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Accepted by:  
Council President

Date	Event	Summary
Pre-10/13/2022	Numerous Communications	<p>On numerous occasions before the 10/13/2022 hearing on the rezone, the Landowners express concern about two provisions in the City's proposed text amendment:</p> <ul style="list-style-type: none"> <li>• The "no net increase" language</li> <li>• The language requiring CEQA review</li> </ul> <p>(See, e.g., Tab A [exhibits omitted])</p> <p>Despite having raised the issue on numerous occasions, City staff never responded to (or endeavored to address) those concerns.</p>
<p>10/13/2022</p> <p>RECEIVED</p> <p>2023 MAY 11 A 11:39</p> <p>CITY OF FRESNO CITY CLERK'S OFFICE</p>	City Council Meeting	<p>SDG and Mid-Valley were rezoned back to IL.</p> <p>With respect to the remaining acreage:</p> <ul style="list-style-type: none"> <li>• Councilmember Arias started the discussion by directing staff to <b>return in 90-days</b> after seeking support from both the community and the landowners so the Council could consider a compromise draft overlay district.</li> <li>• Councilmember Bredefeld clarified that, "[i]f they don't have agreement with it, the Council will make the determination of exactly what will be accomplished in that overlay . . . ."</li> <li>• Councilmember Arias then stated they were on the same page. He also directed staff to come forward with a draft that "addresses the issues discussed today."</li> </ul> <p><a href="https://cmac.tv/show/fresno-city-council-october-13-2022/">https://cmac.tv/show/fresno-city-council-october-13-2022/</a></p>
10/14/2022	Email	<p>Landowners immediately reach out to J. Clark to schedule discussions with the City and the community representatives. (Tab B.)</p> <p>Landowners also inquire about the concerns they previously raised regarding the text amendment:</p> <p>Also, we have had the opportunity to review the proposal provided by the neighborhood groups that was included in the agenda materials. It looks very similar to the version presented by the City previously. <i>The landowners want to</i></p>

		<p><i>make sure the City is aware of and can address the concerns raised in my prior communications. I do not believe we have received a response those communications.</i> (<i>Id.</i> [emphasis added].)</p>
10/18/2022	Settlement Meeting with City and Community Representatives	<p>The Landowners conduct a settlement meeting by Zoom with representatives of the City (B.T. Lewis and J. Clark), and the community representatives.</p> <p>The Landowners express their concerns about the “no net increase” and CEQA provisions, and explain why those provisions will frustrate their ongoing operations.</p> <p>To resolve the issue, the Landowners ask about the substantive issues the community representatives were concerned about, and commit to proposing concrete measures to address those concerns.</p> <p>In addition to the concerns regarding industrial land uses, the community representatives express concern about certain residential uses.</p>
10/24/2022	Email	<p>The Landowners provide revisions to the proposed overlay district, which include:</p> <ul style="list-style-type: none"> <li>• Modifications to the “no net increase” and CEQA provisions to provide the Landowners with relief.</li> <li>• The addition of several mitigation measures that sought to directly address the substantive issues raised by the community.</li> </ul> <p>(Tab C.)</p>
11/1/2022	Settlement Meeting with City and Community Representatives	<p>The Landowners conduct a settlement meeting by Zoom with representatives of the City (B.T. Lewis and J. Clark), and the community representatives.</p> <p>At the beginning of the meeting, J. Clark relayed the community’s position. She advised that the community representatives rejected all of the requests made by the landowners to provide the landowners relief, and only accepted the landowners’ concessions to the community.</p> <p>The Landowners again expressed their concerns about the “no net increase” and CEQA provisions, and explain why those provisions will frustrate their ongoing operations.</p>

		The Landowners again asked about the substantive issues the community representatives were concerned about, and commit to proposing concrete measures to address those concerns.
11/8/2022	Email	<p>The Landowners provide further revisions to the proposed overlay district, which include:</p> <ul style="list-style-type: none"> <li>• Modifications to the “no net increase” and CEQA provisions to provide the Landowners with relief.</li> <li>• Additional mitigation measures that sought to directly address the substantive issues raised by the community.</li> </ul> <p>(Tab D.)</p>
11/15/2022	Email	<p>The Landowners were hoping to receive feedback from either the City or the community representatives before the 11/15/2022 settlement meeting so progress could be made.</p> <p>J. Clark advised on 11/15/2022 that the feedback would not be presented until the meeting. (Tab E.)</p>
11/15/2022	Settlement Meeting with City and Community Representatives	<p>The Landowners conduct a settlement meeting by Zoom with representatives of the City (B.T. Lewis and J. Clark), and the community representatives.</p> <ul style="list-style-type: none"> <li>• At the meeting, the City advised that the community representatives were unwilling to budge on the Landowners’ only two requests—modification of the “no net increase” and CEQA provisions. They were willing to accept the Landowners’ concessions to the community.</li> <li>• The Landowners continued to try to explain their positions.</li> </ul> <p>B.T. Lewis and the community <i>abruptly ceased negotiations</i> halfway through the meeting.</p> <p>After the negotiations ended, J. Clark advised that the City did not intend to bring the issues in dispute immediately back to the Council—as expressly directed by Councilmember Arias and Councilmember Bredefeld—but instead proceed with the processing of a version of the text amendment that is essentially identical to that proposed by the community.</p>

		<p>J. Clark also advised—just seconds after the community pulled the plug on the negotiations—that the City had already scheduled a community meeting on what is essentially the community’s version of the text amendment.</p> <p><b><i>Because the City had already scheduled these meetings, it was clear to the Landowners that the City representatives and the community representatives did not enter the 11/15/2022 meeting with the intention to negotiate.</i></b></p>
11/22/2022	Email	<p>The Landowners sent a communication confirming the events that occurred at the 11/15/2022 meeting. In addition:</p> <ul style="list-style-type: none"> <li>• The Landowners reminded J. Clark that the “no net increase” and CEQA provisions were highly problematic, expressing concern that the City had not yet addressed these issues.</li> <li>• The Landowners expressed concern that staff was not bringing back the issue to the City Council within 90-days as directed, but was instead processing a text amendment that was highly problematic.</li> </ul> <p>(See Tab F.)</p>
11/26/2022	Email	<p>The Landowners learn that the City scheduled a workshop at Gaston Middle School, but were not advised of the workshop by City staff.</p> <p>(See Tab G.)</p>
11/27/2022	Email	<p>Email from B.T. Lewis attacking the Landowners:</p> <ul style="list-style-type: none"> <li>• Although the community representatives did not make a single concession throughout the negotiation process, B.T. Lewis states, “We worked on this overlay for over a year. To expect us to agree to a rewriting of this overlay is a blatant disregard for our opinions, the adopted plan for our community, and an [sic] shameful act of privilege.”</li> <li>• Although the City Council on 10/13/2022 asked the Landowners, the City, and the community representatives to engage in negotiations concerning the text amendment, B.T. Lewis states, “We also take issue with the reiteration that we were expected to enter a mediation with the landowners. We certainly do not interpret City Council’s instruction the same way.”</li> </ul>

		<ul style="list-style-type: none"> <li>B. T. Lewis also states, “We also believe that the Elm Avenue rezone issue was resolved by City Council on October 13, 2022. In their decision, our city Council elected to allow approximately 30 acres to revert back to industrial leaving 60 acres under the land use designation as defined by the Southwest Specific Plan as Neighborhood Mixed Use. We consider that decision final until challenged and prepared to move forward given those conditions.”</li> </ul> <p>(Tab H.)</p>
11/28/2022	Email	Email from J. Clark regarding the 11/29/2022 Zoom workshop on the overlay district. (Tab I.)
11/29/2022	Email	Email from the Landowners in response to the emails from B. T. Lewis and J. Clark. In the email, the Landowners request:  In short, we continue to request that staff call off the meeting scheduled for 12/1, and instead present a neutral recitation of the issues and the status of the negotiations to the City Council as directed on October 13, 2022. We also request that the City Councilmembers be provided with a copy of this email thread so they can see the communications below. (Tab J.) It is unclear whether the City Council was provided a copy of this communication.
11/29/2022	Workshop	Workshop on the Overlay District. The Landowners’ concerns remain unaddressed and unacknowledged.
12/12022	Workshop	Workshop on the Overlay District. The Landowners’ concerns remain unaddressed and unacknowledged.
12/6/2022	Letters to Mayor and Council	The Landowners send separate communications to both the Council and the Mayor requesting a meeting regarding their concerns about the overlay that had never been addressed— <i>i.e.</i> , that the “no net increase” and CEQA provisions. (Tabs K, L.)

December 2022	Project Review Committee Meetings	<p>The City schedules numerous district project review committee meetings on the text amendment without notifying the Landowners.</p>
1/10/2023	Landowner Meeting with City	<p>The Landowners conduct a meeting with the Mayor and J. Clark. At the meeting, J. Clark appears to acknowledge the Landowners' concerns regarding the "no net increase" provisions, and in particular the fact that they are unclear:</p> <ul style="list-style-type: none"> <li>• J. Clark stated that the CEQA provision was merely intended to apply at the initial rezone to the overlay district, and not each change in use.</li> <li>• J. Clark advised the City would be revising the "no net increase" language, and that the Landowners' suggestions regarding concrete performance standards would be considered.</li> </ul> <p>The Landowners left the meeting with the belief that a revised text amendment would soon be presented to the Planning Commission and City Council.</p>
1/12/2023	Letter to City	<p>Based on feedback at the meeting, the Landowners send a letter to J. Clark that:</p> <ul style="list-style-type: none"> <li>• Again explained why the "no net increase" and CEQA provisions were highly problematic.</li> <li>• Provided further concessions and performance standards to ensure there would be no negative impacts on the surrounding communities. (Tab M.)</li> </ul>
January 2023 to February 2023	Project Review Committee Meetings	<p>The City continues to schedule numerous district project review committee meetings on the text amendment without notifying the Landowners.</p>
2/14/2023	District 3 Project Review Committee Meeting	<p>District 3 Project Review Committee Meeting</p> <ul style="list-style-type: none"> <li>• Staff Report includes negative comments from Western Center on Law and Poverty</li> <li>• The Landowners' letter is <i>not</i> included in the Staff Report</li> </ul>

2/15/2023		Landowners reach out by phone and email to B.T. Lewis to see if the community is willing to engage in any further negotiations. (Tab N.)
2/27/2023		Email from B.T. Lewis rejecting further negotiations. In the email, B.T. Lewis states: No person on our team would like to compromise the Southwest specific plan. And we are comfortable advocating for the option. We create it [sic] in collaboration with Director, Clark as initiated on June 1. (Tab O.)
2/27/2023		Email from J. Kinsey inquiring to J. Clark whether the City "had a date for when the proposed overlay district was going to Planning Commission." The City did not respond to the inquiry. (Tab P.)
3/31/2023		The Landowners inquire whether the City had scheduled the Airport Land Use Committee ("ALUC") meeting on the text amendment. The ALUC only meets every other month. The Landowners were informed the 4/3/2023 ALUC meeting had been canceled. (Tab Q.)
4/18/2023		N. Audino meets with Mayor Dyer, J. Clark, and K. Furtado, and is informed that—contrary to the City Council's express direction on 10/13/2022—City staff does not intend to bring the text amendment to the City Council.

**TAB "A"**



In 1999, the City sought to redevelop the Elm Avenue Properties pursuant to the "Elm Avenue Corridor Blight Removal, Streetscape and Business Attraction" project. Over the next several years, the Elm Avenue Landowners were persuaded by the City of Fresno (the "City") to invest in the City by developing clean light industrial uses on the Elm Avenue Properties, which the City at the time considered blighted. The Elm Avenue Landowners, and Greener Neighborhood Industry Overlay District" (the "Text Amendment").

I represent several entities (collectively, the "Elm Avenue Landowners") that own fully-developed land between S. Elm Avenue, E. Vine Avenue, State Route 41, and the Samson Avenue alignment (the "Elm Avenue Properties"). On their behalf, I am submitting the following comments to the proposed additions to the Fresno Municipal Code creating a "Cleaner and Greener Neighborhood Industry Overlay District" (the "Text Amendment").

Dear Honorable Planning Commissioners and Ms. Clark:

**Re: Potential Initiation of Text Amendment: Cleaner and Greener Neighborhood Industry Overlay District: Agenda Items VIII-A, VIII-B**

Jennifer Clark  
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Planning Commission  
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2600 Fresno Street  
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VIA E-MAIL

June 1, 2022

Also admitted in Washington  
Also admitted in Idaho  
Also admitted in Virginia  
Also admitted in Utah  
+ Of course!

- OLIVER W. WANGER
- TIMOTHY JONES\*
- MICHAEL S. HELSLEY
- RILEY C. WALTER
- PATRICK D. TOOLE
- SCOTT D. LAIRD
- JOHN P. KINSEY
- KURT F. VOTE
- TROY T. EWELL
- JAY A. CHRISTOFFERSON
- MARISA L. BALCH
- AMANDA G. HEBESHA\*\*
- PETER M. JONES\*
- STEVEN M. CRASS\*
- JEFFREY B. PAPER
- LAWRENCE M. ARTENIAN\*
- DEBORAH K. BOYETT
- STEVEN K. VOTE
- NICOLAS R. CARDELLA
- GIULIO A. SANCHEZ
- CHRISTOPHER A. LISIESKI\*\*\*
- BENJAMIN C. WEST
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- It is far more difficult to sell properties with legal nonconforming status.
- If a building is unused for a moderate period due to an economic downturn (such as the recent recession), the landowners will lose their legal nonconforming status under the code.
- The inconsistent zoning makes it nearly impossible to receive conventional financing (including capital improvements necessary for ongoing maintenance, beautification, and clean energy improvements), and could result in an event of default under existing loans.
- The inconsistent zoning diminishes the ability to attract the reputable, such as GlaxosmithKline.
- The inconsistent zoning provisions allowing legal non-conforming uses to continue, those provide little practical relief to the Elm Avenue Landowners:

Although the City has some code provisions allowing legal non-conforming uses to continue, those provide little practical relief to the Elm Avenue Landowners: inquiry by a prospective tenant.

The Elm Avenue Landowners never received notice from the City that it was seeking to change their zoning to a district inconsistent with the uses on the Elm Avenue Properties. Had they received notice, they would have objected. It was not until after this action was taken that the Elm Avenue Landowners were apprised of the change in zoning, due to an inquiry by a prospective tenant.

The Elm Avenue Landowners never received notice from the City that it was seeking to change their zoning to a district inconsistent with the uses on the Elm Avenue Properties. Had they received notice, they would have objected. It was not until after this action was taken that the Elm Avenue Landowners were apprised of the change in zoning, due to an inquiry by a prospective tenant.

In 2015, the City formed the Steering Committee for the Southwest Fresno Specific Plan ("SWSP"). The Elm Avenue Landowners were not apprised of the Steering Committee or the planning process. From 2015 through early 2017, the Steering Committee contemplated that the Elm Avenue Properties would remain Light Industrial. However, shortly before the Notice of Preparation for the Elm Avenue Properties to Neighborhood Mixed Use ("NMX"), where most of the light industrial uses on the Elm Avenue Properties are not changed the proposed land use for the Elm Avenue Properties to Neighborhood Mixed Use permitted.

The Elm Avenue Landowners have collectively invested over \$150 million in the City. Today, the Elm Avenue Properties primarily warehouse and distribution uses, with a wide range of responsible tenants, including GlaxosmithKline, as well as Mid-Valley Disposal.

among other things, remediated pollution in the soils beneath several of the properties, performed several roadway improvements in the surrounding area, and provided *thousands* of good paying jobs to the local community.

The Elm Avenue Landowners have interfaced with the City and the surrounding community at length regarding the above issues. In fact, throughout 2021, the Elm Avenue landowners at the suggestion of the City prepared a draft text amendment for presentation to the community group via the City's negotiator, Oliver Baines. (See **Exhibit "A."**) However, the Landowners subsequently were advised that Mr. Baines did not present the draft text amendment to the community group, even though nearly a year had passed. Due to these and other issues, the negotiations were unsuccessful.

As a result, on March 1, 2022, the Elm Avenue Landowners requested that the Planning Commission meeting be put back on the Planning Commission's calendar. Despite the passage of nearly three months, the Elm Avenue Landowners first learned of the new proposed Text Amendment on May 26, 2022, with a statement that the Text Amendment was being proposed by the "community group."

It also appears that the proposed text amendment largely tracks the version the City began to initiate early this year, but abruptly halted without explanation to the Elm Avenue Landowners. As such, it appears the Text Amendment is not being presented to help resolve the Elm Avenue rezoning issue, but rather to help facilitate new industrial construction proposed by Busseto Foods. Indeed, at the last Planning Commission meeting, Busseto's consultant stated that a text amendment was in the works at the City to help facilitate Busseto's compliance with SB 330.

More fundamentally, the Elm Avenue Landowners have previously submitted written comments on the City's proposed text amendment (which this appears to largely mirror), all of which explain why the text amendment is unworkable. (See, e.g., **Exhibit "B."**) Those same issues apply with even greater force here. Specifically, Subdivision (C)(1)(c)(i) of the Text Amendment (and a related provision at Subdivision (C)(1)(d)(2)), which governs legal non-conforming industrial land uses. That provision states:

New legally nonconforming uses shall achieve a net-reduction in water use, energy use, traffic counts, noise reduction, odor generation, PM 2.5 and nanoparticles, and light spill as compared to existing legally nonconforming industrial uses, as identified in environmental studies completed in accordance with the California Environmental Quality Act (CEQA) guidelines for the purpose of protecting public health.

This provision is highly problematic. As currently constituted, the draft language could be read as (i) requiring an environmental document under CEQA, and (ii) a requirement that the landowner and tenant affirmatively demonstrate "a net-reduction or no change in water use, energy use, traffic counts, noise generation, odor generation, and light spill," for each and every change of use.

First, ensuring no increase in water use, energy use, or traffic counts is an impossible burden for a new tenant to meet, particularly with a change in use. It is also counterproductive to protection of the environment. For instance, a project that actively seeks to promote electrification to reduce air quality impacts will require an increase in energy use. Moreover, the focus on vehicle trips is contrary to SB 743 and the Legislature's mandate that level of service will no longer be used to assess environmental impacts under CEQA.

This burden is also illogical in that a mixed use development permitted under the NMX zoning would typically result in far more water use, energy use, and traffic counts than the existing light industrial uses. Moreover, it appears this requires an extensive number of studies and a full environmental review in virtually any case.

These provisions will continue to harm the Elm Avenue Landowners and have significant negative practical consequences:

- The landowners' brokers will testify that clean, high-quality tenants will not even look at a site with these conditions;
- The landowners' brokers will testify that these provisions will continue to make it nearly impossible to sell the Avenue Properties without significant losses, and this will not correct that fact that the 2017 SWSF caused the Elm Avenue Properties to lose *over half of their fair market value*;

- The provisions will continue to put the Elm Avenue Landowners in risk of default under their loans;
- The provisions will continue to frustrate the ability of the Elm Avenue Landowners to upgrade to cleaner fleets and electric infrastructure because it will be virtually impossible to obtain conventional financing; and

- Because the CEQA process can take well over a year, there is a significant risk that the landowners may lose their legal non-conforming status under the Code (which has a 90-day clock for industrial uses).

Although the current language of the Text Amendment places much too high a burden on new tenants, the Elm Avenue Landowners believe there are a few ways the industrial language can be modified to ensure they are not harmed, while at the same time avoiding the stated concerns of the surrounding community. First, the City could specifically identify a subset of industrial land uses that are acceptable in the overlay, while at the same time excluding those

**WANGER JONES HELSLEY PC**

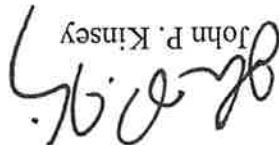
City of Fresno, Planning Commission  
Jennifer Clark, Planning Director  
June 1, 2022  
Page 5

uses that have the potential to have adverse environmental effects. This is consistent with the draft alternative text amendment the Elm Avenue Landowners originally proposed, which is attached as **Exhibit "A."**

Alternatively, instead of focusing on the identity of the end-user and forcing studies for existing facilities, the City could instead employ objective performance standards, such as those suggested by the Attorney General's office.

As a result of the foregoing, we urge the City to modify the currently proposed language of the Text Amendment before considering those amendments for adoption. Thank you very much for your consideration of these comments.

Very truly yours,



John P. Kinsey

Enclosures

**TAB "B"**

**From:** John Kinsey  
**To:** Jennifer Clark  
**Cc:** Robert Holt; Talia Kolluri; Raj Badheshia  
**Subject:** Continued Elm Avenue Discussion  
**Date:** Friday, October 14, 2022 8:31:40 AM  
**Attachments:** Lowell DRC, Public Comment on Text Amendment TA-21-003 (01363208).pdf

Good morning, Jennifer and Rob. In light of the Council's direction yesterday regarding the Buzz Gates and Span properties, I wanted to get the ball rolling to schedule a meeting for the purpose of negotiating the terms of an overlay district with the community representatives. In light of the short time period, and the likely need for multiple meetings, we believe it is important to get the meetings on our respective schedules in the very near term. My clients are pretty flexible. Please let us know when the City and the community representatives are available.

Also, we have had the opportunity to review the proposal provided by the neighborhood groups that was included in the agenda materials. It looks very similar to the version presented by the City previously. The landowners want to make sure the City is aware of and can address the concerns raised in my prior communications. I do not believe we have received a response those communications.

Thanks,

John P. Kinsey, Esq.

*Certified Specialist in Appellate Law*

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**TAB "C"**



Good afternoon, everyone.

I have attached the Landowners' proposed edits to the draft Overlay District. As noted during the meeting, the primary concerns the Landowners had about the draft we were presented were (i) the "no net increase" language and (ii) the CEQA language. According to the landowners and their consultants, these provisions would make it virtually impossible to change from permitted one use to another permitted use under the same rooftop.

That being said, we did include language that we believe resolves the neighborhood's concerns regarding the expansion of uses and the increase of significant environmental impacts. For example, we have proposed that (i) the construction of any new building, (ii) any significant expansion, and (iii) any significant source of pollution (i.e., Title V) would require a CUP (even if the use is otherwise permitted). (See Section C.2.d.) We also added requirements in Section C.3 to regarding most of the resources the neighbors were concerned about. (See Section C.3.)

Here is a summary of the other edits:

- General Industrial, Light Fleet Based Services, R&D (not chemical), and Ag Support Services were added as by right uses. These are all light industrial uses with a comparable air quality, traffic, noise, and water footprint to the status quo, and likely less than most MIX uses.
- CRV, Recycling Processing, Waste Transfer were removed as uses subject to a CUP. They were moved to not permitted.
- A CUP for Chemical and Mineral Storage was limited to other than incidental storage.
- Ag processing was added to CUP. However, we placed "Hazardous Waste Management Facilities," which can be a subset of ag processing, in the Uses **Not Permitted** table.
- Former Section D.3 was deleted since R&D should not involve significant pollution, etc.
- Former Section D.6 was deleted as we were unsure of how it would apply in a manner different than the existing restrictions.

Finally, we understand some members of the community would prefer that certain residential uses are not built on the landowners' properties. We do not know what those uses might be, and understand the City's position is that they cannot be resolved through the overlay district. That being said, the landowners would be willing to agree to a condition of zoning if the neighborhood wants a particular residential use removed.

Thanks,

John P. Kinsey, Esq.

*Certified Specialist in Appellate Law*

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**From:** John Kinsey  
**To:** Jennifer Clark  
**Cc:** Talia Kolluri; Kelli Furtado; Robert Holt  
**Subject:** RE: documents for review  
**Date:** Monday, October 24, 2022 3:49:05 PM  
**Attachments:** Edits to Overlay District (clean) (01496620-2).docx  
Proposed Edits to Overlay (10-24-2022) (01498549).pdf

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**From:** Jennifer Clark <jennifer.clark@fresno.gov>  
**Sent:** Tuesday, October 18, 2022 6:30 PM

**To:** John Kinsey <jkinsey@wjhattorneys.com>

**CC:** Talia Kolluri <Talia.Kolluri@fresno.gov>; Kelli Furtado <Kelli.Furtado@fresno.gov>; Robert Holt <Robert.Holt@fresno.gov>

**Subject:** documents for review

Please see documents referenced tonight.

**TAB “D”**

Good morning, Jennifer and Pastor Lewis. The landowners have made some edits to the draft overlay district based on our discussion last week in response to the concerns raised by the community. Those edits are attached. I have also included a redline (from the original document provided to us a few weeks ago) and a comparison of changes in the same format as Jennifer's spreadsheet.

At the outset, I wanted to note that the landowners were very disappointed by the community's position that was communicated just a few minutes before last week's meeting. Specifically, the community members rejected all of the requests made by the landowners to provide the landowners relief, and only accepted the landowners' concessions to the community. Although the landowners are taking the Council's direction seriously and attempting in good faith to come up with provisions that will allay the concerns articulated by the community, the negotiation process cannot be a one-way street. We are not going to make any progress or come close to meeting the Council's expectations if all of the landowners' requests continue to be rejected, and the only items that are accepted are the landowners' concessions to the community.

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2. The Landowners have reinserted Agricultural Support Services and Agricultural Processing into the permitted and conditional categories, respectively; however, we have excluded the more intensive uses and placed those in the "unpermitted" category.

---

**From:** John Kinsey  
**To:** Jennifer Clark; Kelli Furtado; Talia Kolluri; Robert Holt; Booker Lewis II; Booker Lewis  
**Cc:** Amy Lerseth; Nick Audino  
**Subject:** RE: HOLD: Cleaner & Greener Overlay Discussion - continued  
**Date:** Tuesday, November 8, 2022 9:46:51 AM  
**Attachments:** image001.png  
 Edits to Overlay District (clean) (01496620-4).docx  
 Redline from Original (01509277).pdf  
 Comparison of Changes (01509271).pdf

3. To address Mr. Mitchell's concerns about something similar to the whey plant occurring in the future, we have added a requirement for all industrial uses to comply with the California Accidental Release Prevention (CalARP) program, and also to any CalARP or other hazardous substance from migrating offsite. My understanding is that all of the existing uses currently comply with these requirements; however, this would prevent any issues occurring in the future.
4. We have kept the provisions regarding the minor expansions, as the landowners need to be able to continue to add minor improvements and structures such as guard houses, awnings/overhangs, electrification infrastructure, and the like.

Please let me know if you have any questions. Thanks,

John P. Kinsey, Esq.

*Certified Specialist in Appellate Law  
State Bar of California Board of Legal Specialization  
WANGER JONES HELSLEY PC*

265 E. River Park Circle, Suite 310

Fresno, California 93720

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**From:** Jennifer Clark <jennifer.clark@fresno.gov>  
**Sent:** Tuesday, November 1, 2022 4:53 PM

**To:** Kelli Furtado <Kelli.Furtado@fresno.gov>; Talia Kolluri <Talia.Kolluri@fresno.gov>; Robert Holt <Robert.Holt@fresno.gov>; Booker Lewis II <btlewis@hotmail.com>; Booker Lewis <Booker.Lewis@fresno.gov>; John Kinsey <jkinsey@wjhatorneys.com>

**Cc:** Amy Lerseth <amylerseth@buzzoates.com>; Nick Audino <NAudino@pearsonreality.com>  
**Subject:** HOLD: Cleaner & Greener Overlay Discussion - continued

Good evening.

We will be reviewing the attached document tonight.

Jennifer Clark, Director of Development  
Planning & Development Department  
City of Fresno  
2600 Fresno St, Room 3065  
Fresno, CA 93721  
[jennifer.clark@fresno.gov](mailto:jennifer.clark@fresno.gov)  
(559) 621-8003



**TAB "E"**

Thanks, John. Yes we did receive your landowner comments. I do not have any feedback to share in advance of the meeting but hope we can still have a productive discussion. We have held 11/29 as an additional meeting for discussion if needed prior to public outreach.

See you at 5.

**From:** John Kinsey <jkinsey@wjhattorneys.com>  
**Sent:** Tuesday, November 15, 2022 10:37 AM

**To:** Jennifer Clark <jennifer.clark@fresno.gov>; Kelli Furtado <kelli.furtado@fresno.gov>; Talia Kolluri <Talia.Kolluri@fresno.gov>; Robert Holt <Robert.Holt@fresno.gov>; Booker Lewis II <btlewis@hotmail.com>; Booker Lewis <Booker.Lewis@fresno.gov>  
**Cc:** Amy Lerseth <amylerseth@buzzoates.com>; Nick Audino <NAudino@pearsonreality.com>  
**Subject:** RE: HOLD: Cleaner & Greener Overlay Discussion - continued

**External Email:** Use caution with links and attachments

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Thanks,

John P. Kinsey, Esq.

*Certified Specialist in Appellate Law  
State Bar of California Board of Legal Specialization*

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**From:** John Kinsey <[kinsey@wihatorneys.com](mailto:kinsey@wihatorneys.com)>  
**Sent:** Tuesday, November 8, 2022 9:47 AM

**To:** Jennifer Clark <[Jennifer.Clark@fresno.gov](mailto:Jennifer.Clark@fresno.gov)>; Kelli Furtado <[Kelli.Furtado@fresno.gov](mailto:Kelli.Furtado@fresno.gov)>; Talia Kolluri <[Talia.Kolluri@fresno.gov](mailto:Talia.Kolluri@fresno.gov)>; Robert Holt <[Robert.Holt@fresno.gov](mailto:Robert.Holt@fresno.gov)>; Booker Lewis II <[btlewis@hotmail.com](mailto:btlewis@hotmail.com)>; Booker Lewis <[Booker.Lewis@fresno.gov](mailto:Booker.Lewis@fresno.gov)>  
**Cc:** Amy Lerseth <[amylerseth@buzzoates.com](mailto:amylerseth@buzzoates.com)>; Nick Audino <[NAudino@pearsonreality.com](mailto:NAudino@pearsonreality.com)>  
**Subject:** RE: HOLD: Cleaner & Greener Overlay Discussion - continued

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4. We have kept the provisions regarding the minor expansions, as the landowners need to be able to continue to add minor improvements and structures such as guard houses, awnings/overhangs, electrification infrastructure, and the like.

Please let me know if you have any questions. Thanks,

John P. Kinsey, Esq.

*Certified Specialist in Appellate Law*

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**From:** Jennifer Clark <jennifer.clark@fresno.gov>

**Sent:** Tuesday, November 1, 2022 4:53 PM

**To:** Kelli Furtado <Kelli.Furtado@fresno.gov>; Talia Kolluri <Talia.Kolluri@fresno.gov>; Robert Holt

<Robert.Holt@fresno.gov>; Booker Lewis II <blewis@hottmail.com>; Booker Lewis

<Booker.Lewis@fresno.gov>; John Kinsey <jkinsey@wjhatorneys.com>

**Cc:** Amy Lerseth <amylerseth@buzzoates.com>; Nick Audino <NAudino@pearsonrealty.com>

**Subject:** HOLD: Cleaner & Greener Overlay Discussion - continued

Good evening.

We will be reviewing the attached document tonight.

Jennifer Clark, Director of Development  
Planning & Development Department  
City of Fresno  
2600 Fresno St, Room 3065  
Fresno, CA 93721  
jennifer.clark@fresno.gov  
(559) 621-8003



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**TAB "F"**

**From:** John Kinsey  
**To:** Jennifer Clark; Kelli Furtado; Talia Kolluri; Robert Holt; Booker Lewis II; Booker Lewis  
**Cc:** Amy Lerseth; Nick Audino  
**Subject:** Re: HOLD: Cleaner & Greener Overlay Discussion - continued  
**Date:** Tuesday, November 22, 2022 11:24:54 AM  
**Attachments:** image001.png

Good morning, Jennifer. After our meeting last Tuesday I had the ability to circle back with the landowners regarding the state of the discussions with the community and next steps.

First, we were very disappointed with how the discussion ended last Tuesday. As directed by the Council, the landowners met in good faith with the City and the community representatives regarding revisions to the overlay district to help satisfy the concerns of all stakeholders. The landowners' concerns regarding the draft overlay were very narrow, and primarily related to the "no net/CEQA" paragraph. To help resolve this issue, the landowners made numerous substantial concessions to the community to directly address the community's stated concerns. Despite this, the community did not accept or agree to a single request made by the landowners (instead agreeing only to the landowners' concessions). And despite a willingness on the part on the landowners to continue to engage in discussions, Pastor Lewis and the community abruptly ceased negotiations halfway through the meeting. The Landowners' hope was that they were going to be able to engage in a meaningful discussion with the community; however, the Landowners cannot negotiate with a party that does not want to negotiate.

The Landowners were also surprised to learn at the end of the meeting that the City did not intend to bring the issues in dispute immediately back to the Council—as expressly directed by Councilmember Arias and Councilmember Bredefeld—but instead proceeded with the processing of a version of the text amendment that is essentially identical to that proposed by the community. Even more disconcerting is the fact that the landowners were informed—just seconds after the community pulled the plug on the negotiations—that the City had already scheduled a community meeting on what is essentially the community's version of the text amendment.

As the landowners have previously advised, the draft overlay district initiated by the Planning Commission on 6/1—and in particular the "no net/CEQA" paragraph—is highly problematic and unworkable for Landowners. This has been the subject of several letters from my office to the City. The process that is being contemplated is also contrary to the Council's direction. As a result, the landowners request that staff take the community meeting off calendar, and instead bring the issue back to the City Council for the Council to resolve the disagreements between the Landowners and the community.

Thank you,

John P. Kinsey, Esq.  
WANGER JONES HELSLEY PC  
265 E. River Park Circle, Suite 310  
Fresno, California 93720  
Phone: (559) 233-4800, Ext. 216  
Fax: (559) 233-9330

**From:** Jennifer Clark <jennifer.clark@fresno.gov>  
**Date:** Tuesday, November 15, 2022 at 1:26 PM  
**To:** John Kinsey <jkinsey@wjhattorneys.com>, Kelli Furtado <kelli.furtado@fresno.gov>, Talia Kolluri <Talia.kolluri@fresno.gov>, Robert Holt <Robert.Holt@fresno.gov>, Booker Lewis II <btlewis@hotmail.com>, Booker Lewis <Booker.Lewis@fresno.gov>  
**Cc:** Amy Lerseth <amylerseth@buzzoates.com>, Nick Audino <NAudino@pearsonreality.com>  
**Subject:** RE: HOLD: Cleaner & Greener Overlay Discussion - continued

Thanks, John. Yes we did receive your landowner comments. I do not have any feedback to share in advance of the meeting but hope we can still have a productive discussion. We have held 11/29 as an additional meeting for discussion if needed prior to public outreach.

See you at 5.

**From:** John Kinsey <jkinsey@wjhattorneys.com>  
**Sent:** Tuesday, November 15, 2022 10:37 AM

**To:** Jennifer Clark <jennifer.clark@fresno.gov>, Kelli Furtado <kelli.furtado@fresno.gov>, Talia Kolluri <Talia.kolluri@fresno.gov>, Robert Holt <Robert.Holt@fresno.gov>, Booker Lewis II <btlewis@hotmail.com>, Booker Lewis <Booker.Lewis@fresno.gov>  
**Cc:** Amy Lerseth <amylerseth@buzzoates.com>, Nick Audino <NAudino@pearsonreality.com>  
**Subject:** RE: HOLD: Cleaner & Greener Overlay Discussion - continued

**External Email:** Use caution with links and attachments

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Thanks,

John P. Kinsey, Esq.

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State Bar of California Board of Legal Specialization*

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As a result of the foregoing, the landowners have made some further refinements to the proposed greater concern to the community, such as "General Industrial" and "Ag Support Services." delineating between uses that are permitted in some of the general use categories that are committed to adding some measures to address the concerns raised by Mr. Mitchell and also because of the CEQA and "no net" increase language. At the end of the meeting, the landowners community calls the "health impact" paragraph, which is very problematic for the landowners concerns. We also appreciate Pastor Lewis's commitment to further refine what the very helpful because we can then identify concrete measures that can directly address those articulate the community's concerns regarding prior business operations. That candor and dialog is understanding of the community's concerns. We sincerely appreciated Mr. Mitchell's efforts to That being said, we did find the second half of the meeting very helpful in getting a better

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**Subject:** RE: HOLD: Cleaner & Greener Overlay Discussion - continued  
**CC:** Amy Lerseth <amylerseth@buzzcoates.com>; Nick Audino <NAudino@pearsonreality.com>  
<btlewis@hotmail.com>; Booker Lewis <Booker.Lewis@fresno.gov>  
Kolluri <Talia.Kolluri@fresno.gov>; Robert Holt <Robert.Holt@fresno.gov>; Booker Lewis II  
**To:** Jennifer Clark <Jennifer.Clark@fresno.gov>; Kelli Furtado <Kelli.Furtado@fresno.gov>; Talia  
**Sent:** Tuesday, November 8, 2022 9:47 AM  
**From:** John Kinsey <jkinsey@wjhattorneys.com>

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Please let me know if you have any questions. Thanks,

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**From:** Jennifer Clark <[Jennifer.Clark@fresno.gov](mailto:Jennifer.Clark@fresno.gov)>

**Sent:** Tuesday, November 1, 2022 4:53 PM

**To:** Kelli Furtado <[Kelli.Furtado@fresno.gov](mailto:Kelli.Furtado@fresno.gov)>; Talia Kolluri <[Talia.Kolluri@fresno.gov](mailto:Talia.Kolluri@fresno.gov)>; Robert Holt



<Robert.Holt@fresno.gov>; Booker Lewis II <btlewis@hotmail.com>; Booker Lewis  
<Booker.Lewis@fresno.gov>; John Kinsey <jkinsey@wjhattorneys.com>  
<Amy Lerseth <amylerseth@buzzcoates.com>; Nick Audino <NAudino@pearsonreality.com>  
**Subject:** HOLD: Cleaner & Greener Overlay Discussion - continued

Good evening.

We will be reviewing the attached document tonight.

Jennifer Clark, Director of Development  
Planning & Development Department  
City of Fresno  
2600 Fresno St, Room 3065  
Fresno, CA 93721  
jennifer.clark@fresno.gov  
(559) 621-8003



---

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**TAB "G"**

**From:** John Kinsey  
**To:** Jennifer Clark  
**Cc:** Amy Lerseth; Nick Audino; Talia Kollun; Kelli Furtado  
**Subject:** FW: City of Fresno public workshop on addressing industrial uses in Mixed-Use Zone Districts  
**Date:** Saturday, November 26, 2022 2:58:56 PM  
**Attachments:** City of Fresno Dec 1 Overlay Workshop Flyer.pdf

Good afternoon, Jennifer. I was forwarded the email below from one of my contacts in the community. I am wondering why the Elm Avenue landowners are not being provided with the notices such as the attached, even though they relate to the Elm Avenue issue. Can you please ensure that the Elm Avenue landowners are provided notice of all hearings and meetings that relate to their property and the overlay issue that has been the subject of our negotiations with the City/Community? Thanks,

John P. Kinsey, Esq.  
WANGER JONES HELSLEY PC  
265 E. River Park Circle, Suite 310  
Fresno, California 93720  
Phone: (559) 233-4800, Ext. 216  
Fax: (559) 233-9330

**From:** Michelle Zumwalt <Michelle.Zumwalt@fresno.gov>  
**Sent:** Wednesday, November 23, 2022 12:23 PM  
**To:** Sophia Pagoulatos <Sophia.Pagoulatos@fresno.gov>  
**Subject:** City of Fresno public workshop on addressing industrial uses in Mixed-Use Zone Districts

Hello and Happy Early Thanksgiving!  
The City of Fresno is having a public workshop on December 1, 2022, from 6:00 to 7:30pm at Gaston Middle School and it would be great if you could come join us and share your thoughts.

The subject we are addressing is industrial uses in mixed-use zone districts and understanding an overlay (additional layer) zone.

Food will be provided!!!

Please see the attached flyer and if you can we'd love for you to share with your networks.

Best regards,

Michelle Zumwalt  
Architect

City of Fresno  
Planning and Development Department  
Long Range Planning Division  
(559) 621-8092

**TAB "H"**

**From:** Booker Lewis  
**To:** John Kinsey; Jennifer Clark; Kelli Furtado; Talia Kollum; Robert Holt; Booker Lewis  
**Cc:** Amy Lerseth; Nick Audino  
**Subject:** RE: HOLD: Cleaner & Greener Overlay Discussion - continued  
**Date:** Sunday, November 27, 2022 2:47:03 PM  
**Attachments:** image001.png

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Hello Jennifer,

Apologies for the delay in responding. I had a few health issues to deal with this week. Nevertheless, I have been in contact with our community team members and I believe we are willing to join the meeting on the 29<sup>th</sup> although I do not believe we are in any position to compromise the Overlay to their satisfaction.

While we appreciate Mr. Kinsey's perspective on the state of our discussions regarding the overlay initiated on June 1 by our Planning Commission, we have been disappointed in these discussions since the beginning when Mr. Kinsey submitted a realigned version of our document that demonstrated an enormous amount of gall and disregard for our work and our interest in protecting the health and well-being of our community. We worked on this overlay for over a year. To expect us to agree to a rewriting of this overlay is a blatant disregard for our opinions, the adopted plan for our community, and an shameful act of privilege.

We also take issue with the reiteration that we were expected to enter a mediation with the landowners. We certainly do not interpret City Council's instruction the same way. We were asked to enter discussions with the landowners to see if there was any common ground given that we already had an overlay initiated on June 1. We are a community team not controlled City Council, nor or we obligated to accept their direction. Years of disrespect and blatant disregard for the health of our community has come through city councils.

We did intend to graciously hear the landowner's concerns and engage in a conversation without committing to undoing the work that we had completed. I do believe that they have misinterpreted the intent of this process and that it became glaringly evident from the beginning that their recommendations would be contrary to our commitment to our community and the South West Specific Plan.

We also believe that the Elm Avenue rezoning issue was resolved by City Council on October 13, 2022. In their decision, our city Council elected to allow approximately 30 acres to revert back to industrial leaving 60 acres under the land use designation as defined by the Southwest Specific Plan as Neighborhood Mixed Use. We consider that decision final until challenged and prepared to move forward given those conditions. We believe that it is disingenuous for the landowners to attempt to use the overlay we developed in partnership with the city to reverse City Council's decision to deny their request to be rezoned back to an industrial use designation.

The overlay is not Elm Avenue specific. The overlay will not require any additional action by landowners or change any land use, unless it is implemented by the landowner. For that reason, we are not in favor of changing the language of the overlay that we put significant effort into developing

in partnership with the City of Fresno. I love your analogy that the overlay only adds a menu option to the code. The landowners then have the option of not using the overlay, while others in the city may choose to do so. We therefore choose to move forward with an overlay that will protect the health and welfare of our community. If the language in overlay is problematic for the landowners, then the landowners can simply choose not to use the overlay.

We are not interested in conceding the health and welfare of a community that has been deeply harmed for over 50 years.

The meeting on 12/1 is not a meeting to present a solution for Mr. Kinsey and his clients. It is a meeting to present to our community the definition and details of an overlay that will be made available to protect the health and welfare of vulnerable communities across our city.

Since it is impossible for Mr. Kinsey and his team to tell us what the Council is contemplating, we advocate that staff move forward with the overlay as developed and presented to Planning Commission on June 1.

We do not want the 12/1 meeting at Gaston Middle School to be taken off calendar. We want to proceed with the presentation to implementation committees across the city without delay.

We will never be able to bring a fully-negotiated overlay district before Council because Mr. Kinsey and his clients have no regard for the South West Specific Plan or our responsibility to reverse the injustices of the past and protect the health of our community.

**Pastor B. T. Lewis II**

**Rising Star Missionary Baptist Church, Fresno**  
**Office: 1104 Collins Ave. - (559) 442-1908**  
**'Compelled by the Love of Christ' 2 Cor. 5:14**

**From:** John Kinsey [mailto:kinsey@wjhattorneys.com]  
**Sent:** Saturday, November 26, 2022 12:32 PM

**To:** Jennifer Clark <jennifer.clark@fresno.gov>; Kelli Furtado <kelli.furtado@fresno.gov>; Talia Kolluri <talia.kolluri@fresno.gov>; Robert Holt <Robert.Holt@fresno.gov>; Booker Lewis II <btlewis@hotmail.com>; Booker Lewis <Booker.Lewis@fresno.gov>

**Cc:** Amy Lerseth <amylerseth@buzzoates.com>; Nick Audino <NAudino@pearsonreality.com>

**Subject:** Re: HOLD: Cleaner & Greener Overlay Discussion - continued

Thanks, Jennifer. As previously expressed, I think the group is always open to meeting with the community, notwithstanding the community's positions to date (i.e., not wanting to provide any concessions to the landowners). I think the community was relatively clear on where they stood (i.e., wanting to pull the plug on the negotiations), but we are there to listen if they actually want to participate.

On the 12/1 meeting, I continue to believe this is directly contrary to the Council's direction from 10/13. The Council did not contemplate that the City would continue to process the text amendment initiated by the PC on 6/1; rather, the Council directed that staff either bring a fully-

negotiated overlay district to the Council or alternatively inform them where the disagreements continued to exist. Instead of following the Council's direction, staff is simply processing an overlay district that is identical in function to that advocated by the community. As such, we continue to maintain that the City should take the 12/1 community meeting off calendar and instead present the issue to the City Council as directed.

Thanks,

John P. Kinsey, Esq.  
WANGER JONES HELSLEY PC  
265 E. River Park Circle, Suite 310  
Fresno, California 93720  
Phone: (559) 233-4800, Ext. 216  
Fax: (559) 233-9330

---

**From:** Jennifer Clark <jennifer.clark@fresno.gov>  
**Date:** Tuesday, November 22, 2022 at 12:14 PM

**To:** John Kinsey <jkinsey@wjhattorneys.com>, Kelli Furtado <kelli.furtado@fresno.gov>, Talia Kolluri <Talia.Kolluri@fresno.gov>, Robert Holt <Robert.Holt@fresno.gov>, Booker Lewis II <btlewis@hotmail.com>, Booker Lewis <Booker.Lewis@fresno.gov>  
**Cc:** Amy Lerseth <amylerseth@buzzcoates.com>, Nick Audino <NAudino@pearsonreality.com>  
**Subject:** RE: HOLD: Cleaner & Greener Overlay Discussion - continued

John,

Thank you for your email. We would like to meet again on November 29 to review where we are and any additional input.

The community meeting will be held to discuss the use of an overlay to address the issues created when an existing industrial use is a nonconformity in a mixed use district. While the Cleaner and Greener text amendment is one example, the purpose is to educate the public on the overlay process and get feedback.

Thank you and look forward to seeing everyone on 11/29.

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

**From:** John Kinsey <jkinsey@wjhattorneys.com>  
**Date:** 11/22/22 11:25 AM (GMT-08:00)

**To:** Jennifer Clark <jennifer.clark@fresno.gov>, Kelli Furtado <kelli.furtado@fresno.gov>, Talia Kolluri <Talia.Kolluri@fresno.gov>, Robert Holt <Robert.Holt@fresno.gov>, Booker Lewis II



<btlewis@hotmail.com>, Booker Lewis <Booker.Lewis@fresno.gov>  
Cc: Amy Lerseth <amylerseth@buzzoates.com>, Nick Audino <NAudino@pearsonrealty.com>  
Subject: Re: HOLD: Cleaner & Greener Overlay Discussion - continued

**External Email:** Use caution with links and attachments

Good morning, Jennifer. After our meeting last Tuesday I had the ability to circle back with the landowners regarding the state of the discussions with the community and next steps.

First, we were very disappointed with how the discussion ended last Tuesday. As directed by the Council, the landowners met in good faith with the City and the community representatives regarding revisions to the overlay district to help satisfy the concerns of all stakeholders. The landowners' concerns regarding the draft overlay were very narrow, and primarily related to the "no net/CEQA" paragraph. To help resolve this issue, the landowners made numerous substantial concessions to the community to directly address the community's stated concerns. Despite this, the community did not accept or agree to a single request made by the landowners (instead agreeing only to the landowners' concessions). And despite a willingness on the part on the landowners to continue to engage in discussions, Pastor Lewis and the community abruptly ceased negotiations halfway through the meeting. The landowners' hope was that they were going to be able to engage in a meaningful discussion with the community; however, the landowners cannot negotiate with a party that does not want to negotiate.

The Landowners were also surprised to learn at the end of the meeting that the City did not intend to bring the issues in dispute immediately back to the Council—as expressly directed by Councilmember Arias and Councilmember Bredfeldt—but instead proceeded with the processing of a version of the text amendment that is essentially identical to that proposed by the community. Even more disconcerting is the fact that the landowners were informed—just seconds after the community pulled the plug on the negotiations—that the City had already scheduled a community meeting on what is essentially the community's version of the text amendment.

As the landowners have previously advised, the draft overlay district initiated by the Planning Commission on 6/1—and in particular the "no net/CEQA" paragraph—is highly problematic and unworkable for Landowners. This has been the subject of several letters from my office to the City. The process that is being contemplated is also contrary to the Council's direction. As a result, the landowners request that staff take the community meeting off calendar, and instead bring the issue back to the City Council for the Council to resolve the disagreements between the Landowners and the community.

Thank you,

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WANGER JONES HELSLEY PC  
265 E. River Park Circle, Suite 310  
Fresno, California 93720

Phone: (559) 233-4800, Ext. 216  
Fax: (559) 233-9330

---

**From:** Jennifer Clark <jennifer.clark@fresno.gov>

**Date:** Tuesday, November 15, 2022 at 1:26 PM

**To:** John Kinsey <jkinsey@wjhattorneys.com>, Kelli Furtado <Kelli.Furtado@fresno.gov>, Talia Kolluri <Talia.Kolluri@fresno.gov>, Robert Holt <Robert.Holt@fresno.gov>, Booker Lewis II <btlewis@hotmail.com>, Booker Lewis <Booker.Lewis@fresno.gov>

**Cc:** Amy Lerseth <amylerseth@buzzoates.com>, Nick Audino <NAudino@pearsonrealty.com>

**Subject:** RE: HOLD: Cleaner & Greener Overlay Discussion - continued

Thanks, John. Yes we did receive your landowner comments. I do not have any feedback to share in advance of the meeting but hope we can still have a productive discussion. We have held 11/29 as an additional meeting for discussion if needed prior to public outreach.

See you at 5.

**From:** John Kinsey <jkinsey@wjhattorneys.com>

**Sent:** Tuesday, November 15, 2022 10:37 AM

**To:** Jennifer Clark <jennifer.clark@fresno.gov>, Kelli Furtado <Kelli.Furtado@fresno.gov>, Talia Kolluri <Talia.Kolluri@fresno.gov>, Robert Holt <Robert.Holt@fresno.gov>, Booker Lewis II <btlewis@hotmail.com>, Booker Lewis <Booker.Lewis@fresno.gov>

**Cc:** Amy Lerseth <amylerseth@buzzoates.com>, Nick Audino <NAudino@pearsonrealty.com>

**Subject:** RE: HOLD: Cleaner & Greener Overlay Discussion - continued

**External Email:** Use caution with links and attachments

Good morning, Jennifer. I wanted to check to see if you had any feedback to share in advance of the meeting. By providing the landowner's comments on 11/8, our hope was that we would receive feedback sooner than the last time around. If we can get the community's feedback soon, that will allow us to discuss internally, which will in turn help make the discussion this evening more productive. Let me know.

Thanks,

John P. Kinsey, Esq.  
*Certified Specialist in Appellate Law*  
*State Bar of California Board of Legal Specialization*  
WANGER JONES HELSLEY PC  
265 E. River Park Circle, Suite 310  
Fresno, California 93720  
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Website: [www.wjhattorneys.com](http://www.wjhattorneys.com)

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**From:** John Kinsey <[kinsey@wjhattorneys.com](mailto:kinsey@wjhattorneys.com)>  
**Sent:** Tuesday, November 8, 2022 9:47 AM

**To:** Jennifer Clark <[jennifer.clark@fresno.gov](mailto:jennifer.clark@fresno.gov)>; Kelli Furtado <[kelli.furtado@fresno.gov](mailto:kelli.furtado@fresno.gov)>; Talia Kolluri <[talia.kolluri@fresno.gov](mailto:talia.kolluri@fresno.gov)>; Robert Holt <[Robert.Holt@fresno.gov](mailto:Robert.Holt@fresno.gov)>; Booker Lewis II <[blewis@hotmail.com](mailto:blewis@hotmail.com)>; Booker Lewis <[Booker.Lewis@fresno.gov](mailto:Booker.Lewis@fresno.gov)>  
**Cc:** Amy Lerseth <[amylerseth@buzzoates.com](mailto:amylerseth@buzzoates.com)>; Nick Audino <[NAudino@pearsonreality.com](mailto:NAudino@pearsonreality.com)>  
**Subject:** RE: HOLD: Cleaner & Greener Overlay Discussion - continued

Good morning, Jennifer and Pastor Lewis. The landowners have made some edits to the draft overlay district based on our discussion last week in response to the concerns raised by the community. Those edits are attached. I have also included a redline (from the original document provided to us a few weeks ago) and a comparison of changes in the same format as Jennifer's spreadsheet.

At the outset, I wanted to note that the landowners were very disappointed by the community's position that was communicated just a few minutes before last week's meeting. Specifically, the community members rejected all of the requests made by the landowners to provide the landowners relief, and only accepted the landowners' concessions to the community. Although the landowners are taking the Council's direction seriously and attempting in good faith to come up with provisions that will allay the concerns articulated by the community, the negotiation process cannot be a one-way street. We are not going to make any progress or come close to meeting the Council's expectations if all of the landowners' requests continue to be rejected, and the only items that are accepted are the landowners' concessions to the community.

That being said, we did find the second half of the meeting very helpful in getting a better understanding of the community's concerns. We sincerely appreciated Mr. Mitchell's efforts to articulate the community's concerns regarding prior business operations. That candor and dialog is very helpful because we can then identify concrete measures that can directly address those concerns. We also appreciate Pastor Lewis's commitment to attempt to further refine what the community calls the "health impact" paragraph, which is very problematic for the landowners because of the CEQA and "no net" increase language. At the end of the meeting, the landowners committed to adding some measures to address the concerns raised by Mr. Mitchell and also

delineating between uses that are permitted in some of the general use categories that are of greater concern to the community, such as "General Industrial" and "Ag Support Services."

As a result of the foregoing, the landowners have made some further refinements to the proposed overlay district. These edits are targeted toward addressing the concerns that were articulated to us by the community. Here is a summary:

1. The Landowners have reinserted the General Industrial land use in the "permitted" group; however, we have excluded the more intensive General Industrial uses and placed those in the "conditional" category.
2. The Landowners have reinserted Agricultural Support Services and Agricultural Processing into the permitted and conditional categories, respectively; however, we have excluded the more intensive uses and placed those in the "unpermitted" category.
3. To address Mr. Mitchell's concerns about something similar to the why they plant occurring in the future, we have added a requirement for all industrial uses to comply with the California Accidental Release Prevention (CalARP) program, and also to any CalARP or other hazardous substance from migrating offsite. My understanding is that all of the existing uses currently comply with these requirements; however, this would prevent any issues occurring in the future.
4. We have kept the provisions regarding the minor expansions, as the landowners need to be able to continue to add minor improvements and structures such as guard houses, awnings/overhangs, electrification infrastructure, and the like.

Please let me know if you have any questions. Thanks,

John P. Kinsey, Esq.

*Certified Specialist in Appellate Law*

*State Bar of California Board of Legal Specialization*

WANGER JONES HELSLEY PC

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Website: [www.wjhatorneys.com](http://www.wjhatorneys.com)

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**From:** Jennifer Clark <jennifer.clark@fresno.gov>

**Sent:** Tuesday, November 1, 2022 4:53 PM

**To:** Kelli Furtado <Kelli.Furtado@fresno.gov>; Talia Kolluri <Talia.Kolluri@fresno.gov>; Robert Holt

<Robert.Holt@fresno.gov>; Booker Lewis II <btlewis@hotmail.com>; Booker Lewis

<Booker.Lewis@fresno.gov>; John Kinsey <jkinsey@wjhattorneys.com>

**Cc:** Amy Lerseth <amylerseth@buzzoates.com>; Nick Audino <NAudino@pearsonreality.com>

**Subject:** HOLD: Cleaner & Greener Overlay Discussion - continued

Good evening.

We will be reviewing the attached document tonight.

Jennifer Clark, Director of Development  
Planning & Development Department  
City of Fresno  
2600 Fresno St, Room 3065  
Fresno, CA 93721  
jennifer.clark@fresno.gov  
(559) 621-8003



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**TAB “1”**

**From:** Jennifer Clark  
**To:** Booker Lewis; John Kinsey; Kelli Furtado; Talia Kolluri; Robert Holt; Booker Lewis  
**Cc:** Amy Lerseth; Nick Audino  
**Subject:** RE: HOLD: Cleaner & Greener Overlay Discussion - continued  
**Date:** Monday, November 28, 2022 10:50:54 AM  
**Attachments:** image001.png

Good morning.

Thank you all for your comments on the use of the overlay and direction from City Council.

The meeting on Tuesday 11/29 via Zoom will be to review the intent for the Thursday public workshop. The purpose is

1. to lay out the city-wide issue/concern (i.e. pre-existing industrial buildings with industrial uses rezoned to mixed use zoning),
2. to educate on what an overlay district is and how it can be used
3. to discuss how an overlay could assist in resolving some of the issues/concerns as described in #1

The purpose for Thursday is not to discuss or educate on any specific version of an overlay, although we can acknowledge that there are at least 3 versions that have been drafted by the staff, a resident group, and a property owner group.

Again, if anyone would like to hear the plans for Thursday's public workshop, we will review those via Zoom on Tuesday, November 29<sup>th</sup> at 5 pm.

Thanks!

Jennifer Clark  
[jennifer.clark@fresno.gov](mailto:jennifer.clark@fresno.gov)

**From:** Booker Lewis <[btlewis@hotmail.com](mailto:btlewis@hotmail.com)>  
**Sent:** Sunday, November 27, 2022 2:47 PM

**To:** John Kinsey <[johnkinsey@wjhattorneys.com](mailto:johnkinsey@wjhattorneys.com)>; Jennifer Clark <[jennifer.clark@fresno.gov](mailto:jennifer.clark@fresno.gov)>; Kelli Furtado <[kelli.furtado@fresno.gov](mailto:kelli.furtado@fresno.gov)>; Talia Kolluri <[Talia.Kolluri@fresno.gov](mailto:Talia.Kolluri@fresno.gov)>; Robert Holt <[Robert.Holt@fresno.gov](mailto:Robert.Holt@fresno.gov)>; Booker Lewis <[Booker.Lewis@fresno.gov](mailto:Booker.Lewis@fresno.gov)>  
**Cc:** Amy Lerseth <[amylerseth@buzzoates.com](mailto:amylerseth@buzzoates.com)>; Nick Audino <[Naudino@pearsonrealty.com](mailto:Naudino@pearsonrealty.com)>  
**Subject:** RE: HOLD: Cleaner & Greener Overlay Discussion - continued

**External Email:** Use caution with links and attachments

Hello Jennifer,

Apologies for the delay in responding. I had a few health issues to deal with this week. Nevertheless, I have been in contact with our community team members and I believe we are willing to join the meeting on the 29<sup>th</sup> although I do not believe we are in any position to compromise the Overlay to their satisfaction.

While we appreciate Mr. Kinsey's perspective on the state of our discussions regarding the overlay initiated on June 1 by our Planning Commission, we have been disappointed in these discussions since the beginning when Mr. Kinsey submitted a refined version of our document that demonstrated an enormous amount of gall and disregard for our work and our interest in protecting the health and well-being of our community. We worked on this overlay for over a year. To expect us to agree to a rewriting of this overlay is a blatant disregard for our opinions, the adopted plan for our community, and an shameful act of privilege.

We also take issue with the reiteration that we were expected to enter a mediation with the landowners. We certainly do not interpret City Council's instruction the same way. We were asked to enter discussions with the landowners to see if there was any common ground given that we already had an overlay initiated on June 1. We are a community team not controlled City Council, nor or we obligated to accept their direction. Years of disrespect and blatant disregard for the health of our community has come through city councils.

We did intend to graciously hear the landowner's concerns and engage in a conversation without committing to undoing the work that we had completed. I do believe that they have misinterpreted the intent of this process and that it became glaringly evident from the beginning that their recommendations would be contrary to our commitment to our community and the South West Specific Plan.

We also believe that the Elm Avenue rezone issue was resolved by City Council on October 13, 2022. In their decision, our city Council elected to allow approximately 30 acres to revert back to industrial leaving 60 acres under the land use designation as defined by the Southwest Specific Plan as Neighborhood Mixed Use. We consider that decision final until challenged and prepared to move forward given those conditions. We believe that it is disingenuous for the landowners to attempt to use the overlay we developed in partnership with the city to reverse City Council's decision to deny their request to be rezoned back to an industrial use designation.

The overlay is not Elm Avenue specific. The overlay will not require any additional action by landowners or change any land use, unless it is implemented by the landowner. For that reason, we are not in favor of changing the language of the overlay that we put significant effort into developing in partnership with the City of Fresno. I love your analogy that the overlay only adds a menu option to the code. The landowners then have the option of not using the overlay, while others in the city may choose to do so. We therefore choose to move forward with an overlay that will protect the health and welfare of our community. If the language in overlay is problematic for the landowners, then the landowners can simply choose not to use the overlay.

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harmed for over 50 years.

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We do not want the 12/1 meeting at Gaston Middle School to be taken off calendar. We want to proceed with the presentation to implementation committees across the city without delay.

We will never be able to bring a fully-negotiated overlay district before Council because Mr. Kinsey and his clients have no regard for the South West Specific Plan or our responsibility to reverse the injustices of the past and protect the health of our community.

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Rising Star Missionary Baptist Church, Fresno  
Office: 1104 Collins Ave. - (559) 442-1908

'Compelled by the Love of Christ' 2 Cor. 5:14

**From:** John Kinsey [mailto:jkKinsey@whattorneys.com]  
**Sent:** Saturday, November 26, 2022 12:32 PM

**To:** Jennifer Clark <jennifer.clark@fresno.gov>; Kelli Furtado <kelli.furtado@fresno.gov>; Talia Kolluri <talia.kolluri@fresno.gov>; Robert Holt <Robert.Holt@fresno.gov>; Booker Lewis II <btlewis@hotmail.com>; Booker Lewis <Booker.Lewis@fresno.gov>  
**Cc:** Amy Lerseth <amylerseth@buzzoates.com>; Nick Audino <NAudino@pearsonreality.com>  
**Subject:** Re: HOLD: Cleaner & Greener Overlay Discussion - continued

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Thanks,

John P. Kinsey, Esq.  
WANGER JONES HELSLEY PC  
265 E. River Park Circle, Suite 310  
Fresno, California 93720  
Phone: (559) 233-4800, Ext. 216  
Fax: (559) 233-9330

---

**From:** Jennifer Clark <jennifer.clark@fresno.gov>  
**Date:** Tuesday, November 22, 2022 at 12:14 PM

**To:** John Kinsey <jkinsey@wjhattorneys.com>, Kelli Furtado <Kelli.Furtado@fresno.gov>, Talia Kolluri <Talia.Kolluri@fresno.gov>, Robert Holt <Robert.Holt@fresno.gov>, Booker Lewis II <btlewis@hotmail.com>, Booker Lewis <Booker.Lewis@fresno.gov>  
**Cc:** Amy Lerseth <amylerseth@buzzoates.com>, Nick Audino <NAudino@pearsonrealty.com>  
**Subject:** RE: HOLD: Cleaner & Greener Overlay Discussion - continued

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Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

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**Date:** 11/22/22 11:25 AM (GMT-08:00)

**To:** Jennifer Clark <jennifer.clark@fresno.gov>, Kelli Furtado <Kelli.Furtado@fresno.gov>, Talia Kolluri <Talia.Kolluri@fresno.gov>, Robert Holt <Robert.Holt@fresno.gov>, Booker Lewis II <btlewis@hotmail.com>, Booker Lewis <Booker.Lewis@fresno.gov>

**Cc:** Amy Lerseth <amylerseth@buzzoates.com>, Nick Audino <NAudino@pearsonrealty.com>  
**Subject:** Re: HOLD: Cleaner & Greener Overlay Discussion - continued

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Thank you,

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Fax: (559) 233-9330

**From:** Jennifer Clark <jennifer.clark@fresno.gov>  
**Date:** Tuesday, November 15, 2022 at 1:26 PM

**To:** John Kinsey <jkinsey@wihatorneys.com>, Kelli Furtado <Kelli.Furtado@fresno.gov>, Talia

Kolluri <Talia.Kolluri@fresno.gov>, Robert Holt <Robert.Holt@fresno.gov>, Booker Lewis II <btlewis@hotmail.com>, Booker Lewis <Booker.Lewis@fresno.gov>  
**Cc:** Amy Lerseth <amylerseth@buzzzaates.com>, Nick Audino <NAudino@pearsonreality.com>  
**Subject:** RE: HOLD: Cleaner & Greener Overlay Discussion - continued

Thanks, John. Yes we did receive your landowner comments. I do not have any feedback to share in advance of the meeting but hope we can still have a productive discussion. We have held 11/29 as an additional meeting for discussion if needed prior to public outreach.

See you at 5.

**From:** John Kinsey <jkinsey@wjhattorneys.com>  
**Sent:** Tuesday, November 15, 2022 10:37 AM

**To:** Jennifer Clark <jennifer.clark@fresno.gov>; Kelli Furtado <Kelli.Furtado@fresno.gov>; Talia Kolluri <Talia.Kolluri@fresno.gov>; Robert Holt <Robert.Holt@fresno.gov>; Booker Lewis II <btlewis@hotmail.com>; Booker Lewis <Booker.Lewis@fresno.gov>

**Cc:** Amy Lerseth <amylerseth@buzzzaates.com>; Nick Audino <NAudino@pearsonreality.com>  
**Subject:** RE: HOLD: Cleaner & Greener Overlay Discussion - continued

**External Email:** Use caution with links and attachments

Good morning, Jennifer. I wanted to check to see if you had any feedback to share in advance of the meeting. By providing the landowner's comments on 11/8, our hope was that we would receive feedback sooner than the last time around. If we can get the community's feedback soon, that will allow us to discuss internally, which will in turn help make the discussion this evening more productive. Let me know.

Thanks,

John P. Kinsey, Esq.

*Certified Specialist in Appellate Law  
State Bar of California Board of Legal Specialization*  
WANGER JONES HELSLEY PC  
265 E. River Park Circle, Suite 310  
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**From:** John Kinsey <[jkinsel@wjhattoynys.com](mailto:jkinsel@wjhattoynys.com)>  
**Sent:** Tuesday, November 8, 2022 9:47 AM

**To:** Jennifer Clark <[Jennifer.Clark@fresno.gov](mailto:Jennifer.Clark@fresno.gov)>; Kelli Furtado <[Kelli.Furtado@fresno.gov](mailto:Kelli.Furtado@fresno.gov)>; Talia Kolluri <[Talia.Kolluri@fresno.gov](mailto:Talia.Kolluri@fresno.gov)>; Robert Holt <[Robert.Holt@fresno.gov](mailto:Robert.Holt@fresno.gov)>; Booker Lewis II <[btlewis@hotmail.com](mailto:btlewis@hotmail.com)>; Booker Lewis <[Booker.Lewis@fresno.gov](mailto:Booker.Lewis@fresno.gov)>  
**Cc:** Amy Lerseth <[amylerseth@buzzoates.com](mailto:amylerseth@buzzoates.com)>; Nick Audino <[NAudino@pearsonreality.com](mailto:NAudino@pearsonreality.com)>  
**Subject:** RE: HOLD: Cleaner & Greener Overlay Discussion - continued

Good morning, Jennifer and Pastor Lewis. The landowners have made some edits to the draft overlay district based on our discussion last week in response to the concerns raised by the community. Those edits are attached. I have also included a redline (from the original document provided to us a few weeks ago) and a comparison of changes in the same format as Jennifer's spreadsheet.

At the outset, I wanted to note that the landowners were very disappointed by the community's position that was communicated just a few minutes before last week's meeting. Specifically, the community members rejected all of the requests made by the landowners to provide the landowners relief, and only accepted the landowners' concessions to the community. Although the landowners are taking the Council's direction seriously and attempting in good faith to come up with provisions that will allay the concerns articulated by the community, the negotiation process cannot be a one-way street. We are not going to make any progress or come close to meeting the Council's expectations if all of the landowners' requests continue to be rejected, and the only items that are accepted are the landowners' concessions to the community.

That being said, we did find the second half of the meeting very helpful in getting a better understanding of the community's concerns. We sincerely appreciated Mr. Mitchell's efforts to articulate the community's concerns regarding prior business operations. That candor and dialog is very helpful because we can then identify concrete measures that can directly address those concerns. We also appreciate Pastor Lewis's commitment to attempt to further refine what the community calls the "health impact" paragraph, which is very problematic for the landowners because of the CEQA and "no net" increase language. At the end of the meeting, the landowners committed to adding some measures to address the concerns raised by Mr. Mitchell and also delineating between uses that are permitted in some of the general use categories that are of greater concern to the community, such as "General Industrial" and "Ag Support Services."

As a result of the foregoing, the landowners have made some further refinements to the proposed overlay district. These edits are targeted toward addressing the concerns that were articulated to us by the community. Here is a summary:

1. The Landowners have reinserted the General Industrial land use in the "permitted" group; however, we have excluded the more intensive General Industrial uses and placed those in the "conditional" category.
2. The Landowners have reinserted Agricultural Support Services and Agricultural Processing into the permitted and conditional categories, respectively; however, we have excluded the more intensive uses and placed those in the "unpermitted" category.
3. To address Mr. Mitchell's concerns about something similar to the why plant occurring in the future, we have added a requirement for all industrial uses to comply with the California Accidental Release Prevention (CalARP) program, and also to any CalARP or other hazardous substance from migrating offsite. My understanding is that all of the existing uses currently comply with these requirements; however, this would prevent any issues occurring in the future.
4. We have kept the provisions regarding the minor expansions, as the landowners need to be able to continue to add minor improvements and structures such as guard houses, awnings/overhangs, electrification infrastructure, and the like.

Please let me know if you have any questions. Thanks,

John P. Kinsey, Esq.

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**From:** Jennifer Clark <[jennifer.clark@fresno.gov](mailto:jennifer.clark@fresno.gov)>

**Sent:** Tuesday, November 1, 2022 4:53 PM

**To:** Kelli Furtado <[Kelli.Furtado@fresno.gov](mailto:Kelli.Furtado@fresno.gov)>; Talia Kolluri <[Talia.Kolluri@fresno.gov](mailto:Talia.Kolluri@fresno.gov)>; Robert Holt <[Robert.Holt@fresno.gov](mailto:Robert.Holt@fresno.gov)>; Booker Lewis II <[btlewis@hotmail.com](mailto:btlewis@hotmail.com)>; Booker Lewis <[Booker.Lewis@fresno.gov](mailto:Booker.Lewis@fresno.gov)>; John Kinsey <[john.kinsey@wjhatorneys.com](mailto:john.kinsey@wjhatorneys.com)>

**Cc:** Amy Lerseth <[amylerseth@buzzoates.com](mailto:amylerseth@buzzoates.com)>; Nick Audino <[NAudino@pearsonrealty.com](mailto:NAudino@pearsonrealty.com)>

**Subject:** HOLD: Cleaner & Greener Overlay Discussion - continued

Good evening.

We will be reviewing the attached document tonight.

Jennifer Clark, Director of Development  
Planning & Development Department  
City of Fresno  
2600 Fresno St, Room 3065  
Fresno, CA 93721  
jennifer.clark@fresno.gov  
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**TAB "J"**



In light of the foregoing, the landowners continue to have significant concerns regarding the process being undertaken by City staff. Instead of "addressing the issues" discussed at the October 13, 2022, meeting, staff is proceeding with a June 1, 2022, text amendment that does not address the serious issues discussed at the meeting, or otherwise reflect the issues discussed over the last few weeks. In addition, although the Council directed that staff present to them the areas of disagreement within 90-days so they could resolve any outstanding issues, staff is instead presenting a version of the overlay district that is essentially identical to that advocated for by the community. Further, although Pastor Lewis' email suggests that the community was not "expected to enter a mediation with the landowners," and that the "rezone issue was resolved" on October 13, 2022, a brief review of the colloquy between the Councilmembers on October 13, 2022, shows that is simply untrue.

Finally, we were quite disturbed by the November 27, 2022, email from Pastor Lewis, which accuses the landowners of "blatantly disregarding [the community's] opinions," "engaging in a "shameful act of privilege," and suggesting the landowners are responsible for the injustices affecting the Southwest community. Now is not the time or format to respond to this hyperbole, although the record will ultimately demonstrate these accusations are entirely untrue, and contrary to the landowners' repeated attempts to engage with the community to resolve this issue—which to the landowners' disappointment and dismay have not been reciprocated. Pastor Lewis' statements are likewise unhelpful to the negotiation process and further undermine an amicable resolution of this issue with the City and the Community. It is also not lost on the landowners that this communication is coming from an employee of the City who has been directly engaged in this process on the City's behalf. While the landowners intend to participate this evening in good faith, these statements are not conducive to bringing the parties closer together, and are disappointing to

The most salient discussion is between Councilmembers Arias and Bredfeldt that starts around 5:04:00 of the CMAc video. This is a discussion preceding the amendment to the motion, in which both Councilmember Arias and Councilmember Bredfeldt provided their direction to staff on this issue. Councilmember Arias started the discussion by directing staff to return in 90-days after seeking support from **both** the community **and** the landowners so the Council could consider a compromise draft overlay district. Councilmember Bredfeldt clarified that, "[i]f they don't have agreement with it, the Council will make the determination of exactly what will be accomplished in that overlay," after which Councilmember Arias stated they were on the same page. He also directed staff to come forward with a draft that "**addresses the issues discussed today**."

<https://cmaac.tv/show/fresno-city-council-october-13-2022/>

Jennifer and Pastor Lewis, thank you both from the emails below. After reviewing your emails, I believe there is a very significant disconnect between staff's and the community's view of the process, and what the City Council directed on October 13, 2022. To ensure I wasn't inaccurately remembering the discussion, I went back and reviewed the video. I suggest you do the same.

---

**From:** John Kinsey  
**To:** Jennifer Clark; Booker Lewis; Kelli Furtado; Talia Kolluri; Robert Holt; Booker Lewis  
**Cc:** Amy Lerseth; Nick Audino  
**Subject:** RE: HOLD: Cleaner & Greener Overlay Discussion - continued  
**Date:** Tuesday, November 29, 2022 1:20:39 PM  
**Attachments:** image001.png

say the least.

In short, we continue to request that staff call off the meeting scheduled for 12/1, and instead present a neutral recitation of the issues and the status of the negotiations to the City Council as directed on October 13, 2022. We also request that the City Council members be provided with a copy of this email thread so they can see the communications below.

Thank you,

John P. Kinsey, Esq.

*Certified Specialist in Appellate Law  
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WANGER JONES HELSLEY PC*

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**From:** Jennifer Clark <jennifer.clark@fresno.gov>  
**Sent:** Monday, November 28, 2022 10:50 AM

**To:** Booker Lewis <btlewis@hotmail.com>; John Kinsey <jkinsey@wjhatorneys.com>; Kelli Furtado <Kelli.Furtado@fresno.gov>; Talia Kolluri <Talia.Kolluri@fresno.gov>; Robert Holt <Robert.Holt@fresno.gov>; Booker Lewis <Booker.Lewis@fresno.gov>  
**Cc:** Amy Lerseth <amylerseth@buzzoates.com>; Nick Audino <NAudino@pearsonreality.com>  
**Subject:** RE: HOLD: Cleaner & Greener Overlay Discussion - continued

Good morning.

Thank you all for your comments on the use of the overlay and direction from City Council.

The meeting on Tuesday 11/29 via Zoom will be to review the intent for the Thursday public workshop. The purpose is

1. to lay out the city-wide issue/concern (i.e. pre-existing industrial buildings with

- Industrial uses rezoned to mixed use zoning),
2. to educate on what an overlay district is and how it can be used
  3. to discuss how an overlay could assist in resolving some of the issues/concerns as described in #1

The purpose for Thursday is not to discuss or educate on any specific version of an overlay, although we can acknowledge that there are at least 3 versions that have been drafted by the staff, a resident group, and a property owner group.

Again, if anyone would like to hear the plans for Thursday's public workshop, we will review those via Zoom on Tuesday, November 29<sup>th</sup> at 5 pm.

Thanks!

Jennifer Clark  
[jennifer.clark@fresno.gov](mailto:jennifer.clark@fresno.gov)

**From:** Booker Lewis <[btlewis@hotmail.com](mailto:btlewis@hotmail.com)>  
**Sent:** Sunday, November 27, 2022 2:47 PM

**To:** John Kinsey <[jkinsey@wjhattorneys.com](mailto:jkinsey@wjhattorneys.com)>; Jennifer Clark <[jennifer.clark@fresno.gov](mailto:jennifer.clark@fresno.gov)>; Kelli Furtado <[Kelli.Furtado@fresno.gov](mailto:Kelli.Furtado@fresno.gov)>; Talia Kolluri <[Talia.Kolluri@fresno.gov](mailto:Talia.Kolluri@fresno.gov)>; Robert Holt <[Robert.Holt@fresno.gov](mailto:Robert.Holt@fresno.gov)>; Booker Lewis <[Booker.Lewis@fresno.gov](mailto:Booker.Lewis@fresno.gov)>  
**Cc:** Amy Lerseth <[amylerseth@buzzoates.com](mailto:amylerseth@buzzoates.com)>; Nick Audino <[NAudino@pearsonrealty.com](mailto:NAudino@pearsonrealty.com)>  
**Subject:** RE: HOLD: Cleaner & Greener Overlay Discussion - continued

**External Email:** Use caution with links and attachments

Hello Jennifer,

Apologies for the delay in responding. I had a few health issues to deal with this week. Nevertheless, I have been in contact with our community team members and I believe we are willing to join the meeting on the 29<sup>th</sup> although I do not believe we are in any position to compromise the Overlay to their satisfaction.

While we appreciate Mr. Kinsey's perspective on the state of our discussions regarding the overlay initiated on June 1 by our Planning Commission, we have been disappointed in these discussions since the beginning when Mr. Kinsey submitted a revised version of our document that demonstrated an enormous amount of gall and disregard for our work and our interest in protecting the health and well-being of our community. We worked on this overlay for over a year. To expect us to agree to a rewriting of this overlay is a blatant disregard for our opinions, the adopted plan for our community, and an shameful act of privilege

We also take issue with the reiteration that we were expected to enter a mediation with the landowners. We certainly do not interpret City Council's instruction the same way. We were asked to enter discussions with the landowners to see if there was any common ground given that we already had an overlay initiated on June 1. We are a community team not controlled City Council, nor or we obligated to accept their direction. Years of disrespect and blatant disregard for the health of our community has come through city councils.

We did intend to graciously hear the landowner's concerns and engage in a conversation without committing to undoing the work that we had completed. I do believe that they have misinterpreted the intent of this process and that it became glaringly evident from the beginning that their recommendations would be contrary to our commitment to our community and the South West Specific Plan.

We also believe that the Elm Avenue rezone issue was resolved by City Council on October 13, 2022. In their decision, our city Council elected to allow approximately 30 acres to revert back to industrial leaving 60 acres under the land use designation as defined by the Southwest Specific Plan as Neighborhood Mixed Use. We consider that decision final until challenged and prepared to move forward given those conditions. We believe that it is disingenuous for the landowners to attempt to use the overlay we developed in partnership with the city to reverse City Council's decision to deny their request to be rezoned back to an industrial use designation.

The overlay is not Elm Avenue specific. The overlay will not require any additional action by landowners or change any land use, unless it is implemented by the landowner. For that reason, we are not in favor of changing the language of the overlay that we put significant effort into developing in partnership with the City of Fresno. I love your analogy that the overlay only adds a menu option to the code. The landowners then have the option of not using the overlay, while others in the city may choose to do so. We therefore choose to move forward with an overlay that will protect the health and welfare of our community. If the language in overlay is problematic for the landowners, then the landowners can simply choose not to use the overlay. We are not interested in conceding the health and welfare of a community that has been deeply harmed for over 50 years.

The meeting on 12/1 is not a meeting to present a solution for Mr. Kinsey and his clients. It is a meeting to present to our community the definition and details of an overlay that will be made available to protect the health and welfare of vulnerable communities across our city.

Since it is impossible for Mr. Kinsey and his team to tell us what the Council is contemplating, we advocate that staff move forward with the overlay as developed and presented to Planning Commission on June 1. We do not want the 12/1 meeting at Gaston Middle School to be taken off calendar. We want to proceed with the presentation to implementation committees across the city without delay.

We will never be able to bring a fully-negotiated overlay district before Council because Mr. Kinsey and his clients have no regard for the South West Specific Plan or our responsibility to reverse the

injustices of the past and protect the health of our community.

**Pastor B. T. Lewis II**

Rising Star Missionary Baptist Church, Fresno  
Office: 1104 Collins Ave. - (559) 442-1908

'Compelled by the Love of Christ' 2 Cor. 5:14

**From:** John Kinsey [mailto:kinsey@wjhattorneys.com]

**Sent:** Saturday, November 26, 2022 12:32 PM

**To:** Jennifer Clark <jennifer.clark@fresno.gov>; Kelli Furtado <kelli.furtado@fresno.gov>; Talia Kolluri <talia.kolluri@fresno.gov>; Robert Holt <Robert.Holt@fresno.gov>; Booker Lewis II <btlewis@hotmail.com>; Booker Lewis <Booker.Lewis@fresno.gov>

**Cc:** Amy Lerseth <amylerseth@buzzzates.com>; Nick Audino <NAudino@pearsonrealty.com>

**Subject:** Re: HOLD: Cleaner & Greener Overlay Discussion - continued

Thanks, Jennifer. As previously expressed, I think the group is always open to meeting with the community, notwithstanding the community's positions to date (i.e., not wanting to provide any concessions to the landowners). I think the community was relatively clear on where they stood (i.e., wanting to pull the plug on the negotiations), but we are there to listen if they actually want to participate.

On the 12/1 meeting, I continue to believe this is directly contrary to the Council's direction from 10/13. The Council did not contemplate that the City would continue to process the text amendment initiated by the PC on 6/1; rather, the Council directed that staff either bring a fully-negotiated overlay district to the Council or alternatively inform them where the disagreements continued to exist. Instead of following the Council's direction, staff is simply processing an overlay district that is identical in function to that advocated by the community. As such, we continue to maintain that the City should take the 12/1 community meeting off calendar and instead present the issue to the City Council as directed.

Thanks,

John P. Kinsey, Esq.  
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265 E. River Park Circle, Suite 310  
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**From:** Jennifer Clark <jennifer.clark@fresno.gov>

**Date:** Tuesday, November 22, 2022 at 12:14 PM

**To:** John Kinsey <jkinsey@wjhattorneys.com>; Kelli Furtado <kelli.furtado@fresno.gov>; Talia Kolluri <talia.kolluri@fresno.gov>; Robert Holt <Robert.Holt@fresno.gov>; Booker Lewis II <btlewis@hotmail.com>; Booker Lewis <Booker.Lewis@fresno.gov>

**Cc:** Amy Lerseth <amylerseth@buzzzates.com>; Nick Audino <NAudino@pearsonrealty.com>

**Subject:** RE: HOLD: Cleaner & Greener Overlay Discussion - continued

John,

Thank you for your email. We would like to meet again on November 29 to review where we are and any additional input.

The community meeting will be held to discuss the use of an overlay to address the issues created when an existing industrial use is a nonconformity in a mixed use district. While the Cleaner and Greener text amendment is one example, the purpose is to educate the public on the overlay process and get feedback.

Thank you and look forward to seeing everyone on 11/29.

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: John Kinsey <[jkKinsey@wjhattorneys.com](mailto:jkKinsey@wjhattorneys.com)>

Date: 11/22/22 11:25 AM (GMT-08:00)

To: Jennifer Clark <[Jennifer.Clark@fresno.gov](mailto:Jennifer.Clark@fresno.gov)>, Kelli Furtado <[Kelli.Furtado@fresno.gov](mailto:Kelli.Furtado@fresno.gov)>, Talia Kolluri <[Talia.Kolluri@fresno.gov](mailto:Talia.Kolluri@fresno.gov)>, Robert Holt <[Robert.Holt@fresno.gov](mailto:Robert.Holt@fresno.gov)>, Booker Lewis II <[blewis@hotmail.com](mailto:blewis@hotmail.com)>, Booker Lewis <[Booker.Lewis@fresno.gov](mailto:Booker.Lewis@fresno.gov)>

Cc: Amy Lerseth <[amylerseth@buzzoates.com](mailto:amylerseth@buzzoates.com)>, Nick Audino <[NAudino@pearsonrealty.com](mailto:NAudino@pearsonrealty.com)>

Subject: Re: HOLD: Cleaner & Greener Overlay Discussion - continued

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Good morning, Jennifer. After our meeting last Tuesday I had the ability to circle back with the landowners regarding the state of the discussions with the community and next steps.

First, we were very disappointed with how the discussion ended last Tuesday. As directed by the Council, the landowners met in good faith with the City and the community representatives regarding revisions to the overlay district to help satisfy the concerns of all stakeholders. The landowners' concerns regarding the draft overlay were very narrow, and primarily related to the "no net/CEQA" paragraph. To help resolve this issue, the landowners made numerous substantial concessions to the community to directly address the community's stated concerns. Despite this, the community did not accept or agree to a single request made by the landowners (instead agreeing only to the landowners' concessions). And despite a willingness on the part on the landowners to continue to engage in discussions, Pastor Lewis and the community abruptly ceased

negotiations halfway through the meeting. The Landowners' hope was that they were going to be able to engage in a meaningful discussion with the community; however, the Landowners cannot negotiate with a party that does not want to negotiate.

The Landowners were also surprised to learn at the end of the meeting that the City did not intend to bring the issues in dispute immediately back to the Council—as expressly directed by Councilmember Arias and Councilmember Bredefeld—but instead proceeded with the processing of a version of the text amendment that is essentially identical to that proposed by the community. Even more disconcerting is the fact that the Landowners were informed—just seconds after the community pulled the plug on the negotiations—that the City had already scheduled a community meeting on what is essentially the community's version of the text amendment.

As the Landowners have previously advised, the draft overlay district initiated by the Planning Commission on 6/1—and in particular the “no net/CEQA” paragraph—is highly problematic and unworkable for Landowners. This has been the subject of several letters from my office to the City. The process that is being contemplated is also contrary to the Council's direction. As a result, the Landowners request that staff take the community meeting off calendar, and instead bring the issue back to the City Council for the Council to resolve the disagreements between the Landowners and the community.

Thank you,

John P. Kinsey, Esq.  
WANGER JONES HELSLEY PC  
265 E. River Park Circle, Suite 310  
Fresno, California 93720  
Phone: (559) 233-4800, Ext. 216  
Fax: (559) 233-9330

---

**From:** Jennifer Clark <Jennifer.Clark@fresno.gov>  
**Date:** Tuesday, November 15, 2022 at 1:26 PM

**To:** John Kinsey <John.Kinsey@wjohnattorneys.com>, Kelli Furtado <Kelli.Furtado@fresno.gov>, Talia Kolluri <Talia.Kolluri@fresno.gov>, Robert Holt <Robert.Holt@fresno.gov>, Booker Lewis II <btlewis@hotmail.com>, Booker Lewis <Booker.Lewis@fresno.gov>  
**Cc:** Amy Lerseth <amylerseth@buzzaates.com>, Nick Audino <NAudino@pearsonrealty.com>  
**Subject:** RE: HOLD: Cleaner & Greener Overlay Discussion - continued

Thanks, John. Yes we did receive your landowner comments. I do not have any feedback to share in advance of the meeting but hope we can still have a productive discussion. We have held 11/29 as an additional meeting for discussion if needed prior to public outreach.

See you at 5.

**From:** John Kinsey <John.Kinsey@wjohnattorneys.com>  
**Sent:** Tuesday, November 15, 2022 10:37 AM

**To:** Jennifer Clark <Jennifer.Clark@fresno.gov>; Kelli Furtado <Kelli.Furtado@fresno.gov>; Talia

**Subject:** RE: HOLD: Cleaner & Greener Overlay Discussion - continued  
**Cc:** Amy Lerseth <amylersest@buzzoates.com>; Nick Audino <NAudino@pearsonrealty.com>  
<btlewis@hotmail.com>; Booker Lewis <Booker.Lewis@fresno.gov>  
Kolluri <Talia.Kolluri@fresno.gov>; Robert Holt <Robert.Holt@fresno.gov>; Booker Lewis II

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Good morning, Jennifer. I wanted to check to see if you had any feedback to share in advance of the meeting. By providing the landowner's comments on 11/8, our hope was that we would receive feedback sooner than the last time around. If we can get the community's feedback soon, that will allow us to discuss internally, which will in turn help make the discussion this evening more productive. Let me know.

Thanks,

John P. Kinsey, Esq.

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**From:** John Kinsey <jkinsey@wjhattorneys.com>

**Sent:** Tuesday, November 8, 2022 9:47 AM

**To:** Jennifer Clark <jennifer.clark@fresno.gov>; Kelli Furtado <Kelli.Furtado@fresno.gov>; Talia Kolluri <Talia.Kolluri@fresno.gov>; Robert Holt <Robert.Holt@fresno.gov>; Booker Lewis II <btlewis@hotmail.com>; Booker Lewis <Booker.Lewis@fresno.gov>

**Cc:** Amy Lerseth <amylersest@buzzoates.com>; Nick Audino <NAudino@pearsonrealty.com>

**Subject:** RE: HOLD: Cleaner & Greener Overlay Discussion - continued



Good morning, Jennifer and Pastor Lewis. The landowners have made some edits to the draft overlay district based on our discussion last week in response to the concerns raised by the community. Those edits are attached. I have also included a redline (from the original document provided to us a few weeks ago) and a comparison of changes in the same format as Jennifer's spreadsheet.

At the outset, I wanted to note that the landowners were very disappointed by the community's position that was communicated just a few minutes before last week's meeting. Specifically, the community members rejected all of the requests made by the landowners to provide the landowners relief, and only accepted the landowners' concessions to the community. Although the landowners are taking the Council's direction seriously and attempting in good faith to come up with provisions that will allay the concerns articulated by the community, the negotiation process cannot be a one-way street. We are not going to make any progress or come close to meeting the Council's expectations if all of the landowners' requests continue to be rejected, and the only items that are accepted are the landowners' concessions to the community.

That being said, we did find the second half of the meeting very helpful in getting a better understanding of the community's concerns. We sincerely appreciated Mr. Mitchell's efforts to articulate the community's concerns regarding prior business operations. That candor and dialog is very helpful because we can then identify concrete measures that can directly address those concerns. We also appreciate Pastor Lewis's commitment to attempt to further refine what the community calls the "health impact" paragraph, which is very problematic for the landowners because of the CEQA and "no net" increase language. At the end of the meeting, the landowners committed to adding some measures to address the concerns raised by Mr. Mitchell and also delineating between uses that are permitted in some of the general use categories that are of greater concern to the community, such as "General Industrial" and "Ag Support Services."

As a result of the foregoing, the landowners have made some further refinements to the proposed overlay district. These edits are targeted toward addressing the concerns that were articulated to us by the community. Here is a summary:

1. The Landowners have reinserted the General Industrial land use in the "permitted" group; however, we have excluded the more intensive General Industrial uses and placed those in the "conditional" category.
2. The Landowners have reinserted Agricultural Support Services and Agricultural Processing into the permitted and conditional categories; respectively; however, we have excluded the more intensive uses and placed those in the "unpermitted" category.
3. To address Mr. Mitchell's concerns about something similar to the why plant occurring in the future, we have added a requirement for all industrial uses to comply with the California Accidental Release Prevention (CalARP) program, and also to any CalARP or other hazardous substance from migrating offsite. My understanding is that all of the existing uses currently comply with these requirements; however, this would prevent any issues occurring in the future.
4. We have kept the provisions regarding the minor expansions, as the landowners need to be able to continue to add minor improvements and structures such as guard houses,

awnings/overhangs, electrification infrastructure, and the like.

Please let me know if you have any questions. Thanks,

John P. Kinsey, Esq.

*Certified Specialist in Appellate Law*

*State Bar of California Board of Legal Specialization*

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**From:** Jennifer Clark <[jennifer.clark@fresno.gov](mailto:jennifer.clark@fresno.gov)>

**Sent:** Tuesday, November 1, 2022 4:53 PM

**To:** Kelli Furtado <[Kelli.Furtado@fresno.gov](mailto:Kelli.Furtado@fresno.gov)>; Talia Kolluri <[Talia.Kolluri@fresno.gov](mailto:Talia.Kolluri@fresno.gov)>; Robert Holt

<[Robert.Holt@fresno.gov](mailto:Robert.Holt@fresno.gov)>; Booker Lewis II <[btlewis@hotmail.com](mailto:btlewis@hotmail.com)>; Booker Lewis

<[Booker.Lewis@fresno.gov](mailto:Booker.Lewis@fresno.gov)>; John Kinsey <[jkinsey@wjhatorneys.com](mailto:jkinsey@wjhatorneys.com)>

**Cc:** Amy Lerseth <[amylerseth@buzzates.com](mailto:amylerseth@buzzates.com)>; Nick Audino <[NAudino@pearsonrealty.com](mailto:NAudino@pearsonrealty.com)>

**Subject:** HOLD: Cleaner & Greener Overlay Discussion - continued

Good evening.

We will be reviewing the attached document tonight.

Jennifer Clark, Director of Development  
Planning & Development Department  
City of Fresno  
2600 Fresno St, Room 3065  
Fresno, CA 93721  
[jennifer.clark@fresno.gov](mailto:jennifer.clark@fresno.gov)  
(559) 621-8003

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**TAB "K"**

Although the remaining Elm Avenue Landowners were disappointed that they were not rezoned back to Light Industrial on October 13, 2022, they understood the direction from the City

San Joaquin Valley as well as the Western United States. widespread negative reputational impacts to the City throughout the business community in the problems for the Elm Avenue Landowners. Just as troubling, this issue has resulted in to resolve the issue with the inconsistent zoning caused by the SWSF has caused significant house a wide range of local businesses and employ thousands of Fresnans. The City's inability investment in the City of Fresno, constructing new state-of-the-art light industrial buildings that twenty years, the Elm Avenue Landowners have collectively made over a \$100,000,000 knowledge in 2017 as part of the City's Southwest Specific Plan ("SWSF"). Over the last Landowners") that were rezoned to Neighborhood Mixed Use ("NMX") zoning without their As you are aware, I represent the owners of real property along Elm Avenue (the "Elm Avenue

Dear Mayor Dyer:

Re: Elm Avenue

Jerry Dyer, Mayor  
City of Fresno  
2600 Fresno Street, Room 2075  
Fresno, CA 93721

VIA EMAIL [Jerry.Dyer@fresno.gov] & UNITED STATES MAIL

December 6, 2022

\* Also admitted in Washington  
\*\* Also admitted in Idaho  
\*\*\* Also admitted in Virginia  
\* Of Counsel

OLIVER W. WANGER  
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MICHAEL S. HELSLEY  
RILEY C. WALTER  
PATRICK D. TOOLE  
SCOTT D. LAIRD  
JOHN P. KINSEY  
KURT F. VOTE  
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JAY A. CHRISTOFFERSON  
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STEVEN M. CRASS†  
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DEBORAH K. BOYETT  
STEVEN K. VOTE  
NICOLAS R. CARDELLA  
GIULIO A. SANCHEZ  
CHRISTOPHER A. LISIESKI\*\*\*  
BENJAMIN C. WEST  
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Council provided them a potential pathway to receive relief from the issues associated with their legal non-conforming status. As you will recall, Councilmember Arias started the discussion by directing staff to return in 90-days after seeking support from both community advocates and the landowners so the Council could consider a compromise draft overlay district. Councilmember Bredfeldt clarified that, “[i]f they don’t have agreement with it, the Council will make the determination of exactly what will be accomplished in that overlay,” after which Councilmember Arias stated they were on the same page. Councilmember Arias also directed staff to come forward with a draft that “addresses the issues discussed today.”

The Elm Avenue Landowners have participated in this process actively and in good faith. However, the Elm Avenue Landowners are profoundly disappointed with the process undertaken by City staff following the October 13, 2022, meeting. Prior to and during the first two meetings, the Elm Avenue Landowners’ concerns primarily focused on a *single paragraph* of the community advocates’ overlay district—which contains the same language the Elm Avenue Landowners have expressed concern about to the City on numerous occasions. These technical issues have *never* been addressed—or even responded to—by your staff. And although the Elm Avenue Landowners made *numerous* concessions to the advocates, led by Pastor Lewis, the advocates accepted *none* of the Elm Avenue Landowners’ requests, and instead only accepted the Elm Avenue Landowners’ concessions.

While the Elm Avenue Landowners have listened thoughtfully to the advocates’ concerns, and have proposed specific mitigation to address those issues, the community advocates have not conceded on a *single* issue, and instead have attacked the Elm Avenue Landowners in a highly racially-charged manner. Most recently, at the November 29, 2022, meeting, one community advocate even equated the Elm Avenue Landowners’ proposal to someone having their foot on the neck of the community—a clear reference to George Floyd and Derek Chauvin. Rest assured, the Elm Avenue Landowners sympathize with the hardships endured by the African American community in Fresno and elsewhere, but it is unfair and highly inappropriate to equate them with a convicted felon who committed murder and violated the civil rights of a person he was sworn to protect.

We are also very troubled by the participation of a City employee—Pastor B.T. Lewis—as an advocate on behalf of the community. Although Pastor Lewis on some occasions states at the outset that he is appearing on behalf of the community and not the City, this distinction is at best murky. His Zoom interface states he represents the City, he clearly coordinates and confers with Planning Director Jennifer Clark in advance of negotiations, and both he and Ms. Clark regularly slip in and out of using the term “we” when collectively referring to both the advocates and City.

If Pastor Lewis were a neutral participant, these blurred lines might not be so problematic. However, as you can see from the attached communication dated November 27, 2022, Pastor Lewis has actively accused the Elm Avenue Landowners of (i) “blatantly disregarding [the advocates’] opinions,” (ii) engaging in a “shameful act of privilege,” and (iii) suggesting the landowners are responsible for the injustices affecting the Southwest community. **Exhibit**

**WANGER JONES HELSLEY PC**

Mayor Jerry Dyer

December 6, 2022

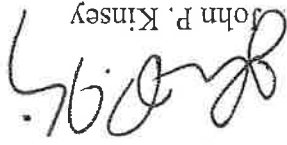
Page 3

“A.”) These inflammatory statements are not conducive to a sincere or productive discussion about the Elm Avenue properties, undermine the Elm Avenue Landowners’ confidence in the process, demonstrate a lack of impartiality, and are frankly unbecoming of a City employee. Such statements continue; in fact, at the December 1, 2022, workshop, while helping to facilitate a community discussion regarding mixed use overlay districts, I overheard Pastor Lewis stating to the community, (i) “we are here because your councilmember didn’t protect you,” (ii) “our councilmember betrayed us,” and (iii) “I completely disagree with [the City’s] decision on October 13,” 2022.

At the July 28, 2022, Fresno Business Council meeting, you expressed a commitment to help resolve the issue on Elm Avenue. We hope that remains true today, both for the Elm Avenue Landowners and the business community at large, which is actively following the Elm Avenue situation. While the Elm Avenue Landowners remain hopeful this issue can be resolved through the process outlined by the Council on October 13, 2022, they have become very concerned with the administration’s approach to the process to date. Because you have not been directly involved, we thought it was important for you to be aware of the conduct of those who speak on your behalf.

As expressed on numerous occasions, the Elm Avenue Landowners are willing, ready, and able to help resolve the issue; however, it is impossible to do so when leveled with racially-charged attacks that seek to terminate productive dialogue rather than further it. Because of the Elm Avenue Landowners’ significant concerns regarding the process being undertaken by Ms. Clark and Pastor Lewis, the Elm Avenue Landowners would like to schedule a meeting with you and the Councilmember for District 3 at the earliest possible time, with the objective of resolving this issue. Please let us know your availability.

Very truly yours,



John P. Kinsey

Enclosures

# EXHIBIT "A"



**John Kinsey**

**From:** Booker Lewis <btlewis@hotmail.com>  
**Sent:** Sunday, November 27, 2022 2:47 PM  
**To:** John Kinsey; Jennifer Clark; Kelli Furtado; Talia Kolluri; Robert Holt; Booker Lewis  
**Cc:** Amy Lerseth; Nick Audino  
**Subject:** RE: HOLD: Cleaner & Greener Overlay Discussion - continued

Hello Jennifer,

Apologies for the delay in responding. I had a few health issues to deal with this week. Nevertheless, I have been in contact with our community team members and I believe we are willing to join the meeting on the 29<sup>th</sup> although I do not believe we are in any position to compromise the Overlay to their satisfaction.

While we appreciate Mr. Kinsey's perspective on the state of our discussions regarding the overlay initiated on June 1 by our Planning Commission, we have been disappointed in these discussions since the beginning when Mr. Kinsey submitted a refined version of our document that demonstrated an enormous amount of gall and disregard for our work and our interest in protecting the health and well-being of our community. We worked on this overlay for over a year. To expect us to agree to a rewriting of this overlay is a blatant disregard for our opinions, the adopted plan for our community, and an shameful act of privilege.

We also take issue with the reiteration that we were expected to enter a mediation with the landowners. We certainly do not interpret City Council's instruction the same way. We were asked to enter discussions with the landowners to see if there was any common ground given that we already had an overlay initiated on June 1. We are a community team not controlled City Council, nor or we obligated to accept their direction. Years of disrespect and blatant disregard for the health of our community has come through city councils.

We did intend to graciously hear the landowner's concerns and engage in a conversation without committing to undoing the work that we had completed. I do believe that they have misinterpreted the intent of this process and that it became glaringly evident from the beginning that their recommendations would be contrary to our commitment to our community and the South West Specific Plan.

We also believe that the Elm Avenue rezoning issue was resolved by City Council on October 13, 2022. In their decision, our city Council elected to allow approximately 30 acres to revert back to industrial leaving 60 acres under the land use designation as defined by the Southwest Specific Plan as Neighborhood Mixed Use. We consider that decision final until challenged and prepared to move forward given those conditions. We believe that it is disingenuous for the landowners to attempt to use the overlay we developed in partnership with the city to reverse City Council's decision to deny their request to be rezoned back to an industrial use designation.

The overlay is not Elm Avenue specific. The overlay will not require any additional action by landowners or change any land use, unless it is implemented by the landowner. For that reason, we are not in favor of changing the language of the overlay that we put significant effort into developing in partnership with the City of Fresno. I love your analogy that the overlay only adds a menu option to the code. The landowners then have the option of not using the overlay, while others in the city may choose to do so. We therefore choose to move forward with an overlay that will protect the health and welfare of our community. If the language in overlay is problematic for the landowners, then the landowners can simply choose not to use the overlay.

We are not interested in conceding the health and welfare of a community that has been deeply harmed for over 50 years.

The meeting on 12/1 is not a meeting to present a solution for Mr. Kinsey and his clients. It is a meeting to present to our community the definition and details of an overlay that will be made available to protect the health and welfare of vulnerable communities across our city.

Since it is impossible for Mr. Kinsey and his team to tell us what the Council is contemplating, we advocate that staff move forward with the overlay as developed and presented to Planning Commission on June 1. We do not want the 12/1 meeting at Gaston Middle School to be taken off calendar. We want to proceed with the presentation to implementation committees across the city without delay.

We will never be able to bring a fully-negotiated overlay district before Council because Mr. Kinsey and his clients have no regard for the South West Specific Plan or our responsibility to reverse the injustices of the past and protect the health of our community.

**Pastor B. T. Lewis II**

Rising Star Missionary Baptist Church, Fresno  
Office: 1104 Collins Ave. - (559) 442-1908  
'Compelled by the Love of Christ' 2 Cor. 5:14

**From:** John Kinsey [mailto:jkkinsey@wjhattorneys.com]  
**Sent:** Saturday, November 26, 2022 12:32 PM

**To:** Jennifer Clark <jennifer.clark@fresno.gov>; Kelli Furtado <kelli.furtado@fresno.gov>; Talia Kolluri <talia.kolluri@fresno.gov>; Robert Holt <Robert.Holt@fresno.gov>; Booker Lewis II <btlewis@hotmail.com>; Booker Lewis <Booker.Lewis@fresno.gov>

**Cc:** Amy Lerseth <amylerse@buzzoates.com>; Nick Audino <NAudino@pearsonrealty.com>

**Subject:** Re: HOLD: Cleaner & Greener Overlay Discussion - continued

Thanks, Jennifer. As previously expressed, I think the group is always open to meeting with the community, notwithstanding the community's positions to date (i.e., not wanting to provide any concessions to the landowners). I think the community was relatively clear on where they stood (i.e., wanting to pull the plug on the negotiations), but we are there to listen if they actually want to participate.

On the 12/1 meeting, I continue to believe this is directly contrary to the Council's direction from 10/13. The Council did not contemplate that the City would continue to process the text amendment initiated by the PC on 6/1; rather, the Council directed that staff either bring a fully-negotiated overlay district to the Council or alternatively inform them where the disagreements continued to exist. Instead of following the Council's direction, staff is simply processing an overlay district that is identical in function to that advocated by the community. As such, we continue to maintain that the City should take the 12/1 community meeting off calendar and instead present the issue to the City Council as directed.

Thanks,

John P. Kinsey, Esq.  
WANGER JONES HELSLEY PC  
265 E. River Park Circle, Suite 310  
Fresno, California 93720  
Phone: (559) 233-4800, Ext. 216  
Fax: (559) 233-9330

**From:** Jennifer Clark <jennifer.clark@fresno.gov>

**Date:** Tuesday, November 22, 2022 at 12:14 PM

**To:** John Kinsey <jkinsey@wjhattorneys.com>; Kelli Furtado <kelli.furtado@fresno.gov>; Talia Kolluri

The Landowners were also surprised to learn at the end of the meeting that the City did not intend to bring the issues in dispute immediately back to the Council—as expressly directed by Councilmember Arias and Councilmember

however, the Landowners cannot negotiate with a party that does not want to negotiate. Landowners' hope was that they were going to be able to engage in a meaningful discussion with the community; discussions, Pastor Lewis and the community abruptly ceased negotiations halfway through the meeting. The landowners' concessions). And despite a willingness on the part on the landowners to continue to engage in community did not accept or agree to a single request made by the landowners (instead agreeing only to the substantial concessions to the community to directly address the community's stated concerns. Despite this, the and primarily related to the "no net/CEQA" paragraph. To help resolve this issue, the landowners made numerous to help satisfy the concerns of all stakeholders. The landowners' concerns regarding the draft overlay were very narrow, landowners met in good faith with the City and the community representatives regarding revisions to the overlay district First, we were very disappointed with how the discussion ended last Tuesday. As directed by the Council, the After our meeting last Tuesday I had the ability to circle back with the landowners regarding the state of the discussions with the community and next steps.

External Email: Use caution with links and attachments

Good morning, Jennifer. After our meeting last Tuesday I had the ability to circle back with the landowners regarding the state of the discussions with the community and next steps.

External Email: Use caution with links and attachments

Subject: Re: HOLD: Cleaner & Greener Overlay Discussion - continued

Cc: Amy Lerseth <amylerseth@buzzoates.com>, Nick Audino <NAudino@pearsonreality.com>  
Lewis <Booker.Lewis@fresno.gov>

<Talia.Kolluri@fresno.gov>, Robert Holt <Robert.Holt@fresno.gov>, Booker Lewis II <btlewis@hotmail.com>, Booker  
To: Jennifer Clark <jennifer.clark@fresno.gov>, Kelli Furtado <kelli.furtado@fresno.gov>, Talia Kolluri  
Date: 11/22/22 11:25 AM (GMT-08:00)  
From: John Kinsey <jkinsey@whattorneys.com>

----- Original message -----

Sent from my Verizon, Samsung Galaxy smartphone

Thank you and look forward to seeing everyone on 11/29.

The community meeting will be held to discuss the use of an overlay to address the issues created when an existing industrial use is a nonconformity in a mixed use district. While the Cleaner and Greener text amendment is one example, the purpose is to educate the public on the overlay process and get feedback.

Thank you for your email. We would like to meet again on November 29 to review where we are and any additional input.

John,

Subject: RE: HOLD: Cleaner & Greener Overlay Discussion - continued

Cc: Amy Lerseth <amylerseth@buzzoates.com>, Nick Audino <NAudino@pearsonreality.com>  
Booker Lewis <Booker.Lewis@fresno.gov>

<Talia.Kolluri@fresno.gov>, Robert Holt <Robert.Holt@fresno.gov>, Booker Lewis II <btlewis@hotmail.com>

Bredefeld—but instead proceed with the processing of a version of the text amendment that is essentially identical to that proposed by the community. Even more disconcerting is the fact that the landowners were informed—just seconds after the community pulled the plug on the negotiations—that the City had already scheduled a community meeting on what is essentially the community's version of the text amendment.

As the landowners have previously advised, the draft overlay district initiated by the Planning Commission on 6/1—and in particular the “no net/CEQA” paragraph—is highly problematic and unworkable for landowners. This has been the subject of several letters from my office to the City. The process that is being contemplated is also contrary to the Council's direction. As a result, the landowners request that staff take the community meeting off calendar, and instead bring the issue back to the City Council for the Council to resolve the disagreements between the Landowners and the community.

Thank you,

John P. Kinsey, Esq.  
WANGER JONES HELSLEY PC  
265 E. River Park Circle, Suite 310  
Fresno, California 93720  
Phone: (559) 233-4800, Ext. 216  
Fax: (559) 233-9330

---

**From:** Jennifer Clark <Jennifer.Clark@fresno.gov>  
**Date:** Tuesday, November 15, 2022 at 1:26 PM

**To:** John Kinsey <|kinsey@whattorneys.com>, Kelli Furtado <Kelli.Furtado@fresno.gov>, Talia Kolluri <Talia.Kolluri@fresno.gov>, Robert Holt <Robert.Holt@fresno.gov>, Booker Lewis II <btlewis@hotmail.com>, Booker Lewis <Booker.Lewis@fresno.gov>  
**Cc:** Amy Lerseth <amylerseth@buzzoates.com>, Nick Audino <NAudino@pearsonrealty.com>  
**Subject:** RE: HOLD: Cleaner & Greener Overlay Discussion - continued

Thanks, John. Yes we did receive your landowner comments. I do not have any feedback to share in advance of the meeting but hope we can still have a productive discussion. We have held 11/29 as an additional meeting for discussion if needed prior to public outreach.

See you at 5.

**From:** John Kinsey <|kinsey@whattorneys.com>  
**Sent:** Tuesday, November 15, 2022 10:37 AM

**To:** Jennifer Clark <Jennifer.Clark@fresno.gov>; Kelli Furtado <Kelli.Furtado@fresno.gov>; Talia Kolluri <Talia.Kolluri@fresno.gov>; Robert Holt <Robert.Holt@fresno.gov>; Booker Lewis II <btlewis@hotmail.com>; Booker Lewis <Booker.Lewis@fresno.gov>  
**Cc:** Amy Lerseth <amylerseth@buzzoates.com>; Nick Audino <NAudino@pearsonrealty.com>  
**Subject:** RE: HOLD: Cleaner & Greener Overlay Discussion - continued

**External Email:** Use caution with links and attachments

Good morning, Jennifer. I wanted to check to see if you had any feedback to share in advance of the meeting. By providing the landowner's comments on 11/8, our hope was that we would receive feedback sooner than the last time around. If we can get the community's feedback soon, that will allow us to discuss internally, which will in turn help make the discussion this evening more productive. Let me know.

Thanks,

John P. Kinsey, Esq.

*Certified Specialist in Appellate Law*

*State Bar of California Board of Legal Specialization*

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**From:** John Kinsey <[jkkinsey@wjhattorneys.com](mailto:jkkinsey@wjhattorneys.com)>  
**Sent:** Tuesday, November 8, 2022 9:47 AM

**To:** Jennifer Clark <[jennifer.clark@fresno.gov](mailto:jennifer.clark@fresno.gov)>; Kelli Furtado <[kelli.furtado@fresno.gov](mailto:kelli.furtado@fresno.gov)>; Talia Kolluri <[talia.kolluri@fresno.gov](mailto:talia.kolluri@fresno.gov)>; Robert Holt <[robert.holt@fresno.gov](mailto:robert.holt@fresno.gov)>; Booker Lewis II <[btlewis@hotmail.com](mailto:btlewis@hotmail.com)>; Booker Lewis <[Booker.Lewis@fresno.gov](mailto:Booker.Lewis@fresno.gov)>

**Cc:** Amy Lerseth <[amylerseth@buzzcoates.com](mailto:amylerseth@buzzcoates.com)>; Nick Audino <[NAudino@pearsonreality.com](mailto:NAudino@pearsonreality.com)>

**Subject:** RE: HOLD: Cleaner & Greener Overlay Discussion - continued

Good morning, Jennifer and Pastor Lewis. The landowners have made some edits to the draft overlay district based on our discussion last week in response to the concerns raised by the community. Those edits are attached. I have also included a redline (from the original document provided to us a few weeks ago) and a comparison of changes in the same format as Jennifer's spreadsheet.

At the outset, I wanted to note that the landowners were very disappointed by the community's position that was communicated just a few minutes before last week's meeting. Specifically, the community members rejected all of the requests made by the landowners to provide the landowners relief, and only accepted the landowners' concessions to the community. Although the landowners are taking the Council's direction seriously and attempting in good faith to come up with provisions that will allay the concerns articulated by the community, the negotiation process cannot be a one-way street. We are not going to make any progress or come close to meeting the Council's expectations if all of the landowners' requests continue to be rejected, and the only items that are accepted are the landowners' concessions to the community.

That being said, we did find the second half of the meeting very helpful in getting a better understanding of the community's concerns. We sincerely appreciated Mr. Mitchell's efforts to articulate the community's concerns regarding prior business operations. That candor and dialog is very helpful because we can then identify concrete measures that can directly address those concerns. We also appreciate Pastor Lewis's commitment to attempt to further refine what the community calls the "health impact" paragraph, which is very problematic for the landowners because of the CEQA and "no net" increase language. At the end of the meeting, the landowners committed to adding some measures to address the concerns raised by Mr. Mitchell and also delineating between uses that are

permitted in some of the general use categories that are of greater concern to the community, such as "General Industrial" and "Ag Support Services."

As a result of the foregoing, the landowners have made some further refinements to the proposed overlay district. These edits are targeted toward addressing the concerns that were articulated to us by the community. Here is a summary:

1. The Landowners have reinserted the General Industrial land use in the "permitted" group; however, we have excluded the more intensive General Industrial uses and placed those in the "conditional" category.
2. The Landowners have reinserted Agricultural Support Services and Agricultural Processing into the permitted and conditional categories, respectively; however, we have excluded the more intensive uses and placed those in the "unpermitted" category.
3. To address Mr. Mitchell's concerns about something similar to the why plant occurring in the future, we have added a requirement for all industrial uses to comply with the California Accidental Release Prevention (CalARP) program, and also to any CalARP or other hazardous substance from migrating offsite. My understanding is that all of the existing uses currently comply with these requirements; however, this would prevent any issues occurring in the future.
4. We have kept the provisions regarding the minor expansions, as the landowners need to be able to continue to add minor improvements and structures such as guard houses, awnings/overhangs, electrification infrastructure, and the like.

Please let me know if you have any questions. Thanks,

John P. Kinsey, Esq.  
*Certified Specialist in Appellate Law*  
*State Bar of California Board of Legal Specialization*  
WANGER JONES HELSLEY PC  
265 E. River Park Circle, Suite 310  
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Fax: (559) 233-9330  
Website: [www.wjhlaw.com](http://www.wjhlaw.com)

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**From:** Jennifer Clark <jennifer.clark@fresno.gov>  
**Sent:** Tuesday, November 1, 2022 4:53 PM

**To:** Kelli Furtado <Kelli.Furtado@fresno.gov>; Talia Kolluri <Talia.Kolluri@fresno.gov>; Robert Holt <Robert.Holt@fresno.gov>; Booker Lewis II <btlewis@hotmail.com>; Booker Lewis <Booker.Lewis@fresno.gov>; John Kinsey <jkinsey@whattorneys.com>

**CC:** Amy Lerseth <amylerseth@buzzoates.com>; Nick Audino <NAudino@pearsonrealty.com>

**Subject:** HOLD: Cleaner & Greener Overlay Discussion - continued

Good evening.

We will be reviewing the attached document tonight.

Jennifer Clark, Director of Development  
Planning & Development Department  
City of Fresno  
2600 Fresno St, Room 3065  
Fresno, CA 93721  
[jennifer.clark@fresno.gov](mailto:jennifer.clark@fresno.gov)  
(559) 621-8003



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**TAB "L"**



As you are aware, I represent the owners of real property along Elm Avenue (the "Elm Avenue Landowners") that were rezoned to Neighborhood Mixed Use ("NMX") zoning without their knowledge in 2017 as part of the City's Southwest Specific Plan ("SWSP"). Over the last twenty-years, the Elm Avenue Landowners have collectively made over a \$100,000,000 investment in the City of Fresno, constructing new state-of-the-art light industrial buildings that house a wide range of local businesses and employ thousands of Fresnans. The City's inability to resolve the issue with the inconsistent zoning caused by the SWSP has caused significant problems for the Elm Avenue Landowners. Just as troubling, this issue has resulted in widespread negative reputational impacts to the City throughout the business community in the San Joaquin Valley as well as the Western United States.

Dear Honorable Councilmembers:

Re: Elm Avenue

Fresno City Council  
c/o City Clerk  
CITY OF FRESNO  
2600 Fresno Street, Room 2097  
Fresno, CA 93721

VIA EMAIL & UNITED STATES MAIL

December 6, 2022

\* Also admitted in Washington  
\* Also admitted in Idaho  
\* Also admitted in Virginia  
\* Of Counsel

OLIVER W. WANGER  
TIMOTHY JONES\*  
MICHAEL S. HELSLEY  
RILEY C. WALTER  
PATRICK D. TOOLE  
SCOTT D. LAIRD  
JOHN P. KINSEY  
KURT F. VOTE  
TROY T. EWELL  
JAY A. CHRISTOFFERSON  
MARISA L. BALCH  
AMANDA G. HERBSHA\*\*  
PETER M. JONES†  
STEVEN M. CRASST  
JEFFREY B. PAPER†  
LAWRENCE M. ARTENIAN†  
DEBORAH K. BOYETT  
STEVEN K. VOTE  
NICOLAS R. CARDELLA  
GIULIO A. SANCHEZ  
CHRISTOPHER A. LISIESKI\*\*\*  
BENJAMIN C. WEST  
HUNTER C. CASTRO  
STEPHANIE M. HOSMAN  
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jkinsey@wjhatorneys.com

Website:  
www.wjhatorneys.com



Although the remaining Elm Avenue Landowners were disappointed that they were not rezoned back to Light Industrial on October 13, 2022, they understood the direction received from the City Council provided them a potential pathway to receive relief from the issues associated with their legal non-conforming status. As you will recall, Councilmember Arias started the discussion by directing staff to return in 90-days after seeking support from both the community and the landowners so the Council could consider a compromise draft overlay district. Councilmember Bredfeld clarified that, “[i]f they don’t have agreement with it, the Council will make the determination of exactly what will be accomplished in that overlay,” after which Councilmember Arias stated they were on the same page. Councilmember Arias also directed staff to come forward with a draft that “addresses the issues discussed today.”

The Elm Avenue Landowners have significant concerns regarding the city’s implementation of this process. First, the Elm Avenue Landowners have now had three meetings with representatives of the community, Pastor B.T. Lewis, and Planning Director Jennifer Clark. As directed by the Council, the Elm Avenue Landowners met in good faith with the City and the community advocates and participated actively in the process. The Elm Avenue Landowners expressed throughout the meetings that their concerns regarding the draft overlay proposed by the advocates were very narrow, and primarily related to a single paragraph. In an attempt to resolve this issue, the Elm Avenue Landowners made numerous substantial concessions to the advocates to address their stated concerns. Despite this, the advocates have not agreed to or accepted a *single request* made by the Elm Avenue Landowners—instead agreeing only to the landowners’ concessions. The Elm Avenue Landowners believe the process is at an impasse created solely by the advocates.

Second, while the Elm Avenue Landowners have listened thoughtfully to the community advocates’ concerns, and have proposed specific mitigation to address those issues, the advocates have repeatedly attacked the Elm Avenue Landowners in a racially-charged manner. Most recently, at the November 29, 2022, meeting, one community advocate even equated the Elm Avenue Landowners’ proposal to someone having their foot on the neck of the community—a clear reference to George Floyd and Derek Chauvin. Rest assured, the Elm Avenue Landowners sympathize with the hardships endured by the African American community in Fresno and elsewhere, but it is unfair and highly inappropriate to equate them with a convicted felon who murdered and violated the civil rights of a person he was sworn to protect. Similar rhetoric has also been cast by City representative Pastor Lewis, who in a November 27, 2022, communication, actively accused the Elm Avenue Landowners of (i) “blatantly disregarding [the community’s] opinions,” (ii) engaging in a “shameful act of privilege,” and (iii) suggesting the landowners are responsible for myriad injustices affecting the Southwest community. (See **Exhibit “A.”**) These inflammatory statements are not conducive to a sincere discussion about the Elm Avenue properties.

Third, at the end of the second meeting with the advocates (shortly before B.T. Lewis expressed a desire to negotiate no further), Ms. Clark announced that the City did not intend to bring the issues in dispute immediately back to the Council—as expressly directed by Councilmember

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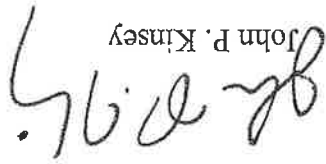
Because of the Elm Avenue Landowners' significant concerns regarding the process being undertaken by Ms. Clark and Pastor Lewis, the Elm Avenue Landowners respectfully request that the City Council schedule a workshop on the status of the negotiations to provide direction to staff regarding the overlay district, instead of allowing staff to continue to waste time on an overlay district nobody wants and that nobody will ever use.

In light of the foregoing issues, the Elm Avenue Landowners' confidence in the process has been entirely undermined. The Elm Avenue Landowners have not been listened to. Their requests have been ignored. They have been attacked with inflammatory rhetoric based on race. And all the while City staff has pressed forward with a version of the overlay district that will be useless in practice—instead of complying with Council's clear direction to come forward with a draft that "addresses the issues discussed" on October 13, 2022.

Fourth, the version of the text amendment proposed by staff and the advocates is wholly unworkable. Having worked in the field of land use and zoning for over two decades, I would be shocked if a single landowner would ever voluntarily seek to have the overlay zoning as currently formulated applied to their property. The Elm Avenue Landowners have issued several letters with technical comments on these identical proposals—almost entirely focused on a single paragraph. As explained in my numerous letters to the City, the overlay district contains ambiguous terms of art that are not commonly used in planning and CEQA circles (such as "nanoparticles"), prohibits increases in energy usage (which is contrary to California's push toward electrification), requires evaluation of environmental issues (and arguably CEQA review) for every change of use (even a mere change in tenants in an existing building), and generally imposes standards that would be impossible for any landowner to meet. According to the real estate experts working with the Elm Avenue Landowners, these provisions would essentially chill interest by potential new tenants in these existing facilities, causing them to look elsewhere (such as Visalia, Madera, or Reno). Despite having sent numerous emails and letters to the City articulating these issues throughout 2021 and 2022, no City representative has ever endeavored to listen to—much less resolve—the Elm Avenue Landowners' technical concerns.

Arias and Councilmember Bredefeld—but instead proceed with the processing of a version of the text amendment that is essentially identical to that proposed by the advocates. Even more disconcerting is the fact that the landowners were informed—just seconds after B.T. Lewis pulled the plug on the negotiations during that meeting—that the City had already scheduled a community meeting on what is essentially the advocates' version of the text amendment for December 1, 2022. This strongly suggested to the Elm Avenue Landowners that both City staff and the community advocates were simply treating the negotiations as a box to check rather than an opportunity for dialogue and compromise.

Enclosures

Handwritten signature of John P. Kinsey in black ink.

John P. Kinsey

Very truly yours,

Thank you very much for your consideration of this request. Should the City have any questions concerning the foregoing, please do not hesitate to contact me.

**WANGER JONES HELSLEY PC**  
Fresno City Council  
December 6, 2022  
Page 4

# EXHIBIT "A"

**From:** Booker Lewis <btlewis@hotmail.com>  
**Sent:** Sunday, November 27, 2022 2:47 PM  
**To:** John Kinsey; Jennifer Clark; Kelli Furtado; Talia Kolluri; Robert Holt; Booker Lewis  
**Cc:** Amy Lerseth; Nick Audino  
**Subject:** RE: HOLD: Cleaner & Greener Overlay Discussion - continued

Hello Jennifer,

Apologies for the delay in responding. I had a few health issues to deal with this week. Nevertheless, I have been in contact with our community team members and I believe we are willing to join the meeting on the 29<sup>th</sup> although I do not believe we are in any position to compromise the Overlay to their satisfaction.

While we appreciate Mr. Kinsey's perspective on the state of our discussions regarding the overlay initiated on June 1 by our Planning Commission, we have been disappointed in these discussions since the beginning when Mr. Kinsey submitted a revised version of our document that demonstrated an enormous amount of gall and disregard for our work and our interest in protecting the health and well-being of our community. We worked on this overlay for over a year. To expect us to agree to a rewriting of this overlay is a blatant disregard for our opinions, the adopted plan for our community, and an shameful act of privilege.

We also take issue with the reiteration that we were expected to enter a mediation with the landowners. We certainly do not interpret City Council's instruction the same way. We were asked to enter discussions with the landowners to see if there was any common ground given that we already had an overlay initiated on June 1. We are a community team not controlled by City Council, nor are we obligated to accept their direction. Years of disrespect and blatant disregard for the health of our community has come through city councils.

We did intend to graciously hear the landowner's concerns and engage in a conversation without committing to undoing the work that we had completed. I do believe that they have misinterpreted the intent of this process and that it became glaringly evident from the beginning that their recommendations would be contrary to our commitment to our community and the South West Specific Plan.

We also believe that the Elm Avenue rezoning issue was resolved by City Council on October 13, 2022. In their decision, our city Council elected to allow approximately 30 acres to revert back to industrial leaving 60 acres under the land use designation as defined by the Southwest Specific Plan as Neighborhood Mixed Use. We consider that decision final until challenged and prepared to move forward given those conditions. We believe that it is disingenuous for the landowners to attempt to use the overlay we developed in partnership with the city to reverse City Council's decision to deny their request to be rezoned back to an industrial use designation.

The overlay is not Elm Avenue specific. The overlay will not require any additional action by landowners or change any land use, unless it is implemented by the landowner. For that reason, we are not in favor of changing the language of the overlay that we put significant effort into developing in partnership with the City of Fresno. I love your analogy that the overlay only adds a menu option to the code. The landowners then have the option of not using the overlay, while others in the city may choose to do so. We therefore choose to move forward with an overlay that will protect the health and welfare of our community. If the language in overlay is problematic for the landowners, then the landowners can simply choose not to use the overlay.

We are not interested in conceding the health and welfare of a community that has been deeply harmed for over 50 years.

The meeting on 12/1 is not a meeting to present a solution for Mr. Kinsey and his clients. It is a meeting to present to our community the definition and details of an overlay that will be made available to protect the health and welfare of vulnerable communities across our city.

Since it is impossible for Mr. Kinsey and his team to tell us what the Council is contemplating, we advocate that staff move forward with the overlay as developed and presented to Planning Commission on June 1. We do not want the 12/1 meeting at Gaston Middle School to be taken off calendar. We want to proceed with the presentation to implementation committees across the city without delay.

We will never be able to bring a fully-negotiated overlay district before Council because Mr. Kinsey and his clients have no regard for the South West Specific Plan or our responsibility to reverse the injustices of the past and protect the health of our community.

**Pastor B. T. Lewis II**

Rising Star Missionary Baptist Church, Fresno  
Office: 1104 Collins Ave. - (559) 442-1908

'Compelled by the Love of Christ' 2 Cor. 5:14

**From:** John Kinsey [mailto:jk Kinsey@wjhattorneys.com]  
**Sent:** Saturday, November 26, 2022 12:32 PM

**To:** Jennifer Clark <jennifer.clark@fresno.gov>; Kelli Furtado <kelli.furtado@fresno.gov>; Talia Kolluri <talia.kolluri@fresno.gov>; Robert Holt <Robert.Holt@fresno.gov>; Booker Lewis II <btlewis@hotmail.com>; Booker Lewis <Booker.Lewis@fresno.gov>  
**Cc:** Amy Lerseth <amylersest@buzzoates.com>; Nick Audino <NAudino@pearsonrealty.com>  
**Subject:** Re: HOLD: Cleaner & Greener Overlay Discussion - continued

Thanks, Jennifer. As previously expressed, I think the group is always open to meeting with the community, notwithstanding the community's positions to date (i.e., not wanting to provide any concessions to the landowners). I think the community was relatively clear on where they stood (i.e., wanting to pull the plug on the negotiations), but we are there to listen if they actually want to participate.

On the 12/1 meeting, I continue to believe this is directly contrary to the Council's direction from 10/13. The Council did not contemplate that the City would continue to process the text amendment initiated by the PC on 6/1; rather, the Council directed that staff either bring a fully-negotiated overlay district to the Council or alternatively inform them where the disagreements continued to exist. Instead of following the Council's direction, staff is simply processing an overlay district that is identical in function to that advocated by the community. As such, we continue to maintain that the City should take the 12/1 community meeting off calendar and instead present the issue to the City Council as directed.

Thanks,

John P. Kinsey, Esq.  
WANGER JONES HEISLEY PC  
265 E. River Park Circle, Suite 310  
Fresno, California 93720  
Phone: (559) 233-4800, Ext. 216  
Fax: (559) 233-9330

**From:** Jennifer Clark <jennifer.clark@fresno.gov>  
**Date:** Tuesday, November 22, 2022 at 12:14 PM

**To:** John Kinsey <jkinsey@wjhattorneys.com>; Kelli Furtado <kelli.furtado@fresno.gov>; Talia Kolluri

The Landowners were also surprised to learn at the end of the meeting that the City did not intend to bring the issues in dispute immediately back to the Council—as expressly directed by Councilmember Arias and Councilmember

however, the Landowners cannot negotiate with a party that does not want to negotiate. Landowners' hope was that they were going to be able to engage in a meaningful discussion with the community; discussions, Pastor Lewis and the community abruptly ceased negotiations halfway through the meeting. The landowners' concessions). And despite a willingness on the part on the landowners to continue to engage in community did not accept or agree to a single request made by the landowners (instead agreeing only to the substantial concessions to the community to directly address the community's stated concerns. Despite this, the and primarily related to the "no net/CEQA" paragraph. To help resolve this issue, the landowners made numerous to help satisfy the concerns of all stakeholders. The landowners' concerns regarding the draft overlay were very narrow, landowners met in good faith with the City and the community representatives regarding revisions to the overlay district First, we were very disappointed with how the discussion ended last Tuesday. As directed by the Council, the Good morning, Jennifer. After our meeting last Tuesday I had the ability to circle back with the landowners regarding the state of the discussions with the community and next steps.

External Email: Use caution with links and attachments

Subject: Re: HOLD: Cleaner & Greener Overlay Discussion - continued  
Cc: Amy Lerseth <amylerseth@buzzoates.com>, Nick Audino <NAudino@pearsonreality.com>  
Lewis <Booker.Lewis@fresno.gov>  
<Talia.Kolluri@fresno.gov>, Robert Holt <Robert.Holt@fresno.gov>, Booker Lewis II <btlewis@hotmail.com>, Booker  
To: Jennifer Clark <jennifer.clark@fresno.gov>, Kelli Furtado <kelli.furtado@fresno.gov>, Talia Kolluri  
Date: 11/22/22 11:25 AM (GMT-08:00)  
From: John Kinsey <jkinsey@whattorneys.com>  
-----Original message-----

Sent from my Verizon, Samsung Galaxy smartphone

Thank you and look forward to seeing everyone on 11/29.

The community meeting will be held to discuss the use of an overlay to address the issues created when an existing industrial use is a nonconformity in a mixed use district. While the Cleaner and Greener text amendment is one example, the purpose is to educate the public on the overlay process and get feedback.

Thank you for your email. We would like to meet again on November 29 to review where we are and any additional input.

John,

Subject: RE: HOLD: Cleaner & Greener Overlay Discussion - continued  
Cc: Amy Lerseth <amylerseth@buzzoates.com>, Nick Audino <NAudino@pearsonreality.com>  
Booker Lewis <Booker.Lewis@fresno.gov>  
<Talia.Kolluri@fresno.gov>, Robert Holt <Robert.Holt@fresno.gov>, Booker Lewis II <btlewis@hotmail.com>



Bredefeld—but instead proceed with the processing of a version of the text amendment that is essentially identical to that proposed by the community. Even more disconcerting is the fact that the landowners were informed—just seconds after the community pulled the plug on the negotiations—that the City had already scheduled a community meeting on what is essentially the community's version of the text amendment.

As the landowners have previously advised, the draft overlay district initiated by the Planning Commission on 6/1—and in particular the “no net/CEQA” paragraph—is highly problematic and unworkable for landowners. This has been the subject of several letters from my office to the City. The process that is being contemplated is also contrary to the Council's direction. As a result, the landowners request that staff take the community meeting off calendar, and instead bring the issue back to the City Council for the Council to resolve the disagreements between the Landowners and the community.

Thank you,

John P. Kinsey, Esq.  
WANGER JONES HELSLEY PC  
265 E. River Park Circle, Suite 310  
Fresno, California 93720  
Phone: (559) 233-4800, Ext. 216  
Fax: (559) 233-9330

---

**From:** Jennifer Clark <jennifer.clark@fresno.gov>  
**Date:** Tuesday, November 15, 2022 at 1:26 PM

**To:** John Kinsey <jkinsey@whattorneys.com>; Kelli Furtado <kelli.furtado@fresno.gov>; Talia Kolluri <Talia.Kolluri@fresno.gov>; Robert Holt <Robert.Holt@fresno.gov>; Booker Lewis II <btlewis@hotmail.com>; Booker Lewis <Booker.Lewis@fresno.gov>  
**Cc:** Amy Lerseth <amylerseth@buzzoates.com>; Nick Audino <NAudino@pearsonrealty.com>  
**Subject:** RE: HOLD: Cleaner & Greener Overlay Discussion - continued

Thanks, John. Yes we did receive your landowner comments. I do not have any feedback to share in advance of the meeting but hope we can still have a productive discussion. We have held 11/29 as an additional meeting for discussion if needed prior to public outreach.

See you at 5.

**From:** John Kinsey <jkinsey@whattorneys.com>  
**Sent:** Tuesday, November 15, 2022 10:37 AM

**To:** Jennifer Clark <jennifer.clark@fresno.gov>; Kelli Furtado <kelli.furtado@fresno.gov>; Talia Kolluri <Talia.Kolluri@fresno.gov>; Robert Holt <Robert.Holt@fresno.gov>; Booker Lewis II <btlewis@hotmail.com>; Booker Lewis <Booker.Lewis@fresno.gov>  
**Cc:** Amy Lerseth <amylerseth@buzzoates.com>; Nick Audino <NAudino@pearsonrealty.com>  
**Subject:** RE: HOLD: Cleaner & Greener Overlay Discussion - continued

**External Email:** Use caution with links and attachments

Good morning, Jennifer. I wanted to check to see if you had any feedback to share in advance of the meeting. By providing the landowner's comments on 11/8, our hope was that we would receive feedback sooner than the last time around. If we can get the community's feedback soon, that will allow us to discuss internally, which will in turn help make the discussion this evening more productive. Let me know.

Thanks,

John P. Kinsey, Esq.

*Certified Specialist in Appellate Law*

*State Bar of California Board of Legal Specialization*

WANGER JONES HELSLEY PC

265 E. River Park Circle, Suite 310

Fresno, California 93720

Phone: (559) 233-4800, Ext. 216

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**From:** John Kinsey <[jk Kinsey@wihattonneys.com](mailto:jk Kinsey@wihattonneys.com)>

**Sent:** Tuesday, November 8, 2022 9:47 AM

**To:** Jennifer Clark <[Jennifer.Clark@fresno.gov](mailto:Jennifer.Clark@fresno.gov)>; Kelli Furtado <[Kelli.Furtado@fresno.gov](mailto:Kelli.Furtado@fresno.gov)>; Talia Kolluri

<[Talia.Kolluri@fresno.gov](mailto:Talia.Kolluri@fresno.gov)>; Robert Holt <[Robert.Holt@fresno.gov](mailto:Robert.Holt@fresno.gov)>; Booker Lewis II <[bt Lewis@hotmail.com](mailto:bt Lewis@hotmail.com)>; Booker

Lewis <[Booker.Lewis@fresno.gov](mailto:Booker.Lewis@fresno.gov)>

**Cc:** Amy Lerseth <[amylerseth@buzzcoates.com](mailto:amylerseth@buzzcoates.com)>; Nick Audino <[NAudino@pearsonrealtv.com](mailto:NAudino@pearsonrealtv.com)>

**Subject:** RE: HOLD: Cleaner & Greener Overlay Discussion - continued

Good morning, Jennifer and Pastor Lewis. The landowners have made some edits to the draft overlay district based on our discussion last week in response to the concerns raised by the community. Those edits are attached. I have also included a redline (from the original document provided to us a few weeks ago) and a comparison of changes in the same format as Jennifer's spreadsheet.

At the outset, I wanted to note that the landowners were very disappointed by the community's position that was communicated just a few minutes before last week's meeting. Specifically, the community members rejected all of the requests made by the landowners to provide the landowners relief, and only accepted the landowners' concessions to the community. Although the landowners are taking the Council's direction seriously and attempting in good faith to come up with provisions that will allay the concerns articulated by the community, the negotiation process cannot be a one-way street. We are not going to make any progress or come close to meeting the Council's expectations if all of the landowners' requests continue to be rejected, and the only items that are accepted are the landowners' concessions to the community.

That being said, we did find the second half of the meeting very helpful in getting a better understanding of the community's concerns. We sincerely appreciated Mr. Mitchell's efforts to articulate the community's concerns regarding prior business operations. That candor and dialog is very helpful because we can then identify concrete measures that can directly address those concerns. We also appreciate Pastor Lewis's commitment to attempt to further refine what the community calls the "health impact" paragraph, which is very problematic for the landowners because of the CEQA and "no net" increase language. At the end of the meeting, the landowners committed to adding some measures to address the concerns raised by Mr. Mitchell and also delineating between uses that are

permitted in some of the general use categories that are of greater concern to the community, such as "General Industrial" and "Ag Support Services."

As a result of the foregoing, the landowners have made some further refinements to the proposed overlay district. These edits are targeted toward addressing the concerns that were articulated to us by the community. Here is a summary:

1. The Landowners have reinserted the General Industrial land use in the "permitted" group; however, we have excluded the more intensive General Industrial uses and placed those in the "conditional" category.
2. The Landowners have reinserted Agricultural Support Services and Agricultural Processing into the permitted and conditional categories, respectively; however, we have excluded the more intensive uses and placed those in the "unpermitted" category.
3. To address Mr. Mitchell's concerns about something similar to the why plant occurring in the future, we have added a requirement for all industrial uses to comply with the California Accidental Release Prevention (CalARP) program, and also to any CalARP or other hazardous substance from migrating offsite. My understanding is that all of the existing uses currently comply with these requirements; however, this would prevent any issues occurring in the future.
4. We have kept the provisions regarding the minor expansions, as the landowners need to be able to continue to add minor improvements and structures such as guard houses, awnings/overhangs, electrification infrastructure, and the like.

Please let me know if you have any questions. Thanks,

John P. Kinsey, Esq.

*Certified Specialist in Appellate Law*

*State Bar of California Board of Legal Specialization*

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**From:** Jennifer Clark <[jennifer.clark@fresno.gov](mailto:jennifer.clark@fresno.gov)>

**Sent:** Tuesday, November 1, 2022 4:53 PM

**To:** Kelli Furtado <[Kelli.Furtado@fresno.gov](mailto:Kelli.Furtado@fresno.gov)>; Talia Kolluri <[Talia.Kolluri@fresno.gov](mailto:Talia.Kolluri@fresno.gov)>; Robert Holt

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**Cc:** Amy Lerseth <[amylersesthbuzzozates.com](mailto:amylersesthbuzzozates.com)>; Nick Audino <[NAudino@pearsonrealty.com](mailto:NAudino@pearsonrealty.com)>

**Subject:** HOLD: Cleaner & Greener Overlay Discussion - continued

Good evening.

We will be reviewing the attached document tonight.

Jennifer Clark, Director of Development  
Planning & Development Department  
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**TAB "M"**

As you are aware, the Elm Avenue Landowners' properties were rezoned to Neighborhood Mixed Use (NMX) in October 2017, as part of the Southwest Specific Plan ("SWSP"). Since learning of the rezoning shortly thereafter, the Elm Avenue Landowners have sought to work cooperatively with the City and other stakeholders to resolve the negative impacts the rezoning has had on their properties. We continue to believe the proposed

I am writing on behalf of the Elm Avenue Landowners to provide technical comments on the City of Fresno's (the "City") proposed Cleaner and Greener Neighborhood Industry Overlay District (the "Text Amendment"), which was initiated by the Planning Commission on June 1, 2022. We appreciate your consideration of these comments.

Dear Ms. Clark:

**Re: Comments of the Elm Avenue Landowners on Proposed Cleaner and Greener Neighborhood Industry Overlay District**

Jennifer Clark  
Planning Director  
CITY OF FRESNO  
2600 Fresno Street, Room 3065  
Fresno, CA 93721  
E-mail: [jennifer.clark@fresno.gov](mailto:jennifer.clark@fresno.gov)

**VIA E-MAIL & UNITED STATES MAIL**

January 12, 2023

\* Also admitted in Washington  
\*\* Also admitted in Idaho  
\*\*\* Also admitted in Virginia  
\* Of Counsel

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- TIMOTHY JONES\*
- MICHAEL S. HELSLEY\*
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- JOHN P. KINSEY
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Text Amendment is one potential solution to this issue, and encourage the City to continue to work with affected stakeholders to ensure the proposed action meets the City's objectives.

We understand the City's goals include (i) maintaining the capability of rezoned properties to develop mixed uses, (ii) avoiding disruption to employment-generating land uses, and (iii) preventing unintended negative consequences associated with the cessation of non-conforming uses, such as vacant warehouses. Unfortunately, as currently drafted, the proposed overlay district would provide little, if any, utility to rezoned landowners. As a result, the Text Amendment should be revised to provide landowners greater certainty, while at the same time protecting local communities. The Elm Avenue Landowners sincerely believe these two aims are not mutually exclusive.

To that end, I have enclosed proposed revisions to the Text Amendment in redline and clean format for your review and consideration. (See Exhibits "A," "B.")

#### **A. The "Net Reduction"/CEQA Paragraphs**

The Elm Avenue Landowners and other members of the business community have significant concerns regarding one particular paragraph, which appears in the proposed Text Amendment in the context of both Permitted Industrial Uses and Uses Subject to a Conditional Use Permit. These paragraphs provide that (i) "[a]ny new legally nonconforming [industrial] uses" and (ii) "[n]ew and existing businesses that require a conditional use permit":

shall achieve a net-reduction in water use, energy use, traffic counts, noise reduction, odor generation, PM 2.5 and nanoparticles, and light spill as compared to existing legally nonconforming uses, as identified in environmental studies completed in accordance with the California Environmental Quality Act (CEQA) guidelines for the purpose of protecting public health.

(See Proposed Text Amendment § C(1)(c)(i), C(2).)

We have several concerns about this paragraph. First, the paragraph could be read to suggest that any new land use would be required to assess whether each of the identified environmental impacts would increase or decrease through the preparation of an environmental study "completed in accordance with" CEQA. As an initial matter, this exercise would be redundant and wasteful, given that a CEQA document would have already been required at the time the City considers the application of the overlay district to a specific property. More fundamentally, because environmental documents take many months if not years to complete, and expose applicants to the threat of litigation, the provision would hamstring the ability of landowners to attract tenants.

We understand, based on recent statements that you have made, that the City's intent is that CEQA would be applied at the time of rezoning, and that "Permitted Uses" would not

subsequently be required to undertake another round of CEQA review. Rather, further review under CEQA would only typically be necessary if a Conditional Use Permit is required. If this accurately captures the City's position, the Text Amendment should be amended to reflect that position.

The Elm Avenue Landowners' second concern regarding this paragraph is the "net reduction" language, which states that new uses are only permissible if they "achieve a net-reduction in water use, energy use, traffic counts, noise reduction, odor generation, PM 2.5 and nanoparticles, and light spill as compared to existing legally nonconforming industrial uses." This language is problematic for several reasons. First, instead of focusing on whether the impacts of a use would be harmful to the surrounding community, the paragraph instead focuses on whether a new use would be less than the prior use or some other unidentified "legally nonconforming industrial use." Second, this standard will be difficult if not impossible to meet in most circumstances, since a change from one use to another is *always* going to result in some changes compared to the *status quo*. For instance, a furniture manufacturer would likely generate slightly more noise, water usage, traffic counts, and stationary source emissions than a furniture distributor, while a furniture distributor would likely generate slightly more energy use (due to ZEV infrastructure), mobile source emissions, and light spill. But it does not necessarily follow that those impacts would be significant. Further, an evaluation of a use's environmental impacts would require *environmental studies*; as such, even if the City's intent is that CEQA would not apply for each change in use, this language would require environmental studies and strongly suggest to prospective tenants that their tenancy would be conditioned upon some sort of environmental review, chilling the landowners' ability to attract new tenants.

Although the above language is problematic, we understand and agree that the surrounding communities should be assured that light industrial uses will not adversely affect the environment. Thus, instead of focusing on whether the impacts of a new use will be greater or less than what preceded it, the City should instead adopt clear performance standards to provide both landowners and the surrounding community with certainty.

To this end, the Elm Avenue Landowners have proposed several performance standards that directly address the concerns that have been raised most frequently by community advocates. As you will see, these edits make the proposed Text Amendment far more restrictive than the version previously initiated by the Planning Commission on June 1, 2022, while at the same time providing objective standards and greater certainty for affected landowners and the community:

<b>Community Concern</b>	<b>Truck Trips and Truck Routes</b>
<b>Proposed Standard</b>	"Any truck trips to or from the property shall only follow truck routes designated by the City of Fresno. Truck routes along pathways adjacent to neighborhoods are not permitted."



<p>(Elm Avenue Landowner Revision ¶ C(3)(a).)</p>	<p><b>Landscaping</b></p> <p>“Any property subject to the rezone must be landscaped in accordance with Section 15-2305(B)(4) of the City Ordinance.”</p> <p>(Elm Avenue Landowner Revision ¶ C(3)(b).)</p>	<p><b>Odor Prevention</b></p> <p>“No new use shall generate odors that are detectable offsite.”</p> <p>(Elm Avenue Landowner Revision ¶ C(3)(c).)</p>	<p><b>Noise Prevention</b></p> <p>“No new use shall generate noise at a level that exceeds the limitations provided in the Fresno Municipal Code.”</p> <p>(Elm Avenue Landowner Revision ¶ C(3)(d).)</p>	<p><b>Adverse Impacts to Groundwater/Overdraft</b></p> <p>“Any new industrial use must tie in to the City’s municipal water system. The use of groundwater from private wells is not permitted.”</p> <p>(Elm Avenue Landowner Revision ¶ C(3)(e).)</p>	<p><b>Mobile and Stationary Source Emissions, &amp; GHG Emissions</b></p> <p>“All new industrial uses must acquire and maintain at all times (i) any permits required for any stationary sources, and (ii) certificates from the California Air Resources Control Board showing compliance with all applicable regulations governing trucks, including yard trucks, that enter onto the Project site, including but not limited to the Truck and Bus Regulation, the Advanced Clean Trucks Regulation, and the Advanced Clean Fleets Regulation.”</p> <p>(Elm Avenue Landowner Revision ¶ C(3)(f).)</p>	<p><b>Energy Usage &amp; GHG Emissions</b></p> <p>“Any tenant improvements or other construction activities performed for any new industrial use shall comply with California Green Building Standards.”</p> <p>(Elm Avenue Landowner Revision ¶ C(3)(g).)</p>	<p><b>Hazardous Substances</b></p> <p>“All industrial uses shall fully comply with the California Accidental Release Prevention (CalARP) program. No industrial use shall allow any substance regulated under the CalARP program or other hazardous substance to migrate offsite.”</p>
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(Elm Avenue Landowner Revision ¶ C(3)(h).)	<p><b>Brownfields &amp; Environmental Remediation</b></p> <p>“In the event that any contamination is discovered on the property, the landowner shall cooperate in good faith and with reasonable diligence with the investigation and remediation of the property by the governmental entity or entities overseeing such investigation and remediation. Nothing herein shall be construed as limiting the right of any landowner to seek indemnification or contribution from any person or entity.”</p> <p>(Elm Avenue Landowner Revision ¶ C(3)(i).)</p>	<p><b>Expansion of Uses &amp; Stationary Source Emissions</b></p> <p>CUP required for the following:</p> <p>“Any new industrial use identified in Section 1.c above that requires (i) the construction of a new building; (ii) the expansion of any existing structure by more than 5% compared to the gross floor area existing as of the date upon which the underlying property was rezoned to the Base District, or (iii) requiring permitting under Title V of the Clean Air Act.”</p> <p>(Elm Avenue Landowner Revision ¶ C(2)(d).)</p>	<p><b>Expansion of Uses</b></p> <p>“Expansions of over 10% of new building area will not be permitted.”</p>	<p><b>Intensive Light Industrial Uses</b></p> <p>The Elm Avenue Landowners propose moving certain intensive “General Industrial” land uses from “Permitted” to “<i>Not Permitted</i>”:</p> <ul style="list-style-type: none"> <li>• Rubber products manufacturing</li> <li>• Nonmetallic mineral product manufacturing</li> <li>• Primary metal manufacturing</li> <li>• Fabricated metal product manufacturing</li> <li>• Automotive and heavy equipment manufacturing</li> </ul> <p>We also propose moving:</p> <ul style="list-style-type: none"> <li>• “CRV Recycling Center,” “Recycling Processing Facility,” and “Waste Transfer Facility” from “Conditional” to “Not Permitted”</li> <li>• “Utilities, Major” from “Permitted” to “Not Permitted”</li> <li>• “Chemical and Mineral Storage” from</li> </ul>
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• “Permitted” to “Conditional” “Research and Development, chemical,” from	• “Permitted” to “Conditional”
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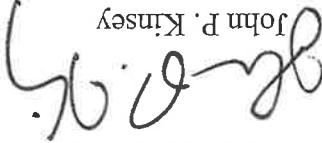
Finally, as you will see, the original text amendment initiated by the Planning Commission contemplated that all Agricultural Processing and Agricultural Support Services uses—which are Permitted Uses in the IL zoning district—would not be permitted within the overlay district. Although some such uses might not be appropriate for the overlay district, others are. As such, the Elm Avenue Landowners’ proposed amendments would allow the following less intensive agricultural uses:

- The “pre-cooling and packaging of fresh or farm-dried fruits and vegetables”; the “sorting, grading, and packing of fruits and vegetables”; the “storage of agricultural products” [Conditional Uses]

- The “storage of agricultural products”; “sales, maintenance, and repair of farm machinery and equipment”; “farm animal veterinary clinics”; “agriculturally related building, feed, and farm supply stores”; “and other similar related services.” [Permitted Uses]

(See Ordinance § 15-6706; cf. Proposed Amendments §§ C(1)(e), C(2)(c), C(4)(f), C(4)(g).)

Thank you very much for your consideration of the above comments. Should you have any questions, or wish to discuss additional potential solutions, please do not hesitate to contact me.

Very truly yours,  
  
John P. Kinsey

Enclosures

1 Prohibited uses would continue to include custom farming services; agricultural waste handling and disposal services (e.g. manure, bedding and litter, composting); the rendering or transport of deceased animals; alfalfa cubing; hay baling and cubing; corn shelling; drying of corn, rice, hay, fruits, and vegetables; grain cleaning and custom grinding; custom grist mills; Custom milling of flour, feed, and grain; tree nut hulling and shelling; cotton ginning; wineries, alcohol fuel production; and the receiving and processing of green material, other than that produced on-site (commercial composting). (Cf. Proposed Amendments §§ C(1)(e), C(2)(c).)

cc: Mayor Jerry Dyer (*via email only*)  
Councilmember Miguel Arias (*via email only*)  
Councilmember Annalisa Perea (*via email only*)  
Councilmember Mike Karbassi (*via email only*)  
Councilmember Tyler Maxwell (*via email only*)  
Councilmember Luis Chavez (*via email only*)  
Councilmember Garry Bredefeld (*via email only*)  
Councilmember Nelson Esparza (*via email only*)  
Kelli Furtado, Chief of Staff to the Mayor (*via email only*)  
Talia Kolluri, Esq., Assistant City Attorney (*via email only*)

# EXHIBIT "A"

i. Animal Care, Sales and Services: *Veterinary Services*

b. Commercial Use Classification

i. Colleges and Trade Schools, Public or Private

a. Public and Semi-Public Use Classifications

1. Permitted Uses. Those uses permitted in the Base District, subject to the limitations and conditions set forth therein; and those uses identified below:

C. Use Regulations.

- 1. This overlay is only applied through the rezoning process
- 2. This ordinance shall not be used to add industrial uses outside of former industrially zoned property, nor for properties that are zoned to a mixed use district following the adoption of this ordinance.

Key Points:

- A. Purpose. The purpose of the Cleaner and Greener Neighborhood District is to clarify and codify certain legal nonconforming uses, to allow existing uses, committed to the protection of public health and to promote a greater range of uses including green business practices in certain mixed use districts by utilizing the best available control technology that best serves the interest of public health.
- B. Applicability. This overlay shall only be applied, through the rezoning process, to parcels with mixed-use (MX) designations (NMX, CMX, RMX). It shall be used exclusively in areas which are or were previously zoned for industrial uses to promote and incentivize transition from these uses to non-industrial uses permitted in these mixed-use districts, while at the same time reducing negative public health impacts to surrounding communities from existing businesses.

[SEC. 15-1615- Cleaner and Greener Neighborhood Industry Overlay District

SECTION 1. Section 15-1615 is added to the Fresno Municipal Code as follows:

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA, ADDING SECTION 15-1615 TO CHAPTER 15 OF THE FRESNO MUNICIPAL CODE CREATING THE CLEANER AND GREENER NEIGHBORHOOD INDUSTRY OVERLAY DISTRICT

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

BILL NO. ORDINANCE NO. ----

ii. Automobile/Vehicle Sales and Services: Automobile Rentals; Automobile/Vehicle Sales and Leasing; Automobile/Vehicle Service and Repair; Minor; Washing, excluding large vehicle and equipment sales, service, and washing.

c. Industrial Use Classification

- i. Construction and Material Yards
- ii. Custom Manufacturing
- iii. Limited Industrial
- iv. General Industrial, with the exception of the following uses:

A. Rubber products manufacturing;

B. Nonmetallic mineral product manufacturing

C. Primary metal manufacturing

D. Fabricated Metal product manufacturing; and

E. Automotive and heavy equipment manufacturing.

V. Research and Development, excluding chemical

vi. Warehousing, Storage and Distribution: *Indoor Warehousing and Storage; Outdoor Storage; Personal Storage; Wholesaling and Distribution.*

d. Transportation, Communication, and Utilities Use Classifications

i. Communication Facilities: *Antenna and Transmission Towers; Facilities within Buildings*

ii. Freight/Truck Terminals and Warehouses

iii. Light Fleet Based Services

iv. Utilities, Minor

e. Agricultural and Extractive Use Classifications

i. Agricultural Support Services, with the exception of the following uses:

A. Custom farming services; and

B. Agricultural waste handling and disposal services (e.g. manure, bedding and litter, composting).

2. Uses Subject to a Conditional Use Permit. Those uses permitted in the Base District, subject to the limitations and conditions set forth therein; and those uses are identified below.

a. Research and Development, chemical

b. Chemical and Mineral Storage, other than incidental storage that comprises less than

5% of the premises, subject to demonstration to the City that the use fully complies

with the California Accidental Release Prevention (CalARP) program.

c. Agricultural Processing, with the exception of the following uses:

1. Alfalfa cubing;

- a. Any truck trips to or from the property shall only follow truck routes designated by the City of Fresno. All truck routes shall avoid pathways adjacent to schools or that traverse through residential neighborhoods.
- b. Any property subject to the rezoning must be landscaped in accordance with Section 15-2305(B)(4) of the City Ordinance.
- c. No new use shall generate odors that are detectable offsite.
- d. No new use shall generate noise at a level that exceeds the limitations provided in the Fresno Municipal Code.
- e. Any new industrial use must tie in to the City's municipal water system. The use of groundwater from private wells is not permitted.
- f. All new industrial uses must acquire and maintain at all times (i) any permits required for any stationary sources, and (ii) certificates from the California Air Resources Control Board showing compliance with all applicable regulations governing trucks, including yard trucks, that enter onto the Project site, including but not limited to the Truck and Bus Regulation, the Advanced Clean Trucks Regulation, and the Advanced Clean Fleets Regulation.
- g. Any tenant improvements or other construction activities performed for any new industrial use shall comply with California Green Building Standards.
- h. All industrial uses shall fully comply with the California Accidental Release Prevention (CalARP) program. No industrial use shall allow any substance regulated under the CalARP program or other hazardous substance to migrate offsite.
- i. In the event that any contamination is discovered on the property, the landowner shall cooperate in good faith and with reasonable diligence with the investigation and remediation of the property by the governmental entity or entities overseeing such investigation and remediation. Nothing herein shall be construed as limiting

3. Standards and Restrictions Applicable to Light Industrial Use Classifications. Any new industrial use permitted under Sections 1.c or 2 above shall be subject to the following restrictions and standards:

- d. Any new industrial use identified in Section 1.c above that requires (i) the construction of a new building, (ii) the expansion of any existing structure by more than 5% compared to the gross floor area existing as of the date upon which the underlying property was rezoned to the Base District, or (iii) requiring permitting under Title V of the Clean Air Act.
- 2. Hay baling and cubing;
- 3. Corn shelling;
- 4. Drying of corn, rice, hay, fruits, and vegetables;
- 5. Grain cleaning and custom grinding;
- 6. Custom grist mills; Custom milling of flour, feed, and grain;
- 7. Tree nut hulling and shelling;
- 8. Cotton ginning;
- 9. Wineries, alcohol fuel production; and
- 10. Receiving and processing of green material, other than that produced on-site (commercial composting).



the right of any landowner to seek indemnification or contribution from any person or entity.

4. Uses Not Permitted. Those uses not permitted in the Base District or listed above, subject to the limitations and conditions set forth therein, and the following:

- a. Emergency Shelter
- b. Adult-Oriented Business
- c. Towing and Impound, Salvage and Wrecking
- d. Intensive Industrial
- e. Airports and Heliports
- f. Agricultural Processing, involving Alfalfa cubing; Hay baling and cubing; Corn shelling; Drying of corn, rice, hay, fruits, and vegetables; Grain cleaning and custom grinding; Custom grist mills; Custom milling of flour, feed, and grain; Tree nut hulling and shelling; Cotton ginning; Wineries, alcohol fuel production; or Receiving and processing of green material, other than that produced on-site (commercial composting).
- g. Agricultural Support Services, involving Custom farming services; or Agricultural waste handling and disposal services (e.g. manure, bedding and litter, composting).
- h. Hazardous Waste Management Facilities
- i. Animal Raising
- j. Crop Cultivation
- k. Rendering
- l. Sales Lot, Feed Lot, Stockyard
- m. Cannabis Dispensaries
- n. Cotton ginning, wineries or alcohol fuel production
- o. Utilities, Major
- p. CRV Recycling Center
- q. Recycling Processing Facility
- r. Waste Transfer Facility

D. Development Standards. Development Standards shall be required as follows:

- 1. For uses identified in the base district, the development standards of the base district apply.
- 2. For uses identified in this section, the development standards that apply to Industrial Light uses will apply
- 3. Expansions of over 10% of new building area will not be permitted
- 4. Any additional measures as identified in any environmental assessment.

SECTION 2: This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its passage.

\*\*\*\*\*

# EXHIBIT “B”

i. Animal Care, Sales and Services: *Veterinary Services*

b. Commercial Use Classification

i. Colleges and Trade Schools, Public or Private

a. Public and Semi-Public Use Classifications

1. Permitted Uses. Those uses permitted in the Base District, subject to the limitations and conditions set forth therein; and those uses identified below:

C. Use Regulations.

2. This ordinance shall not be used to add industrial uses outside of former industrially zoned property, nor for properties that are zoned to a mixed use district following the adoption of this ordinance.

1. This overlay is only applied through the rezone process

Key Points:

B. Applicability. This overlay shall only be applied, through the rezone process, to parcels with mixed-use (MX) designations (NMX, CMX, RMX). It shall be used exclusively in areas which are or were previously zoned for industrial uses to promote and incentivize transition from these uses to non-industrial uses permitted in these mixed-use districts, while at the same time reducing negative public health impacts to surrounding communities from existing businesses.

A. Purpose. The purpose of the Cleaner and Greener Neighborhood District is to clarify and codify certain legal nonconforming uses, to allow existing uses, committed to the protection of public health and to promote a greater range of uses including green business practices in certain mixed use districts by utilizing the best available control technology that best serves the interest of public health.

[SEC. 15-1615-Cleaner and Greener Neighborhood Industry Overlay District

SECTION 1. Section 15-1615 is added to the Fresno Municipal Code as follows:

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA, ADDING SECTION 15-1615 TO CHAPTER 15 OF THE FRESNO MUNICIPAL CODE CREATING THE CLEANER AND GREENER NEIGHBORHOOD INDUSTRY OVERLAY DISTRICT  
THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

BILL NO. ORDINANCE NO. ----

2. Uses Subject to a Conditional Use Permit. Those uses permitted in the Base District,

- i. Agricultural Support Services, with the exception of the following uses:
  - A. Custom farming services; and
  - B. Agricultural waste handling and disposal services (e.g. manure, bedding and litter, composting).

e. Agricultural and Extractive Use Classifications

- v-iv. Utilities, Minor
- iv. Utilities, Major
- iii. Light Fleet Based Services
- ii. Freight/Truck Terminals and Warehouses
- i. Communication Facilities: Antenna and Transmission Towers; Facilities within Buildings

d. Transportation, Communication, and Utilities Use Classifications

- v. Research and Development, excluding chemical
- iv-vi. Warehousing, Storage and Distribution: Indoor Warehousing and Storage; Outdoor Storage; Personal Storage; Wholesaling and Distribution; Chemical and Mineral Storage.
- A. Rubber products manufacturing;
- B. Nonmetallic mineral product manufacturing
- C. Primary metal manufacturing
- D. Fabricated Metal product manufacturing; and
- E. Automotive and heavy equipment manufacturing.

iv. General Industrial, with the exception of the following uses:

- i. Construction and Material Yards
- ii. Custom Manufacturing
- iii. Limited Industrial

c. Industrial Use Classification

Any new industrial uses from the list below shall achieve a net reduction in specific measurable impacts for water use, energy use, traffic counts, noise, odor generation, PM 2.5 and nanoparticles, and light spill as compared to the project site's existing legally nonconforming industrial uses, as identified through project specific environmental studies completed in accordance with the California Environmental Quality Act (CEQA) guidelines for the purpose of protecting public health.

- ii. Automobile/Vehicle Sales and Services: Automobile Rentals; Automobile/Vehicle Sales and Leasing; Automobile/Vehicle Service and Repair; Minor; Washing, excluding large vehicle and equipment sales, service, and washing.

subject to the limitations and conditions set forth therein; and those uses are identified below. Any new conditionally-permitted uses from the list below shall achieve a net reduction in specific measurable impacts for water use, energy use, traffic counts, noise, odor generation, PM 2.5 and nanoparticles, and light spill as compared to the project site's existing legally nonconforming industrial uses, as identified through project-specific environmental studies completed in accordance with the California Environmental Quality Act (CEQA) guidelines for the purpose of protecting public health.

~~a. GRV Recycling Center~~

~~b.a. Recycling Processing Facility~~

~~e.a. Waste Transfer Facility~~

~~a. Research and Development, chemical~~

~~b. Chemical and Mineral Storage, other than incidental storage that comprises less than~~

~~5% of the premises, subject to demonstration to the City that the use fully complies~~

~~c. Agricultural Processing, with the exception of the following uses:~~

~~1. Alfalfa cubing;~~

~~2. Hay baling and cubing;~~

~~3. Corn shelling;~~

~~4. Drying of corn, rice, hay, fruits, and vegetables;~~

~~5. Grain cleaning and custom grinding;~~

~~6. Custom grist mills; Custom milling of flour, feed, and grain;~~

~~7. Tree nut hulling and shelling;~~

~~8. Cotton ginning;~~

~~9. Wineries, alcohol fuel production; and~~

~~10. Receiving and processing of green material, other than that produced on-site~~

~~(commercial composting).~~

~~d. Any new industrial use identified in Section 1.c above that requires (i) the construction~~

~~of a new building, (ii) the expansion of any existing structure by more than 5%~~

~~compared to the gross floor area existing as of the date upon which the underlying~~

~~property was rezoned to the Base District, or (iii) requiring permitting under Title V of~~

~~the Clean Air Act.~~

~~3. Standards and Restrictions Applicable to Light Industrial Use Classifications. Any~~

~~new industrial use permitted under Sections 1.c or 2 above shall be subject to the~~

~~following restrictions and standards:~~

~~a. Any truck trips to or from the property shall only follow truck routes designated by~~

~~the City of Fresno. All truck routes shall avoid pathways adjacent to schools or that~~

~~traverse through residential neighborhoods.~~

~~b. Any property subject to the rezone must be landscaped in accordance with Section~~

~~15-2305(B)(4) of the City Ordinance.~~

~~c. No new use shall generate orders that are detectable offsite.~~

~~d. No new use shall generate noise at a level that exceeds the limitations provided in~~

~~the Fresno Municipal Code.~~

- e. Any new industrial use must tie in to the City's municipal water system. The use of groundwater from private wells is not permitted.
- f. All new industrial uses must acquire and maintain at all times (i) any permits required for any stationary sources, and (ii) certificates from the California Air Resources Control Board showing compliance with all applicable regulations governing trucks, including yard trucks, that enter onto the Project site, including but not limited to the Truck and Bus Regulation, the Advanced Clean Trucks Regulation, and the Advanced Clean Fleets Regulation.
- g. Any tenant improvements or other construction activities performed for any new industrial use shall comply with California Green Building Standards.
- h. All industrial uses shall fully comply with the California Accidental Release Prevention (CalARP) program. No industrial use shall allow any substance regulated under the CalARP program or other hazardous substance to migrate offsite.
- i. In the event that any contamination is discovered on the property, the landowner shall cooperate in good faith and with reasonable diligence with the investigation and remediation of the property by the governmental entity or entities overseeing such investigation and remediation. Nothing herein shall be construed as limiting the right of any landowner to seek indemnification or contribution from any person or entity.

3.4. Uses Not Permitted. Those uses not permitted in the Base District or listed above, subject to the limitations and conditions set forth therein, and the following:

- a. Emergency Shelter
- b. Adult-Oriented Business
- c. Towing and Impound, Salvage and Wrecking
- d. Intensive Industrial
- e. Airports and Heliports
- f. Agricultural Processing, involving Alfalfa cubing; Hay baling and cubing; Corn shelling; Drying of corn, rice, hay, fruits, and vegetables; Grain cleaning and custom grinding; Custom grist mills; Custom milling of flour, feed, and grain; Tree nut hulling and shelling; Cotton ginning; Wineries, alcohol fuel production; or Receiving and processing of green material, other than that produced on-site (commercial composting).
- g. Agricultural Support Services, involving Custom farming services; or Agricultural waste handling and disposal services (e.g. manure, bedding and litter, composting).
- h. Hazardous Waste Management Facilities
- f.i. Animal Raising
- g.i. Crop Cultivation
- h.k. Rendering
- h.l. Sales Lot, Feed Lot, Stockyard
- f.m. Cannabis Dispensaries
- k.n. Cotton ginning, wineries or alcohol fuel production
- f.o. Utilities, Major Utilities, Major

- p. CRV Recycling Center
- g. Recycling Processing Facility
- f. Waste Transfer Facility

D. Development Standards. Development Standards shall be required as follows:

1. For uses identified in the base district, the development standards of the base district apply.
2. For uses identified in this section, the development standards that apply to industrial Light uses will apply, except as follows
  - a. In order to allow for a transition to non-industrial uses, expansions that will add more than 20% in new building area will be subject to a CUP.
  - 2.
  3. Research and Development which utilizes parts produced off-site if such products include pharmaceutical, chemical or biotechnology will be prohibited
  - 4.3. Expansions of over 10% of new building area will not be permitted
  - 5.4. Any additional measures as identified in any environmental assessment.

SECTION 2: This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its passage.

\*\*\*\*\*

**TAB „N“**



**From:** John Kinsey

**To:** Bookner, Lewis@fresno.gov  
Hannah Wilhelm

**Cc:** Overlay District and Elm

**Date:** Wednesday, February 15, 2023 8:57:24 AM

Good morning, Pastor Lewis.

I justg left you a voicemail. I was wondering if you had a few moments to chat about the overlay district and Elm. Do you have some time for a quick phone call? Thanks!

John P. Kinsey, Esq.

*Certified Specialist in Appellate Law*

*State Bar of California Board of Legal Specialization*

WANGER JONES HELSLEY PC

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**TAB "O"**

**From:** Booker Lewis

**To:** John Kinsey

**Cc:** Hannah Wilhelm

**Subject:** Re: Overlay District and Elm

**Date:** Monday, February 27, 2023 12:24:50 PM

Mr. Kinsey,

I hope all is well with you and your family. Thank you for reaching out to me. I did meet with the team and as I suspected as a team, we are not comfortable with one of us, representing our teams interest in a smaller group mediation. Please do not misunderstand. No person on our team would like to compromise the Southwest specific plan. And we are comfortable advocating for the option. We create it in collaboration with Director, Clark as initiated on June 1. I know this is not the answer you were looking for, but it is difficult to convince a Community that has been compromised so many times in the past to do so even one more time. God bless you and have a great day

Pastor BT Lewis

Sent from my iPhone

On Feb 27, 2023, at 9:45 AM, John Kinsey <[jk Kinsey@wjhattorneys.com](mailto:jk Kinsey@wjhattorneys.com)> wrote:

**External Email:** Use caution with links and attachments

Good morning, Pastor Lewis. I hope you had a nice weekend. I just wanted to follow-up on our call from a week ago, and to see if further discussions with a smaller negotiating group would be productive in your view. We are willing to engage, of course, but I also understand your concern that the Currys are not really interested in any compromise, which would be an impediment to continued discussions. Please let me know. Thanks,

John P. Kinsey, Esq.

*Certified Specialist in Appellate Law*

*State Bar of California Board of Legal Specialization*

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**From:** John Kinsey <jkinsey@wjhattorneys.com>  
**Sent:** Wednesday, February 15, 2023 8:57 AM  
**To:** Booker.Lewis@fresno.gov  
**Cc:** Hannah Wilhelm <hwillhelm@wjhattorneys.com>  
**Subject:** Overlay District and Elm

Good morning, Pastor Lewis.

I just left you a voicemail. I was wondering if you had a few moments to chat about the overlay district and Elm. Do you have some time for a quick phone call? Thanks!

John P. Kinsey, Esq.

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**TAB "P"**

Good morning, Jennifer. I just wanted to check in to see if you had a date for when the proposed overlay district was going to Planning Commission. Thanks,

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**From:** John Kinsey  
**To:** Jennifer Clark  
**Cc:** Talia Kolluri  
**Subject:** Proposed Overlay District  
**Date:** Monday, February 27, 2023 9:42:57 AM

TAB "Q"



**From:** Hannah Wilhelm

Brenda Veendaal

John Kinsey

**Subject:** RE: Airport Land Use Commission agenda for 4/3

Friday, March 31, 2023 11:57:07 AM

Thank you for that update Brenda.

**From:** Brenda Veendaal <brendav@fresnocog.org>

**Sent:** Friday, March 31, 2023 11:56 AM

**To:** Hannah Wilhelm <hwillhelm@wjhattorneys.com>

**Subject:** Re: Airport Land Use Commission agenda for 4/3

Hannah, the meeting had been cancelled. No items were submitted for review.

Get Outlook for IOS

**From:** Hannah Wilhelm <hwillhelm@wjhattorneys.com>

**Sent:** Friday, March 31, 2023 7:38:19 AM

**To:** Brenda Veendaal <brendav@fresnocog.org>

**Subject:** Airport Land Use Commission agenda for 4/3

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good Morning Brenda,

Could you please provide me with a copy of the Airport Land Use Commission agenda for 4/3?

Thank you,

Hannah N. Wilhelm

Legal Assistant/Paralegal to:

John P. Kinsey

Nicolas R. Cardella

Wanger Jones Helsley PC

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