

2.

Defendant Javier McIntosh is an individual and an owner of 5785 Northside Drive, Sandy Springs, Fulton County, Georgia (the “subject property” and advertised as “The Manor ATL”) and is engaged in the commercial use of the subject property.

3.

Defendant Michael A. Revell, II is an individual and owner of the subject property.

4.

Defendant Jabriel McIntosh is an individual engaged in the commercial use of the subject property.

5.

Defendant Eric McIntosh is an individual engaged in the commercial use of the subject property.

Jurisdiction and Venue

6.

The City hereby incorporates paragraphs 1-5 as if set forth fully herein.

7.

This Court has jurisdiction over this action requesting injunctive relief pursuant to Ga. Const. 1983, Art. VI, § 1, Para. IV; O.C.G.A. § 9-5-1 et. seq.; and O.C.G.A. § 9-11-65.

8.

This Court has jurisdiction over this action requesting abatement of a nuisance pursuant to O.C.G.A. § 41-2-1 et. seq.

9.

Venue is proper in this Court because the acts complained of have occurred and are occurring in Fulton County.

Facts

10.

The City hereby incorporates paragraphs 6-9 as if set forth fully herein.

11.

Article 7 of the City’s Development Code provides the allowed uses of property within the City’s respective zoning districts.

12.

Division 7.2 of Article 7 of the City’s Development Code precludes commercial uses on residentially zoned properties, with certain exceptions.

13.

Section 7.3.1 of the City’s Development Code provides certain exceptions for commercial uses of residentially zoned properties.

14.

Section 7.31. (G) (1) (g) provides that the “nonresidential use of the unit is limited to office, personal service, retail and artisanal uses.”

15.

Defendant’s property is zoned Residential Estate 2 (“RE-2”).

16.

Defendants are operating a business—engaging in a commercial use—at the subject property and using the subject property as the site for events that make up that business.

17.

Upon information and belief, Defendants regularly utilize the subject property for lease to others to host commercial events.

18.

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 Exhibit A.

19.

Defendants regularly and continuously advertise for and, upon information and belief, provide additional services to renters of the subject property for commercial events.

20.

Defendants regularly and continuously advertise for and utilize the subject property for commercial purposes, including, but not necessarily limited to:

- a. advertising the subject property as available to rent for a fee for parties and events, including advertising to provide certain services as part of the use of the property: offering bartender services for a specified fee; offering sound system use for a specified fee; and use of a pole dance studio for a specified fee (Exhibit A)
- b. advertising specific events held at the subject property including, but not necessarily limited to:
 - i. Mid Morning Yoga and Meditation Session (Exhibit A, p. 18);
 - ii. Saturday Music Jam Session (Exhibit A, p. 17);
 - iii. Pole Fitness Lesson with Christine (Exhibit A, p. 16);
 - iv. Photography 101 Class With Javi (Exhibit A, p. 15);

- v. Exotic Cooking Class With Jabriel (Exhibit A, p. 14);
- vi. Standup Comedy Show With Javier McIntosh (Exhibit A, p. 13);
- vii. Baby Goat Petting Zoo and Goat Themed Freestyle Rap Battle (Exhibit A, p. 12);
- viii. Food and Wine Festival (Exhibit A, p. 11);
- ix. Pirate Pool Parrty. (Exhibit A, p. 20-25);
- x. Wet Royalty (Exhibit A, p. 26-27).

21.

Defendants have created and maintained online advertisements promoting events at the subject property. The online advertisements are used for people to purchase the commercially operated events.

22.

The online advertisements declare that many tickets have been sold and are continuing to be sold. The sale and ticket price include the sale of alcohol. Defendants do not possess a license to sell alcohol of any kind.

23.

The subject property's zoning will not allow for a license.

24.

The City has received complaints from members of the public complaining of large crowds and noise emanating from commercial events taking place at the subject property.

25.

The City's Police Department responded to noise complaints related to a commercial event on the subject property on May 31, 2021. The Police ordered the event to cease, and cited

Defendant Javier McIntosh for violation of the City's noise ordinance. Approximately 200 or more people were in attendance at the commercial event on May 31, 2021.

26.

The City has cited Defendants for violating the City's zoning ordinance for hosting an event without a special event permit.

27.

The City has cited Defendants for violating the City's zoning ordinance for impermissibly utilizing the subject property as a commercial use in a residentially zoned area.

28.

The City has provided Defendants a Notice of Violation for violating the City's zoning ordinance for impermissibly installing a gate without a permit. See Dev. Code Sec. 8.2.10.

29.

In furtherance of Defendants' commercial use of the subject property, Defendants have recently hung tarps near the property line in order to screen the commercial activity from the neighboring residential properties.

30.

The City has provided Defendants a Notice of Violation for violating the City's Code of Ordinances for accumulating rubbish or garbage via the installation of tarps on the subject property. See City Code Sec. 105-20 and International Property Maintenance Code.

31.

In furtherance of Defendants' commercial use of the residentially zoned property, Defendants currently have commercial events imminently scheduled at the subject property on June 19, 2021 and June 26, 2021. See Exhibit A.

Count I: Violation of City’s Zoning Ordinance—Emergency Temporary Restraining Order, Interlocutory and Permanent Injunctive Relief

32.

The City hereby incorporates paragraphs 10-31 as if set forth fully herein.

33.

Defendants are engaging in ongoing commercial activity at the subject property, which is zoned RE-2.

34.

Defendant’s commercial use of the subject property zoned for residential purposes violates the City’s zoning ordinance.

35.

Defendants violate Development Code Sections 7.1 and 7.3 by engaging in commercial activity on property zoned RE-1.

36.

Defendants commercial use of the residential property does not fall within any of the relevant exceptions for allowing commercial activity on residentially zoned property.

37.

“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.

38.

The City will suffer immediate and irreparable injury if the Defendants are allowed to continue to operate their commercial enterprise on the residentially zoned property. Specifically, the City will be forced to intervene at the imminently scheduled June 19, 2021 and June 26, 2021 events to shut down events that are not allowed under the City's zoning ordinance.

39.

The City certifies herein that it has made reasonable attempts to notify the Defendants of this Action. The City scheduled a meeting with Defendant Javier McIntosh for June 14, 2021, and June 17, 2021, to which no Defendant attended. The City requests an ex-parte thirty (30) day Temporary Restraining Order enjoining Defendants from continuing to operate a commercial enterprise on the subject property.

40.

The City is entitled to an Emergency Temporary Restraining Order to prevent the imminent and continuous commercial use of the subject property in violation of the City's zoning ordinance and subjecting City Code Enforcement and City Police Department to unnecessary confrontation.

41.

The City is entitled to an Emergency Temporary Restraining Order to prevent the imminent and continuous commercial use of the subject property in violation of the City's zoning ordinance causing continuous harm to the general public welfare.

42.

In deciding whether to issue an interlocutory injunction (not being sought via an ex parte temporary restraining order), the trial court should consider whether: 1) there is a substantial threat that the moving party will suffer irreparable injury if the injunction is not granted; 2) the threatened injury to the moving party outweighs the threatened harm that the injunction may do to the party being enjoined; 3) there is a substantial likelihood that the moving party will prevail on the merits of [its] claims at trial, and 4) granting the interlocutory injunction will not disserve the public interest. See *SRB Inv. Servs., LLP v. Branch Banking & Trust Co.*, 289 Ga. 1 (2011).

43.

There is a substantial threat that the damage to the City will be irreparable and not compensable with monetary damages as the City will be forced to continue to confront the Defendants in order to enforce its zoning and noise ordinances.

44.

The threat of harm to the City outweighs the threat of harm to Defendants. Defendants are simply being asked to comply with the City's zoning ordinance, but are allowed continued use of the subject property for all lawful purposes.

45.

There is a substantial likelihood that the City will prevail on the merits. Defendants are operating a commercial business on residentially zoned property.

46.

The City is entitled to an interlocutory injunction and a permanent injunction against Defendants—as well as their officers, agents, servants, employees, and those persons in active concert or participation with them—to prevent the imminent and continued commercial use of the

subject property in violation of the City's zoning ordinance causing continuous harm to the general public welfare.

Count II: Nuisance

47.

The City hereby incorporates paragraphs 29-43 as if set forth fully herein.

48.

Defendants' continuous commercial use of the residentially zoned subject property creates excessive noise and generates excessive crowds.

49.

Defendants' continuous commercial use of the subject property causes hurt, inconvenience, and/or damage to others.

50.

The inconvenience is not fanciful, or such as would affect only one of fastidious taste, but is such as would affect an ordinary, reasonable person.

51.

Defendants' continuous commercial use of the subject property, generating excessive noise and crowds, constitutes a public nuisance because it is one that damages all persons who come within the sphere of its operation.

52.

Defendants' violation here of the City's zoning ordinance (commercial use in a residentially zoned property) constitutes a public nuisance because it is one that damages all persons who come within the sphere of its operation.

Any nuisance which tends to the immediate annoyance of the public in general, is manifestly injurious to the public health or safety, or tends greatly to corrupt the manners and morals of the public may be abated by order of a judge of the superior court of the county in which venue is proper. See O.C.G.A. § 41-2-1

WHEREFORE, the City respectfully requests this Court to:

- a. issue an ex parte temporary restraining order, ordering Defendants—as well as their officers, agents, servants, employees, and those persons in active concert or participation with them—to immediately cease operating the commercial activities on the subject property (Count I);
- b. issue an interlocutory injunction and a permanent injunction ordering Defendants—as well as their officers, agents, servants, employees, and those persons in active concert or participation with them—to immediately cease carrying on the unlawful commercial activity in a RE-2 zoning district (Count I);
- c. issue an order to remove all advertisements soliciting payment for activities at the subject property (Count I);
- d. issue an order to abate the nuisance on the subject property by ceasing operation of the commercial use of the residentially zoned property (Count II); and
- e. such other relief as this Court may deem proper.

Respectfully submitted this 16th day of June, 2021.

/s/ Daniel W. Lee

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