

**IN THE SUPERIOR COURT FULTON COUNTY  
STATE OF GEORGIA**

<b>CITY OF SANDY SPRINGS, GEORGIA</b>	)	
	)	
<b>Plaintiff</b>	)	<b>CIVIL ACTION</b>
<b>vs.</b>	)	<b>FILE NO: _____</b>
	)	
<b>JAVIER MCINTOSH;</b>	)	
<b>MICHAEL A. REVELL, II,</b>	)	
<b>JABRIEL MCINTOSH; and,</b>	)	
<b>ERIC MCINTOSH</b>	)	
	)	
<b>Defendants.</b>	)	
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**PLAINTIFF’S MOTION FOR TEMPORARY RESTRAINING ORDER AND  
BRIEF IN SUPPORT**

Plaintiff City of Sandy Springs, Georgia (the “City”) moves the Court pursuant to O.C.G.A. § 9-11-65 to enter a temporary restraining order against Defendant Javier McIntosh, Defendant Michael A. Revell, II, Defendant Jabriel McIntosh, and Defendant Eric McIntosh (collectively “Defendants”) showing the Court as follows.

**Facts**

The City has filed a Verified Complaint in the above-styled action. As discussed in the Verified Complaint, Defendants Javier McIntosh and Defendant Michael Revell own the property located at 5785 Northside Drive, Sandy Springs, Fulton County, Georgia (the “subject property”). Defendants are operating a commercial enterprise on the subject property. Defendants regularly and continuously advertise the subject property for rent for commercial use and include within said advertisements the required fee for use of the subject property for commercial events as well as the costs of admission to said events. See Complaint, ¶¶ 18-24. Further, Defendants utilize the online advertisements and websites for individuals to purchase tickets via the website for the

events at the subject property. See Id. The online advertisements declare that many tickets have been sold and are continuing to be sold. See Id. Moreover, the sale and ticket price include the sale of alcohol, for which Defendants do not possess a license and could not possess. See Complaint, ¶¶ 24-25.

On May 31, 2021, the City's Police Department responded to complaints of noise and large crowds at the subject property. The City's Police Department responded to the scene, shut down the party, and issued a citation for violation of the City's noise ordinance. See Complaint, ¶ 27.

The City's Code Enforcement has cited Defendants for multiple violations of the City's Development Code and Code of Ordinances. See Complaint ¶¶ 28-30, 32. The City has attempted to meet with Defendant Javier McIntosh on two occasions, to which he did not show. See Complaint, ¶ 41. Defendants continue to advertise for the commercial use of the subject property, and, specifically, are advertising for two imminently scheduled commercial events: an event entitled Wet Royalty for June 19, 2021, and an event entitled Pirate Pool Parrty for June 26, 2021. See Complaint ¶¶ 22, 33. As depicted in the Complaint and included in Exhibit A thereof, Defendants include within the advertisements for said events the ticket price for admission.

### **Argument and Citation of Authority**

Defendants commercial use of the residentially zoned subject property violates the City's zoning ordinance. Specifically, Divisions 7.1, 7.2, and 7.3 of Article 7 of the City's Development Code precludes commercial uses on residentially zoned properties, with certain exceptions. Section 7.31. (G) (1) (g) provides that the "nonresidential use of the unit is limited to office, personal service, retail and artisanal uses." Defendants'

commercial use of the property by holding events that require a fee for use of the property and include charge for ticket price admission—along with advertisements for said purposes—do not fall within any of these allowed exceptions. Defendants are clearly operating a business at the subject property, and that is not allowed under the City’s zoning ordinance.

The City is entitled to a temporary restraining order to prevent the continued use of the subject property in violation of the City’s Development Code.

A temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if: (1) It clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition; and (2) The applicant’s attorney certifies to the court, in writing, the efforts, if any, which have been made to give the notice and the reasons supporting the party’s claim that notice should not be required.

O.C.G.A. § 9-11-65. The City has established specific facts via a verified complaint that it will suffer immediate and irreparable injury, loss, or damage if the temporary restraining order is not granted. As discussed above and in the Complaint, the Defendants have continued to utilize the subject property in violation of the City’s Development Code and have two imminently scheduled commercial events to occur within the next week. See Exhibit A to Complaint. Tickets have already been sold for both events and are continuing to be sold. If the events are allowed to proceed, the City will have no option but to intervene in order to attempt to enforce its ordinances, to which Defendants have already refused to follow. Moreover, the general public welfare—which the City’s ordinances are designed to protect—will continue to be damaged.

As certified in the City's Complaint, the City attempted to meet twice with Defendant Javier McIntosh, and he did not attend. The City has thus made efforts to give Defendants notice. Given the imminency of the scheduled commercial events, and the unwillingness of Defendants to meet with the City, notice should not be required before a temporary restraining order is issued.

Moreover, there is a substantial likelihood that the City will succeed on the ultimate merits of obtaining a permanent injunction enjoining defendants from continued use of the subject property in violation of the City's zoning ordinance. Defendants are indisputably operating a business at the subject property. They are advertising events, selling tickets to those events, and charging a fee for use of the property for the events. Additionally, defendants offer services such as a bartender, for a fee, for use at the events. Unequivocally, Defendants cannot engage in commercial use of a residentially zoned property.

Thus, as established in the Verified Complaint and this Motion, the City is entitled to a temporary restraining order because (1) it has established a substantial likelihood of success on the merits; (2) immediate and irreparable injury, loss, and damage will result to the company if a temporary restraining order is not granted; and (3) a balancing of the equities favors the granting of a temporary restraining order. Moreover, a temporary restraining order is appropriate without notice to Defendants because the City has made reasonable efforts to meet with Defendant Javier McIntosh and he failed to attend either time.

THEREFORE, The respectfully prays that the Court enter a temporary restraining order:

(1) Enjoining, restraining and prohibiting Defendants from continuing to utilize the subject property for commercial purpose.

(2) Ordering Defendants to remove the advertisements for the upcoming commercial events.

Respectfully submitted this 17th day of June, 2021.

*/s/ Daniel W. Lee*

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