP application was deemed complete on January 9, 2022.

On January 27, 2022, the City distributed its tentative notice of decision to approve Pick Axe’s Third MUP. On February 1, 2022, the Appellants timely filed an appeal. At this time, the Pick Axe’s MMD CUP application is still not deemed complete.

DISCUSSION

A. THE REQUIRED FINDINGS FOR THIS MUP APPLICATION CANNOT BE MADE.

1. The Early Separation Findings Are Not A Use.

Section 17.28.020(O) of the (“LGMC”) regulates an applicant’s request for early separation findings. If an applicant wishes to obtain early separation findings, the applicant must use a minor use permit application “**for the sole purpose of finding that the application meets or does not meet the required separation requirements.**” Section 17.28.020(O) precludes the City from applying the generic minor use permit findings listed in LGMC section 17.28.052(C)(1)-(4) by including the language “**for the sole purpose of finding that the application meets or does not meet the required separation requirements.**”

Even without the aforementioned prohibitive language, it would be nonsensical to review early separation requirements based upon LGMC section 17.28.052 (C) because those findings require the City to evaluate the compatibility of a “use.”¹ LGMC section 17.08.030 defines “use” as “the purpose for which

¹ LGMC section 17.28.052(C) requires the following findings: (i) the *use* is compatible with the neighborhood or the community, (ii) the *use* is not detrimental to the health, safety, convenience or general welfare of persons residing or

land or a building or structure is arranged, designed, or intended to be used, or for which it is or may be used, occupied or maintained.” Early separation findings by their very nature are not a “use”. The City is not evaluating whether or not the MMD “use” is appropriate with the early separation findings. Rather, it is certifying that there are not any regulated or protected uses within 1000’ at the time of application. This allows an applicant to have one year to diligently process its application without a daycare popping up at the last minute that would prohibit the location of the MMD. In light of this, the City must look solely to the proposed project’s compliance with the City’s separation requirements in making the early determination findings.

2. A cannabis dispensary at 8280 Broadway does not meet the required separation requirements provided in Section 17.32.090(B).

Notwithstanding the above, the City cannot make the determination that a cannabis dispensary at 8280 Broadway would meet the required separation requirements. The Appellants submitted a conditional use permit application for a cannabis dispensary at 8280 Broadway on **December 9, 2021**. Pick Axe’s Second MUP **expired on January 13, 2022**.

On January 27, 2022, the City distributed its tentative notice of decision to approve Pick Axe’s Third MUP the notice of decision stated that the decision would become final on February 7th, 2022 if no public hearing was requested. Therefore, between January 13, 2022 and at a minimum January 27, 2022, Pick Axe did not have the benefit of early separation findings. If the City were to approve this Third MUP at the March 1, 2022 City Council hearing, the notice of decision would provide that: “Any conflicting land use, or land use application, that commences between March 1, 2022 and March 1, 2023 will not be grounds to disqualify a MMD CUP application at this address.”

Due to: (1) the expiration of the Pick Axe’s Second MUP on January 13, 2022, and (2) Appellants’ CUP application being submitted in January 2022 (prior to March 1, 2022), the City cannot approve Pick Axe’s MUP.

B. PICK AXE HAS MANIPULATED THE CITY’S PERMITTING PROCESS IN BAD FAITH.

Pick Axe has manipulated the City’s permitting system for over 2 years and will continue to do so. Pick Axe’s conduct has prevented other cannabis applicants from applying and developing in the area limiting the City’s opportunity for commercial and neighborhood revitalization. Pick Axe’s bad faith can be demonstrated by the following acts:

1. Pick Axe submitted its first request for early separation findings for the 8280 Broadway MMD in or around October 2019. Pick Axe did not submit any conditional use permit application materials until November 30, 2020 more than one year from its First MUP request.
2. Once Pick Axe did submit a conditional use permit application, the application failed to include a majority of the application’s submittal requirements.
3. Once the City told Pick Axe of all its missing CUP application materials, Pick Axe waited until one week from the expiration of its CUP application to submit plans for the Project. Moreover, this last-minute submittal still excluded many required application materials.

working in the vicinity; (iii) the *use* complies with performance standards according to Section 17.24.080; and (iv) the *use* is consistent with the applicable provisions of the particular zoning district and with the policies and standards of the *general plan*.

4. Pick Axe has submitted three requests for early separation findings and Pick Axe's CUP application is still not deemed complete.

Finally, it is not possible for Pick Axe to timely utilize its conditional use permit even if it were to be granted. The current property owner of 8280 Broadway is in a lease agreement for approximately three more years with the tow yard. Neither the property owner nor the tenant intend to breach the lease. LGMC section 17.28.020(J)(2)(b) states that a conditional use permit shall expire after twelve months post-approval unless construction or the use has commenced. Pick Axe will not meet this deadline further delaying any development opportunity in the area.

CONCLUSION

As demonstrated above, MUP-210-0007 cannot be approved because: (1) the required early separation findings cannot be made and (2) Pick Axe has and will continue to act in bad faith with respect to its improper and unilateral delays of this Project.

In light of this, the Appellants respectfully request that the City Council grant the appeal and deny MUP-210-0007.

Sincerely,
AUSTIN LEGAL GROUP, APC



Gina M. Austin, Esq.

cc: City Attorney
Interim Community Development Director