

**Exhibit N – Letter from Applicant/Appellant
to Planning Commission [12/28/2023]**

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December 28, 2023

Via Email To Phillip Siegrist

Planning Commission

2600 Fresno Street, 2nd Floor

Fresno, CA 93721

Re: Planning Commission Appeal Number P23-03471; Supplement Communication.

Dear Planning Commission:

This ***Summary Supplemental Communication*** relates to Bauer's Auto Wrecking and Towing's ("Bauer's") Fresno Planning Commission (the "Commission") Appeal submitted October 10, 2023 ("PC Appeal") to the City Planning Department's ("Planning Department") September 26, 2023 Zoning Inquiry decision letter deciding Zoning Inquiry Application No. P23-02357 ("ZI Decision" or "Zoning Inquiry Confirmation") filed on or about July 6, 2023 ("Zoning Inquiry"). This Appeal concerns Bauer's real property located at 317 West Voorman Avenue, Assessor's Parcel No. 458-040-22 (hereinafter "Bauer's Property").

PLANNING COMMISSION APPEAL REQUESTS FOR RELIEF

While this matter comes to your Commission after some previous protracted proceedings (which are summarized for context below) the action you are being asked to take is simple: **Modify the Confirmations issued by the City Planning Department provided in response to Zoning Inquiry No. P23-02357 (the "Confirmation"), to revise the last sentence of Paragraph 7 to provide as follows: "Based on the record of proceedings in this matter, the Planning Commission confirms that the Site in conformance with the standards and requirements outlined under Policy and Procedure No. C-002 dated June 14, 2011."**

Detailed below is important context concerning the requested relief, which concerns:

- 1) Actions by the City of Fresno Police Department ("FPD") that terminated the Applicant's rights to be included in the FPD's Tow Service Agreement ("TSA");
- 2) Determinations by the City of Fresno Independent Hearing Officer that overturned (in two instances), the FPD actions that terminated and denied Appellant rights to be included on the TSA;

- 3) Evaluations and decisions by the Planning Department that frustrated the Applicant's ability to enforce compliance by the FPD of the orders of the City of Fresno hearing officer, by incorrectly issuing a determination that Applicant's property fails to satisfies applicable standards and requirements that govern maintenance of tow yards in the City of Fresno, as established in Policy and Procedure No. C-002 dated June 14, 2011;
- 4) Applicant's efforts, through this Appeal of the Confirmations issued by the Planning Department, to confirm that Bauer's Property is in fact, for the reasons detailed in the record of these proceedings, in compliance with applicable standards and requirements that govern maintenance of tow yards in the City of Fresno, as established in the City's Development and Resource Management Department's Policy and Procedure C-002 ("C-002") dated June 14, 2011.

BRIEF APPEALS HISTORY

Bauer's towed for the FPD and was a participant on the FPD's Tow Service Agreement ("TSA") continuously over thirty-two (32) years since 1987 until it was wrongfully terminated in early 2021. Bauer's won two appeals in front of the City's Independent Hearing Officer, Honorable Michael Flores, winning substantial attorney's fees and costs in both appeals and was ordered to be reinstated on the TSA in March 2023. The FPD refused to comply with Honorable Flores' order based on the FPD's determination that Bauer's did not comply with City's Development and Resource Management Department's Policy and Procedure C-002 ("C-002"), an opinion which the FPD then provided to the Planning Department to review and also conclude that Bauer's Property does not comply with its C-002. C-002 concerns standards that apply to tow yard vehicle storage lots, and its standards must be satisfied to be included on the TSA. This determination by the Planning Department is incorrect because Bauer's was confirmed to have satisfied those standards by authorized City officials in 2011, and therefore satisfies all conditions for reinstatement to the TSA, which the Planning Department and FPD wrongfully withhold.

PLANNING DEPARTMENT THURSDAY, 12/28/23 REPORT TO PLANNING COMMISSION

As is evidenced in **Exhibit A** hereto, the FPD facsimile transmitted to Bauer's informing it that Bauer's cannot receive FPD TSA tows (e.g., effectively be "reinstated" on the TSA) as of October 2, 2023 and through the present, because Bauer's does not comply with C-002. Thus, the Planning Department's argument today in its Report to Planning Commission that C-002 is not applicable misses the boat. It also seems like a continuation of animus and unfair treatment of Bauer's by the FPD and Planning Department.

Bauer's does respectfully need and request that the Planning Commission revise Par. 7 of the Planning Department's Confirmation to read that: **"Based on the record of proceedings in**

this matter, the Planning Commission confirms that the Site in conformance with the standards and requirements outlined under Policy and Procedure No. C-002 dated June 14, 2011.” This need is due to the FPD’s position herein, as well as for Bauer’s dealings with the City’s Independent Hearing Officer appeals, which are ongoing into the new year.

PLANNING COMMISSION APPEAL REQUESTS FOR RELIEF

Bauer’s July 6, 2023 Zoning Inquiry asked the Planning Department:

- 1) For confirmation that its Property was in compliance with C-002 based on the Planning Department’s prior approval of Bauer’s in the Planning Department’s response letter to Bauer’s Zoning Inquiry Application Q-11-035 (“2011 Zoning Inquiry”), dated August 5, 2011 (“2011” OR “C-002” “Approval Letter”) wherein the Planning Department refers to its own August 5, 2011 communication as an “Approval Letter” on Exhibit A-1 thereto (please see **Exhibit B** attached hereto, which is the Declaration of Michael Sanchez including his C-002 Approval Letter included therein) and Captain Andy Hall of the FPD Tow Unit was carbon copied thereon; and
- 2) To take into account the Declaration of former Fresno Planning Manager, Mike Sanchez, submitted to the Planning Department on or about May 12, 2023, wherein Mr. Sanchez testified that the Planning Department C-002 approved Bauer’s in its August 5, 2011 Approval Letter (also signed by Mr. Sanchez) concerning Bauer’s 2011 Zoning Inquiry Q-11-035 (please see **Exhibit B** attached hereto, the Declaration of Mike Sanchez). It should also be noted that Mr. Sanchez signed C-002 on behalf of Planning Department, and he was charged with approving (or not) all FPD TSA towers in 2011 under C-002—well over 35 towing companies—prior to any towing companies signing the 2011 FPD TSA. (Please see C-002 attached hereto as **Exhibit C**.)

The Planning Department, despite receiving Mr. Sanchez’s Declaration, failed to acknowledge it, comment about it, or explain it in its recent Zoning Inquiry Decision. This is troublesome given that Mr. Phillip Siegrist, the current Planning Manager, informed Bauer’s and its counsel in an in-person meeting on May 10, 2023, that Mr. Sanchez then (just like Mr. Siegrist currently) had the authority to approve Bauer’s under C-002 in 2011. Phillip claimed the hang-up in approving Bauer’s in 2023 was the fact that the Planning Department was not sure if Mr. Sanchez approved Bauer’s due to the Planning Department’s alleged “confusing” language in the Planning Department 2011 Approval Letter, allegedly (per the Planning Department) requiring it to be “paved.” Thus, Mr. Siegrist claimed at the May 10 meeting that since the Planning Department was not sure if Bauer’s was approved in 2011, it would likely be determined that Bauer’s fails C-002. Two days later, Bauer’s contacted and provided the Planning Department/Mr. Siegrist with Mr. Sanchez’s Declaration confirming Bauer’s passed C-002 in 2011. (Please see Declaration of Bradley K. Boulden, Par. 3 attached hereto as **Exhibit D** attaching a true and correct copy of the May 12, 2023 email to Phillip Siegrist.)

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PLANNING DEPARTMENT'S WRONGFUL INTERPRETATION OF AUGUST 5, 2011 APPROVAL LETTER

Despite Mr. Siegrist's comment at the May 10, 2023 Meeting and Mr. Sanchez's subsequent declaration, the Planning Department wrongfully determined in its Zoning Inquiry Confirmation that the Approval Letter found that: ". . . ***the subject site, specifically the areas where cars or vehicles are stored and vehicles drive, is not paved nor constructed to Public Works Standard P-21 as required in accordance with policy item 3-iii-a.***" (*Emphasis added.*) (Please see Zoning Inquiry Confirmation, Pg. 5 attached hereto as **Exhibit E**). This determination wrongfully interprets the Planning Department's/Mr. Sanchez's Approval Letter and Exhibit A-1 thereto. (Please see highlighted portions of email attached to **Exhibit D**.) The Planning Department purposefully confused the C-002 Approval Letter's recitation of C-002's requirement that a stored vehicle area be "paved"—(the first sentence of Section 6.a.) as evidence to conclude that Bauer's was not paved. This is a misinterpretation of that Approval Letter. That sentence, and its immediately preceding sentence, state as follows: "**All existing tow yards shall comply with the following minimum conditions: a. The areas where cars or vehicle parts are stored and vehicles drive must be paved.**" These sentences are simply a statement of the requirements that must be satisfied by all existing tow yards. The second sentence of Section 6.a., discussed below, concerns a specific requirement of the Applicant, which was satisfied.

The second sentence of Section 6.a. of the August 5, 2011 Approval Letter references the applicant (Bauer's) (not the general principles of C-002 set forth in the first part of subsection a. requiring paving). It provides that, "***The applicant shall maintain a paved surface pursuant to the attached Exhibit A-1,***" and further that, "***The applicant shall also apply an additional layer of base rock, as necessary, within six months of the date of [August 5, 2011], to those areas where towed vehicles will be stored.***"

The first sentence in the C-002 Approval Letter in 6.a. is word-for-word the exact language of C-002, Section 3.i.—both of which provide: "***The areas where cars or vehicle parts are stored and vehicles drive must be paved.***" (See Sections 6.a. in Exhibit A and 3.i. in Exhibit B verifying exact language.) It is clear that the same sentence from 3.i. and 6.a. was not a command to Bauer's or something it failed to do, but merely copied from C-002 to announce the topic of "pavement" in the TSA towing company storage yards. Clearly, as shown above, when the word "applicant" is mentioned thereafter, it directly relates to Bauer's and what it needs to do to its storage yard—as it existed that day.

Moreover, Exhibit A-1 attached to the 2011 C-002 Approval Letter clearly identifies the storage yard area of Bauer's lot. There is paving in this lot (and greater than 5,000 sq ft and more than enough to store over 20 vehicles as indicated in Director's Classification No. 208 referenced on Pg. 3 of Planning Department's ZI Decision Letter). Moreover, Mr. Sanchez's handwritten notes on Exhibit A-1, instructed Bauer's: 1) to "Apply Condition 6a per the 8/5/11 Approval Letter"; 2) defined the storage lot by outlining the area on the illustration; and 3) referred to the "Front Portion of Yard For towed Vehicles." (Please see **Exhibit B**, Approval Letter attached

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thereto.) The front portion of Bauer's lot, extending all the way to the South of Bauer's storage lot, is paved. Please also see Aerial Images section below.

Exhibit A-1 with the language of the August 5, 2011 Letter clearly indicates that Bauer's satisfied C-002, as Mr. Sanchez called the August 5, 2011 communication an "Approval Letter" in Exhibit A-1 thereto. Moreover, Bauer's was paved or had an otherwise approved surface and was to "Apply Condition 6a", which was to add "an additional layer of base rock." You don't pave a surface and then add base rock to it. Bauer's explained this to the Planning Department and FPD numerous times, so the Planning Department's claim that Bauer's Property does not comply with C-002 (on the basis that it was not paved) is untenable given the facts and based in animus and disparate treatment arising from the proceedings conducted against the FPD before the City's Hearing Officer.

Additionally, the "**front portion of the yard**", as indicated in Exhibit A-1 where the towed vehicles were stored, was identified. This was where the additional base rock was to be added—to the already "paved" area of Bauer's storage yard.

Finally, page 2 of C-002 under Procedures, provides as follows:

"For staff: Number 3 under the Policy section of the document is not a procedure for a special permit. Rather, it is a process to verify that the use existed prior to the existence of Directo Classification No. 208. The request for verification will be entered into Navaline (THE) as a Zoning Inquiry. The fee of \$510 for staff time will have to be entered into the system manually. The applicant will be given a letter (after all documentation is submitted and staff is able to verify compliance) that indicates that the subject tow yard is legally in operation."

(See **Exhibit C** attached hereto.)

As was pointed out in the ZI Decision, Bauer's existed as a tow yard towing under the FPD TSA since well before 2006. Further, evidence that Bauer's submitted all necessary documents for the Zoning Inquiry is also established, as well as Bauer's paying the \$510 fee for staff time. Bauer's was given the 2011 Approval Letter and Bauer's was provided "legal" non-conforming use. Thus, C-002 by itself clarifies that the C-002 Approval Letter was part and parcel evidence that Bauer's passed C-002.

AERIAL IMAGES INDICATGE BAUER'S HAS PAVING IN ITS C-002 STORAGE LOT

Aerial images of Bauer's Property taken on or about November 28, 2023, demonstrate a "paved" area of Bauer's vehicle storage yard. Base rock that was previously applied per the requirements of the Planning Department's August 5, 2011 Approval Letter was moved, thereby clearly showing a "paved" surface that existed long prior to 2006. (Please see Declaration of Edward Mason attached hereto as **Exhibit E, Par. 3** including three (3) photographs of Bauer's

subject tow storage lot, including images of “paved” area and estimated square feet thereof.) Thus, Bauer’s complied with C-002, as it has a “paved” surface. Moreover, this paved area further assists in explaining the August 5, 2011 Approval Letter (add base rock, which you don’t do if you are first requiring Bauer’s storage lot to first be paved), as well as dovetails with Bauer’s explanation of Mr. Sanchez’s written approval letter. Exhibit E, Par. 3 also clearly indicates that Bauer’s storage lot has at least between 5,700 and 6,800 square feet of a “paved” area.

Exhibit E images can be contrasted with aerial views from current Google Earth™ images in **Exhibit F** hereto. The image in **Exhibit F** was likely captured much earlier than November 5, 2023, but are dated as of November 5, 2023. These are likely what the Planning Department improperly relied upon to wrongfully concluded in its September 26, 2023 ZI Decision Letter that Bauer’s did not comply with C-002. Exhibit F looks like Bauer’s storage yard could be all dirt or gravel, but Exhibit E clearly shows “paved” surface once the base rock was removed. The FPD and Planning Department wrongfully concluded that Bauer’s yard was not paved and declined to physically inspect Bauer’s yard. The paved surface therein is much greater than 5,000 square feet. (See Declaration of Ed Mason attached hereto as **Exhibit E, Par. 3.**)

The only reason for the FPD’s (and now Planning Department’s) continued failure to comply with the City of Fresno’s Independent Hearing Officer’s March 30, 2023 Decision and Order to reinstate Bauer’s on the FPD TSA is the FPD’s animus and the Planning Department’s willingness to “go along” with the FPD’s refusal to allow Bauer’s to be placed back on the TSA. The FPD’s and Planning Department’s failure to physically and personally inspect Bauer’s Property—despite requests by Bauer’s to the Fresno City Attorney’s Office (“CAO”) and Planning Department to personally inspect the property for compliance, clearly evidences animus. Instead, the Planning Department decided to rely on the FPD’s wrongful conclusions and Google Earth or other simple visual, not physical or personal, inspection to continue wrongfully failing to recognize Bauer’s 2011 C-002 approval.

BAUER’S REQUESTED REDRESS

As such, Bauer’s respectfully requests that the Commission reach the following decision(s):

Modify the Confirmations issued by the City Planning Department provided in response to Zoning Inquiry No. P23-02357 to revise the last sentence of Paragraph 7 to provide as follows: “Based on the record of proceedings in this matter, the Planning Commission confirms that the Site in conformance with the standards and requirements outlined under Policy and Procedure No. C-002 dated June 14, 2011.”

ADDITIONAL BACKGROUND

To further understand this matter and why Bauer’s should further prevail at this Appeal, the following more detailed summary is included, including more background as to the underlying appeal in this matter, as well as evidence of the underlying FPD animus and disparate and unfair

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treatment towards Bauer's compared to other FPD TSA towing companies, ultimately leading to this Appeal.

I. Underlying Appeal.

After Bauer's was wrongfully terminated from the FPD's TSA on or about January 13, 2021, the FPD refused to meet with Bauer's or its counsel to discuss this matter, despite numerous written requests. Due to COVID delays and delays by the FPD, Bauer's was found on or around May 20, 2022 by the Honorable IH Officer, Michael Flores, to be wrongfully terminated from the FPD ("First IH Officer Appeal") and awarded substantial attorneys' fees and costs—over fifteen (15) months after it filed the appeal.

The FPD, with animus and in contradiction to the decision in the First IH Officer Appeal, claimed that the 2018 TSA expired and although all its terms were extended by a one (1)-page extension, the FPD claimed it did not have to invite Bauer's to continue to participate in the extended 2018 TSA, which the FPD claimed was expiring sometime shortly after the First IH Officer Appeal.

II. Second Underlying Appeal.

Bauer's prevailed at the second appeal also before the Honorable Flores and again won substantial attorneys' fees and costs from the City, as the IH Officer held in his March 30, 2023 Decision and Order ("Recent D&O") that language of the "extended" 2018 TSA did not preclude Bauer's from being reinstated to a subsequent TSA if an appeal was not concluded prior to a new or extended TSA taking effect—that the language of the 2018 TSA did not preclude Bauer's from being placed on a subsequent TSA following a victorious appeal. Bauer's was ordered to be "reinstated" (not apply as a new towing company) to the TSA (and an upcoming TSA) within fourteen (14) days.

The FPD, however, again failed to comply with Honorable Flores' Recent D&O, now claiming that the Recent D&O required that Bauer's had to "re-comply" with or now meet 2018 TSA terms Bauer's already met and complied with in 2018 (and back to the 2011 and 2014 TSAs) when it signed such TSAs, as Bauer's was a TSA tower on prior (and the 2018 TSA) when it was first wrongfully terminated.

a. Hearing Officer's March 30, 2023 Decision And Order.

Evidence of the Honorable Flores' holding from page 51 of the March 30, 2023 D&O, Paragraph 2.) therein, provided as follows:

"For the reasons provided in Section IV, "Issues on Appeal", Subsection F(1) of this "Decision and Order", and Section 34 of the "Tow Services Agreement" fully executed by both parties on April 26, 2018, Appellant is

to be reinstated to the current "Tow Services Agreement" and related "Rotational Tow List" within 14 calendar days of the date of the issuance of this "Decision and Order". The Fresno Police Department Tow Unit will utilize the 14-day period to confirm with Appellant that his towing operation, doing business as "Bauer's Auto Wrecking and Towing" meets all standards and other requirements pursuant to the current Tow Services Agreement and all applicable Fresno Municipal Code, State, and Federal laws, and for both parties to fully execute all necessary documents to carry out this order. Further, **Appellant shall be included in the Tow Services Agreement presently being prepared for review, approval by the City Council, and execution by the Fresno Police Department, participating Tow Operators, and the City.** (Emphasis added.)

(Please see **Paragraph 5** of the Declaration of Edward Mason attached hereto as **Exhibit F**)

b. 2018 and 2011 TSA C-002 Compliance Requirement

Section 8 entitled *Size And Location Of Storage Facility, page 12* of the *Attachment A Scope of Work* to the 2018 FPD TSA, provided:

“... All current tow yards contracted with the City of Fresno shall be in compliance with the current Development and Resource Management Department's Policy and Procedure C-002. Any new tow yards would follow FMC 15-2765 Land Use Regulations, Towing and Impound, Vehicle Impound Yard and Transit Storage requirements. . .” (Emphasis added.)

(Please see **Paragraph 6** of the Declaration of Edward Mason attached hereto as **Exhibit F**, which includes the relevant pages of the terms of the 2018 TSA.)

Moreover, the 2011 TSA also required strict adherence to the requirement that all FPD TSA towing companies comply with C-002. Section 8 entitled *Size And Location Of Storage Facility, page 11* of the *Attachment A Scope of Work* to the 2011 FPD TSA, provided:

“... A minimum of 5,000 square foot or room for 20 vehicles shall be provided. All tow yards located with[in] the City of Fresno shall be in compliance with the FMC, current Directors Class #208 and shall follow current Development and Resource Management Department's Policy and Procedure C-002. (Emphasis added.)

(Please see **Paragraph 7** of the Declaration of Edward Mason attached hereto as **Exhibit F**, therein, which includes the relevant pages of the terms of the 2011 TSA.)

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Accordingly, given the language in the 2011 and 2018 TSA's (and in the 2014 TSA), as well as Exhibit H attached hereto, it is clear that Bauer's had to pass C-002 or it could not have received, signed, or become a TSA towing company on any of the TSA's since 2011. Thus, Bauer's unequivocally passed C-002 in 2011, and the Planning Department and FPD have known that since 2011.

Additionally, The Planning Department's ZI Decision Letter provides that C-002 was last amended in June 14, 2011 (see Pg. 4 of **Exhibit E** attached hereto)—two months before Bauer's received the C-002 Approval Letter (August 5, 2011). Two more months later, Bauer's was provided and signed the 2011 TSA (October 2011)—the very TSA requiring approval of C-002 set forth above. TSA tow operators were also notified before being presented with the 2011 TSA that non-compliance with C-002 would lead to TSA towing companies to not being able to participate in the 2011 TSA. (See **Exhibit G**, which included a facsimile transmission from FPD Tow Officer Dalan Richards to "All Tow Operators" of an email from Capt. Andy Hall to Mr. Richards and Planning Manager Mike Sanchez concerning Capt. Hall's conversation with Mike Sanchez notifying tow operators that they were required to comply with C-002 or they would not be able to participate in the 2011 TSA.)

Additionally, the 2018 TSA provided that Bauer's had to be in compliance with the "current" C-002, which Bauer's passed and C-002 has not changed since 2011. (**Exhibit F**.) The FPD claimed that language in the Recent D&O (see above) allowed the FPD to make Bauer's again pass C-002 based on the TSA term under Section 8 cited above—despite the fact that Bauer's passed C-002 in 2011. It should be noted that the C-002 Approval Letter also provided that Bauer's would maintain its approval provided that Bauer's did not expand or extend its business in any way, change its approved for use, or abandon its use. (See Pars. 7 and 8 of the C-002 Approval Letter attached hereto in **Exhibit B**.)

Moreover, Bauer's was provided and signed the 2011, 2014 and 2018 TSA's (thereby serving as *de facto* evidence that the FPD and Planning Department recognized Bauer's 2011 C-002 compliance. Bauer's served as a TSA towing company on the 2018 TSA until it was wrongfully terminated in early 2021. Bauer's was never provided any prior notice that it did not comply with C-002; but, all of a sudden, the FPD (and now Planning Department), with animus and bias against Bauer's in violation of the California Constitution's and the United States Constitution's Equal Protection Class of One Jurisprudence standards, found Bauer's is not in compliance with C-002, despite the fact that Bauer's was, in 2011, approved and unfairly required Bauer's to again comply with C-002. Bauer's is informed and believes the FPD knew and knows that other towing companies were otherwise approved and failed to have "paved" storage yards as the FPD/Planning Department alleged against Bauer's. Those towing companies were treated differently and were and are allowed to continue to tow on the TSA at all times relevant herein. Bauer's raises these issues, not to get other towing companies in trouble, but to prove animus and disparate treatment against Bauer's.

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There was no reason for the FPD or the Planning Department to require Bauer's to be C-002 reinspected. It was the FPD's attempt, with animus and bias against Bauer's, to stick it to Bauer's and again try and avoid complying with the IH Officer's Recent D&O. After the FPD alleged Bauer's was not in compliance with C-002, and after counsel for Bauer's notified Dan Casas and Jennifer Nguyen-Bui of the Office of Fresno City Attorneys Office ("CAO") that other towing companies on the TSA rotation were in violation of C-002 because they have dirt storage yards). the CAO requested that Tow Unit Officer, Dalan Richards inspect all TSA towing companies for C-002 compliance. We are informed and believe that since on or about late 2011, none of the TSA towing companies were C-002 inspected, because they were deemed to have passed C-002, as Bauer's did.

This was evidenced in a meeting between the CAO, Honorable Flores, and Bauer's counsel on or about June 7, 2023, wherein Deputy City Attorney, Dan Casas, when asked, stated that he had recently instructed Officer Richards to inspect every TSA towing company for C-002 compliance due to the fact that Bauer's counsel recently intimated that if Bauer's was not in C-002 compliance, other towing companies were also not and that Bauer's was being treated disparately. Mr. Casas intimated at the June 7 meeting that the FPD recently inspected all other TSA tow companies and found that they all were in compliance with C-002 prior to the June 7, 2023 meeting. Honorable Flores asked the CAO to have the Planning Department inspect Bauer's yard after discussion that Bauer's storage yard had a "paved" area therein. Counsel for Bauer's agreed with such inspection, however the Planning Department did not physically set foot on Bauer's yard. (See Pars. 4 and 5 to the Declaration of Bradley K. Boulden attached hereto as **Exhibit D.**)

Bauer's has evidence that other FPD TSA towing companies who were approved under C-002 in 2011 (based on a grandfathered status). and who are on the FPD TSA, would not pass C-002 without that grandfathering. That grandfathered status is confirmed by Section 1 of the Policies C-002, which benefit all tow companies (including Bauer's) who have been established prior to January 24, 2006. The FPD/Planning Department now intends to hold Bauer's to a different standard than it applies to all other TSA towing companies regarding C-002 approval and "re-inspections." Shockingly, the FPD continues to allow such towing companies to remain on the TSA and be invited to a new TSA—demonstrating the disparate treatment that violates relevant Equal Protection Class of One standards.

The FPD, with animus and bias against Bauer's, only inspected Bauer's for the purpose of C-002 compliance to "reinstate" it, despite the fact that Bauer's is informed and believes that the FPD (as of the time the FPD claimed Bauer's did not comply with C-002) had not C-002 inspected any other TSA towing companies, including Bauer's, for the 2014 TSA, 2018 TSA, or any of the extensions thereto through 2023 until as provided herein.

**RELEVANT UNDERLYING FACTS GIVING RISE TO ADMINISTRATIVE HEARING
OFFICER APPEAL**

- 1) Bauer's has been owned and operated by Ed and Sharon Mason (Ed's wife) as a towing company since on or in 1984, and Bauer's has participated in the FPD's TSA continuously as an approved towing company for FPD vehicles since at least 1987—over 33 years prior to the instance giving rise to this appeal.
- 2) Around 6:00 am or so early morning on December 28, 2020, Ed and Sharon's son, Grant Mason, who lives on the adjacent property owned by Grant's grandmother (Sharon's mother) and separated by a greater than six-foot fence to the West of Bauer's FPD towing yard, called his father Ed and said that he heard someone inside Bauer's yard. Ed gave permission to Grant to jump the yard fence—because Grant had no key to the property and was not an employee or allowed to be on the property without Ed's permission—to flush a trespasser from the South to the North, towards Ed at the fence on the Northwest part of the storage yard. The FPD was called and the goal was to have the assailant arrested.
- 3) The trespasser jumped the fence and started a physical altercation with Ed, who was trying to contain him until the FPD arrived to arrest the trespasser. Grant, a prior felony in felon, and unbeknownst to Ed or Sharon, had a .22 rifle that he fired at the trespasser. The trespasser fled and was never caught. The FPD crime unit commenced an investigation.
- 4) It should be noted that all possible charges against Grant for this underlying matter (felon in possession of a firearm) were dropped, and Grant's actions were ruled justified defense of another (his father). Grant was also already in the process of having his prior felony expunged as it occurred almost ten (10) years prior in 2021. Grant's felony record has since been expunged.
- 5) The FPD Tow Unit suspended Bauer's over two weeks after the incident on January 13, 2021, and the FPD Tow Unit terminated Bauer's on February 3, 2021, over one month after the incident. The reason for the termination was that **the FPD Tow Unit alleged that Grant Mason was an "employee" of Bauer's and not approved to work for Bauer's per the TSA requirements.** The Tow Unit wrongfully concluded this, however, without interviewing Bauer's and after refusing to meet with Bauer's despite Ed's letters to the FPD requesting a meeting to discuss the fact that Grant was not in any way affiliated with, or an employee of, Bauer's. Bauer's counsel also requested meetings with the FPD Tow Unit and CAO after Bauer's was terminated, but the FPD refused. Bauer's appealed this matter in or around February 19, 2021 ("First Appeal").
- 6) There were many delays in this matter, consisting of the FPD's alleged continued crime unit police investigation (not the Tow Unit's) that in fact concluded within two weeks of the incident (not months as was alleged by the Tow Unit), COVID preventing an in-person appeal, a back-log of cases before the IHO, and the FPD Tow Unit terminating the first appeal hearing on March 10, 2021, due to the fact that it was not ready to proceed and would not stipulate to facts already in evidence (therefore requiring a continued hearing 20 days later).

- 7) At the end of the hearing for the first appeal in this matter on or about March 29, 2022, the FPD and City Attorneys stated that a required 2022 one (1)-page extension to the expiring 2018 TSA, would not be offered to Bauer's in April 2022, even if it prevailed in the First Appeal.
- 8) Bauer's won the first appeal, as well as an award for attorneys' fees and costs against the City of Fresno in the IHO's May 24, 2021 Decision and Order ("First D&O"). Grant Mason was found not to be a Bauer's employee. There was in fact testimony through the declarations of three (3) separate business employees how Grant Mason had informally (and without compensation) served as a watchdog. His attentiveness to potential criminal conduct benefitted T-Mobile, PG&E, and Party Rentals, in addition to Bauer's, as persons at each facility testified via a declaration how Grant called the police and/or called these employees if/when he heard or saw persons break into their respective businesses.
- 9) The statement in paragraph 7 above laid the groundwork, however, as the FPD—rather than comply with the First D&O, and with a continued bias and animus against Bauer's, failed to offer the extended 2018 TSA to Bauer's after Bauer's prevailed at the Second Hearing Officer Appeal. This was despite the fact that the FPD promised to and did offer its TSA and extensions to every company on rotation at the end of every year to the next through prior TSA's.
- 10) This gave rise to Bauer's filing a second appeal, which was also concluded by the IHO in Bauer's favor on or about March 30, 2023, another ten (10) months after the First Appeal. **The IHO again awarded Bauer's attorneys' fees and costs against the City and found that Bauer's was required to be "REINSTATED" to the current and future TSA within fourteen (14) days,** as set forth above.
- 11) Bauer's passed every hurdle placed in front of it by the FPD. One issue remained according to the FPD—whether or not Bauer's passed the C-002, which Bauer's passed in 2011 and should not have been revisited given that Bauer's remained towing vehicles, even for law enforcement agencies such as the California Highway Patrol ("CHP"), during all times since it was suspended and terminated in January 2021. And, the FPD was aware that Bauer's continued to operate for the CHP and other law enforcement during this time.
- 12) This should never have come to pass, as the FPD Tow Unit and Planning Department both knew that Bauer's passed C-002 in 2011, as witnessed by the facts previously established above.

VIOLATIONS OF EQUAL PROTECTIONS CLAUSE OF US CONSTITUTION

- 13) The FPD and the Planning Department have violated equal protection clause claim brought by a "class of one" (Bauer's) of the US Constitution (and California constitution) by

intentionally treating Bauer's differently than other FPD TSA towing companies by applying the standards of C-002 in an arbitrary and unequal fashion—with no rational basis for the treatment. Although “class of one” claims do not require proof of animus, the FPD has demonstrated clear animus against Bauer's and attempted to dig in its heels to prevent Bauer's from returning to the TSA—despite twice losing attorneys' fees and costs to Bauer's of at least \$77,000.00, and continuing to operate in violation of Honorable Flores' March 30 D&O wherein the FPD was ordered to reinstate Bauer's within fourteen (14) days.

- 14) Proof of violating the Equal Protection Clause can be brought by a “class of one” (Bauer's) because the facts demonstrably show that the FPD and Planning Department have intentionally treated Bauer's differently than other towing companies similarly situated and participating on the FPD's TSA—and that there is no rational basis to do so, thus proving even animus and bias against Bauer's.

BIAS AGAINST BAUER'S AND EVIDENCE OF INTENTIONALLY TREATING BAUER'S DISPARATELY, THEREBY EVIDENCING VIOLATIONS OF U.S. CONSTITUTION EQUAL PROTECTIONS CLAUSE PROTECTIONS OF A “CLASS OF ONE”

The following towing businesses have been on the FPD TSA as rotational tow list towers since prior to 2011 and through present, just as Bauer's was prior to the time it was terminated. Bauer's is informed and believe that none of these towing yards were investigated for C-002 compliance since they passed C-002 in 2011 until sometime in or about May or June 2023, after Bauer's counsel informed the City Attorneys Office and the IH Officer that TSA FPD towing companies similarly situated as Bauer's with regarding to passing C-002 by the City and having tow yards with the same issue Bauer's allegedly had according to the Planning Department.

I believe that the FPD's animus and unfair application of C-002 towards Bauer's is a violation of constitutional Equal Protection Clause claims that can be brought by a “class of one” (Bauer's) due to passing the following companies and allowing them to remain at all times C-002 compliant while Bauer's allegedly failed C-002 according to the Planning Department and FPD. Bauer's asserts the companies below are preferred and/or treated differently and/or have had C-002 applied differently by the FPD/Planning Department—not to show that these companies violate C-002.

The companies below also were “grandfathered” in, like Bauer's, in 2011. The FPD continues to allow these companies to remain on the TSA and tow for the FPD when the Planning Department and FPD: 1) denied Bauer's reinstatement due to Bauer's lot allegedly being not being “paved”, and these overflow lots below are also, Bauer's is believed and informed, not “paved”; and 2) allegedly had the FPD inspect lots for C-002 approval after March 30, 2023:

1. **Romo's Towing.** I am informed and believe that this FPD TSA towing company, which has been towing on the FPD TSA since at least 2010 to the present, has a primary lot and an overflow lot where it stores FPD tows. I am informed and believe, after driving by and looking at the property, as well as reviewing the Google Earth images from November 5, 2023, that the image with the "O/F" drawn to illustrates an overflow dirt lot that Bauer's believe does not pass C-002. (See **Exhibit F**, Declaration of Edward Mason, Par. 8.)
2. **Ray's Towing.** I am informed and believe that this FPD TSA towing company, which has been towing on the FPD TSA since at least 2010 to the present, has a primary lot and an overflow lot where it stores FPD tows. I believe, after driving by and looking at the property, as well as reviewing the Google Earth images from November 5, 2023, that the image with the "overflow" drawn to it illustrates an overflow dirt lot that Bauer's believe also does not pass C-002. A second image is also included that Bauer's captured showing that Ray's Towing does have the required "slats" or fence coverings required by C-002, paragraph 3.b.—the same requirement that the FPD made Bauer's comply with after March 30, 2023 (See **Exhibit F**, Declaration of Edward Mason, Par. 9.)
3. **D & K Towing.** I am informed and believe that this FPD TSA towing company, which has been towing on the FPD TSA since at least 2010 to the present, has a primary lot and an overflow lot where it stores FPD tows. I believe, after driving by and looking at the property, as well as reviewing the Google Earth images from November 5, 2023, that the image with the "overflow" drawn to it illustrates an overflow dirt lot that Bauer's believe also does not pass C-002. (See **Exhibit F**, Declaration of Edward Mason, also Par. 9.)
4. **Reyna Towing.** I am informed and believe that this FPD TSA towing company, which has been towing on the FPD TSA since at least 2010 to the present, has a primary lot and an overflow lot where it stores FPD tows. I believe, after driving by and looking at the property, as well as reviewing the Google Earth images from November 5, 2023, that the image with the "overflow" drawn to it illustrates an overflow dirt lot that Bauer's believe also does not pass C-002. (See **Exhibit F**, Declaration of Edward Mason, also Par. 10.)
5. **Nelly's Towing.** I am informed and believe that this FPD TSA towing company, which has been towing on the FPD TSA since at least 2010 to the present, as per the image provided, shows that Nelly's Towing does have the required "slats" or fence coverings required by C-002, paragraph 3.b. (See **Exhibit F**, Declaration of Edward Mason, Par. 11.)
6. **Kevin's Towing.** I am informed and believe that this FPD TSA towing company, which has been towing on the FPD TSA since at least 2010 to the present, has a primary

Douglas T. Sloan
City Attorney
Fresno City Hall
February 12, 2023
Page 15 of 15

lot and an overflow lot where it stores FPD tows. I believe, after driving by and looking at the property, as well as reviewing the Google Earth images from November 5, 2023, that the image with the “overflow” drawn to it illustrates an overflow dirt lot that Bauer’s believe also does not pass C-002. (See **Exhibit F**, Declaration of Edward Mason, also Par. 12.)

Bauer’s is informed and believe there are other companies that also were in existence towing prior to 2010 for the FPD TSA that were/are in violation of C-002 at all relevant times herein, however, due to time constraints and Mr. Mason struggling to care for his sick wife, only the above-mentioned are set forth herein.

THE CITY OF FRESNO HAS WAIVED ITS RIGHT TO CLAIM BAUER’S DID NOT PASS C-002, AND FRESNO MUNICIPAL CODE SECTION 15-5010A, AS WELL AS THE C-002 APPROVAL LETTER DEMONSTRATE THAT BAUER’S PASSED C-002 IN 2011 AND THEREFORE BAUER’S C-002 PASSING SHOULD NOT BE DISTURBED.

Bauer’s again asserts all such claims alleged in this Appeal, related to “waiver” claims, equitable claims such as latches and the like, and those in the Fresno Municipal Code, including those in Sections 15-5010 A.

CONCLUSION

Bauer’s based its appeal and requests the redress sought herein based upon the Appeal, underlying Zoning Inquiry, and the entire file submitted herein, which includes the entire file submitted to the Planning Department, Planning Commission, and the entire file from the underlying Administrative Hearing appeals, which although are not necessary to conclude this matter by the Planning Commission, could be necessary to Bauer’s should a writ of administrative mandate or other civil action necessitate filing following this matter. This file will be provided as a jump drive due to the size of the documents.

Sincerely,

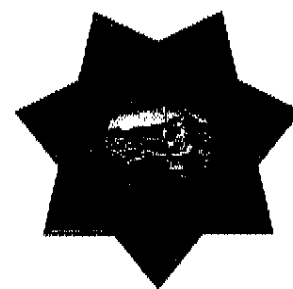


Bradley K. Boulden

EXHIBIT “A”

City of
FRESNO
POLICE DEPARTMENT
Mariposa Mall
P.O. Box 1271
Fresno, CA 93715-1271

PACO BALDERRAMA
Chief of Police



October 2, 2023

TO: BAUER'S AUTO WRECKING
103 N. Thorne
Fresno Ca 93706

FROM: ANTHONY DEWALL, Lieutenant
Support Services/Traffic Safety Section Commander

SUBJECT: 2018 Non-exclusive Tow Service Agreement

Mr. Mason,

This letter is regarding the 2018 Non-exclusive Tow Service Agreement ("TSA") executed by you and Sharon K. Bauer Mason on March 14, 2018. The Fresno Police Department and its Tow Unit (FPD) have reviewed the Fresno City Planning Department's September 26, 2023, letter to you in response to your Zoning Inquiry No. P23-02357.

As was indicated in the April 13, 2023, letter, the FPD Tow Unit has complied with Hearing Officer Michael Flores' March 30, 2023, Decision and Order by placing Bauer's back onto the FPD tow rotation list and extended Bauer's 2018 TSA.

The Fresno Police Department notes and acknowledges that the Planning Department's letter confirmed that Bauer's Tow Yard (Bauer's) has been determined to be a legal non-confirming use under the City of Fresno's zoning law given its uses as a Tow Yard prior to January 24, 2006.

The Planning Department's letter goes on to note and point out that even though the Bauer's site is deemed and considered to be a legal non-confirming use under the City's Zoning Laws, Bauer's "is not in conformance with the standards and requirement outlined under Policy and Procedure No. C-002," since:

1. "[T]he subject site, specifically the areas where cars or vehicles are stored and vehicles drive, is not paved nor constructed to Public Works Standards P-21 as required in accordance with policy item 3-iii-a," and
2. "[T]hat base rock material does not meet the standards detailed in Public Works Standard P-21."

As such, the Planning Department's letter acknowledged that Bauer's is a legal non-conforming under the City's Zoning Law which designation shall remain as long as there is no expansion or change in the property's use. This does not impact Bauer's ability to continue to legally operate as a tow yard for other agencies under the City's Zoning Laws. The letter did, however, confirm that Bauer's "is not in conformance with the standards and requirements outlined under Policy and Procedure No. C-002 dated June 14, 2011. This failure to comply with the C-002 requirement of the Tow Services Agreement (TSA) precludes Bauer's from receiving tows under the TSA."

As you are aware when Bauer's executed the FPD's TSA, Bauer's agreed to comply with "all of the terms and conditions of the [TSA]," including "all standards, laws, statutes, restrictions, ordinances, requirements, and regulations, including, but not limited to those issued by City in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by the City." (Paragraph 18 of the TSA), including "Attachment A" to the TSA, which was made part of Bauer's ongoing obligations pursuant to paragraph 2 of the TSA.

Under paragraph 8 of the "Attachment A," Bauer's agreed that it will comply with and continue to comply with Policy and Procedure No. C-002, which mandates that "the areas where cars or vehicle parts are stored and vehicles drive must be paved," which pavement must be installed in accordance with Public Works Standards P-21. This is a term, provision and obligation that is not waiving in Pursuant to 8 of the TSA.

If you have any questions, do not hesitate to contact the tow unit.

Sincerely,



ANTHONY DEWALL, Lieutenant

Support Services/Traffic Safety Section Commander

EXHIBIT “B”

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1 Letter and Exhibit "1" attached thereto), the only plan or future requirement I set forth, was an
2 additional base rock addition, "as necessary," requirement; and, that Bauer's add base rock to the
3 area, "as necessary," within six (6) months. I did not specifically provide that Bauer's needed to
4 "pave" the vehicle "Storage Lot Area" indicated on page three (3) of the letter (the illustration)
5 with asphalt, because I approved base rock as an "other approved surface" for paving. The
6 sentence where I set forth on page one (1) of the letter where I provided that, "Applicant shall
7 maintain a "paved" surface pursuant to Exhibit A-1" meant that the approved "paving" was to be
8 maintained by applying an additional later of base rock, as necessary, within six (6) months to
9 such Storage Lot Area that was not paved with asphalt, but was "paved" and approved as an
10 "other approved alternate surface" with base rock.

11 6. At the time of my approval letter, and with regard to other tow companies I
12 approved to be in compliance with C-002 around this time, base rock was also an "other
13 approved alternative surface" for the paving requirement at such towing company locations
14 according to the Planning Department due to Directors Classification No. 208 2nd Amendment,
15 Public Works Standard P-21, and my authority at the time in the scope and performance of my
16 job as City Planning Manager.

17 7. On Friday, May 12, 2023, I reviewed the approval letter I signed penned to Mr.
18 Ed Mason of Bauer's dated August 5, 2011. I also had the opportunity to review a color Google
19 Earth schematic of Bauer's property. Recalling the letter, and given my memory of this matter
20 and the inspection of August 5, 2011, again, I specifically recall that on behalf of the Planning
21 Department, I approved Bauer's location pursuant to C-002 requirements (which was signed by
22 my hand and dated June 14, 2011), Directors Classification No. 208 2nd Amendment (dated June
23 17, 2010), and based on the fact that "A paved surface, or other approved alternative surface . . ."
24 and the base rock utilized at Bauer's vehicle storing location on this day sufficed for a "paved"
25 surface under C-002 for any outside vehicle or vehicle parts storage area, as afforded by City of
26 Fresno Public Works Standard P-21 and my authority as Planning Manager.

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1 I declare under penalty of perjury under the laws of California that the foregoing is true
2 and correct, and that this declaration was executed in Fresno, California on May 12, 2023.

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5 _____
6 Michael Sanchez
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ATTACHMENT "1"

Development and Resource Management Department

2600 Fresno Street • Third Floor
Fresno, California 93721-3604
(559) 621-8277; FAX (559) 488-1020

Mark Scott, Interim Director

Please reply to:

Mike Sanchez
(559) 621-8040

August 5, 2011

Edward Mason
317 West Voorman Avenue ✓
Fresno, CA 93706

Dear Mr. Mason:

**SUBJECT: TOW YARD LAND USE INQUIRY (Q-11-035) REQUESTING INFORMATION
RELATED TO PROPERTY LOCATED AT 317 WEST VOORMAN AVENUE
(ASSESSOR'S PARCEL NO. 458-040-22).**

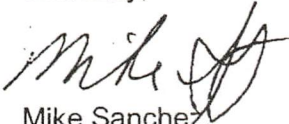
Thank you for your recent inquiry as to whether the existing tow yard on subject site is considered a legal non-conforming use. A review of the City of Fresno Municipal Code (FMC), the City of Fresno Official Zone Map, and review of permit, business license, code enforcement and entitlement records reveals the following information regarding the subject property:

1. The property is zoned M-3 (Heavy Industrial *District*). The 2025 Fresno General Plan designates the planned land use of the site as *Heavy Industrial*.
2. The existing tow yard use on the subject site has been in existence prior to January 24, 2006 (prior to the initial adoption of Director's Classification No. 208).
3. The subject site has never been required to file a conditional use permit or site plan review application for the use of the site as a tow yard.
4. The subject site has never had an open code enforcement case related to the existing tow yard use.
5. The existing use on the subject site, a tow yard with lien sales as well as auto dismantling is a use allowed in the M-3 zone district with a site plan review application pursuant to Director Classification No. 208.
6. Although the subject site does not have an approved site plan review application for this use, the proposed use has been determined to be a **LEGAL NONCONFORMING USE**. The use is considered nonconforming because it does not conform to current zoning regulations (no site plan approval). **As a legal nonconforming use, the site may continue to legally operate as a tow yard with lien sales.** All existing tow yards shall comply with the following minimum conditions:
 - a. The areas where cars or vehicle parts are stored and vehicles drive must be paved. The Applicant shall maintain a paved surface pursuant to the attached Exhibit A-1. The applicant shall also apply an additional layer of base rock, as necessary, within six months of the date of this letter, to those areas where towed vehicles will be stored.
 - b. The area where cars are stored must be completely screened from view from the public right-of-way or residential areas by a solid fence or wall. A chain link fence with slats is acceptable. All graffiti must be removed from these fences within 48 hours. *Staff has verified that this condition has been met.*

- c. The operator shall provide adequate security of vehicles and property at the storage site.
 - d. The storage of property other than motor vehicles is limited to personal property found inside the impounded vehicles.
 - e. Retail sales shall be limited to lien sales of vehicles and/or personal property not claimed by the owner.
7. Pursuant to Section 12-317-C-3 of the Fresno Municipal Code, the nonconforming use of land may be continued, but shall be subject to the following limitations: (1) such use shall not be expanded or extended in any way either on the same or adjoining land, (2) such use shall not be changed, except to a use which conforms to the regulations of the zone in which such land is located, and (3) if such use is discontinued it shall not thereafter be reestablished.
8. In order to modify or expand the existing nonconforming use, a full site plan review application will be required and the subject site will be required to comply with all existing codes, policies and regulations as applicable. The addition of buildings or structures requires a site plan review.
9. Please note that this letter only relates to the nonconforming use of the subject site as a tow yard. **It does not legalize any other uses on the subject site or legalize any other code violations that may exist on the subject site. Potential uses on the site that are NOT approved under this review are as follows:**
- a. Barbed tape or wire, concertina wire or similar security toppings are specifically prohibited in the city, except for barbed tape or wire constructed pursuant to a barbed wire permit. Applications for this permit may be obtained at the Planning Front Counter in City Hall.
 - b. The on-site parking lot striping may not conform to current standards. Parking lot geometrics have not been reviewed under this land use inquiry.
 - c. Any parking of company vehicles has not been approved to be off-site and should be contained on-site.

If you have any questions regarding this matter, please contact me at the number above.

Sincerely,

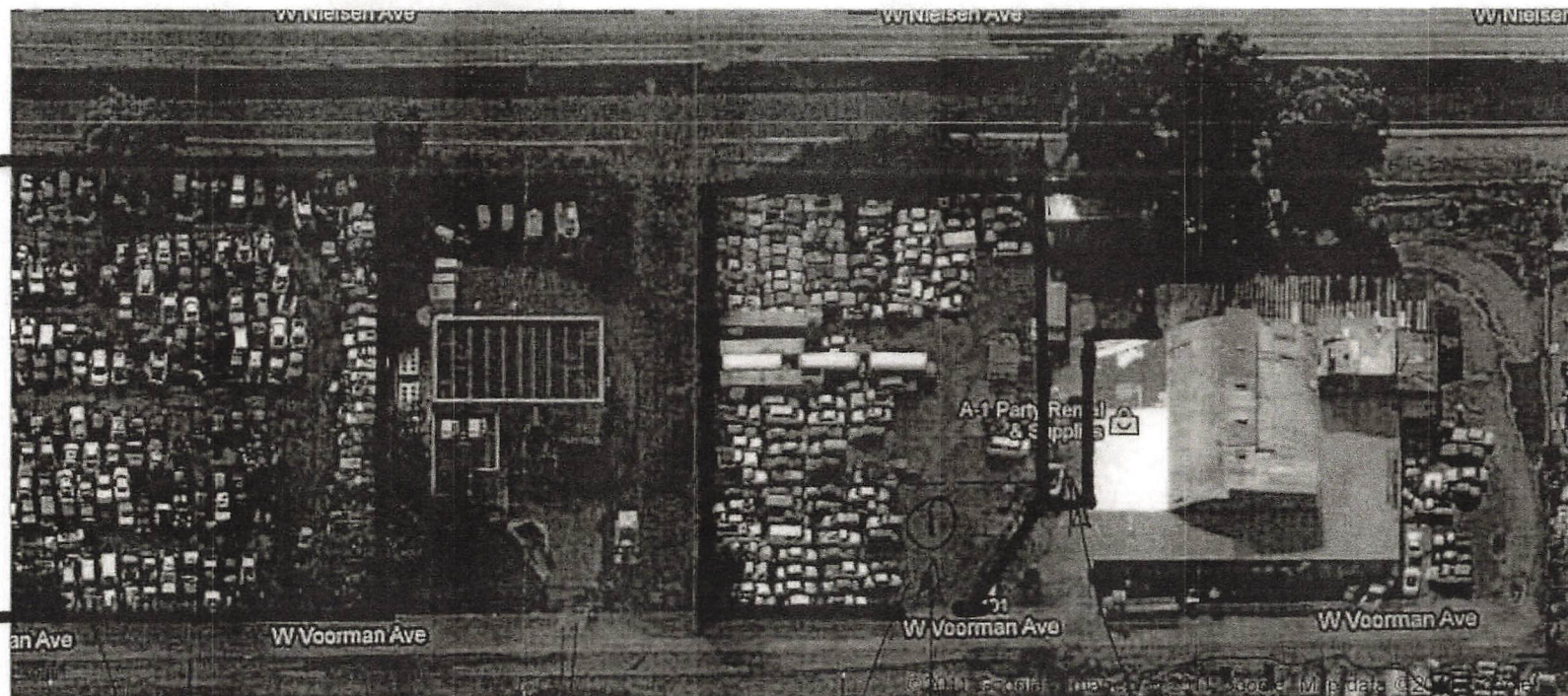


Mike Sanchez,
Planning Manager

CC: Fresno Police Department, Attn: Captain Hall (via e-mail)
Job Address File: 317 West Voorman Avenue

Google maps

To see all the details that are visible on the screen, use the "Print" link next to the map.



Auto Dismantling YARD.

NOTE

Le Apply Condition 6a
per 8/5/11 Approval
letter.

BAUER'S AUTO WRECKING

103 N. Thorne


Fresno, CA 93706

STORAGE LOT AREA

FRONT PORTION of yard
FOR towed vehicles

EXHIBIT A-1
8/5/11

EXHIBIT “C”

	<h2 style="text-align: center;">Tow Yards</h2> <p style="text-align: center;">Development and Resource Management Department 2600 Fresno Street, 3rd Floor, Rm 3076 Call (559) 621-8277 for an appointment or visit www.fresno.gov for information</p>	<p>Policy and Procedure No.</p> <h1 style="text-align: center;">C-002</h1> <p style="text-align: center;">Date: June 14, 2011</p>
<p>Target Audience: Planning staff, the Police Department, the Community Revitalization Division, and business owners who plan to establish a Tow Yard or have an existing Tow Yard in the City of Fresno.</p>		
<p>Purpose: The purpose of this Policy is to give City staff, tow yard business owners and the general public the ability to easily verify whether or not a Tow Yard was legally established and/or a legally allowable use on a specific site.</p>		
<p>Policy: The following policy applies to industrially zoned properties (C-M, M-1, M-2 and M-3)</p> <ol style="list-style-type: none"> 1. All tow yards established after January 24, 2006, must either 1) Comply with Director's Class No. 208 dated June 17, 2010 and file a full conditional use permit application; or 2) File a full site plan review application as a transit storage yard. The type of application filed will depend on which land use is applicable based on the facility's existing or proposed operational characteristics (see Definitions below). 2. An existing tow yard that was established either before or after January 26, 2006 that was previously required to apply for a special permit (either a site plan review or conditional use permit) must comply with all conditions of the approved special permit application in order to be considered legally in operation. If this special permit was filed but never approved, a new special permit is required. 3. All existing tow yards established prior to January 24, 2006 that were not previously required to file a special permit application may be determined to be a legally operating tow yard if the following conditions are met: <ol style="list-style-type: none"> i. The applicant must have a legal business license for a tow yard with the City of Fresno for the year 2005 that shows that the specific site in question was in operation as a tow yard at that time. If no such license exists, all business license fees must be paid and the operator must provide proof to the satisfaction of the Director that the tow facility was in operation prior to January 26, 2006. ii. The site must have no open or previous code enforcement cases related to the operation of a tow yard. iii. If the site is in compliance with items 3-i and 3-ii above, the applicant must submit a request with the City to verify compliance and pay a fee of \$510. The applicant must submit a site plan and pictures showing that the following two requirements have been met: <ol style="list-style-type: none"> a. The areas where cars or vehicle parts are stored and vehicles drive must be paved. This pavement must be constructed to Public Works Standard P-21. A grading plan and permit will be required for the installation of pavement on a site. b. The area where cars are stored must be completely screened from view from the public right-of-way or residential areas by a solid fence or wall. A chain link fence with slats is acceptable. <p>A complete request must include: A City of Fresno Special Permit application signed by the property owner, a site plan drawing (this site plan does not need to be drawn by a professional, but must be to scale and show all buildings, structures, and storage areas), a detailed operational statement, and pictures of the site showing that the site is in compliance with the conditions noted above.</p>		

- iv. A tow yard must comply with following operational conditions contained in Director Classification No. 208 as applicable:
 - a. The operator shall provide adequate security of vehicles and property at the storage site.
 - b. The storage of property other than motor vehicles is limited to personal property found inside the impounded vehicles.
 - c. Retail sales shall be limited to lien sales of vehicles and/or personal property not claimed by the owner.
 - d. There shall be no dismantling of motor vehicles.
- v. A site that is not in compliance with items 3-i and 3-ii above must file a full special permit application in order to legally establish and operate as a tow yard in accordance with item #1 above.

Definitions: A Tow Yard as used in this policy includes 1) A towing company with a storage yard (considered transit storage as defined by Section 12-105 of the Fresno Municipal Code); and 2) A towing company with a storage yard that stores not only cars but motor vehicle parts and conducts lien sales of motor vehicles. This second use is described in Director's Classification No. 208 as "Towing, Storage and Lien Sales of Impounded Motor Vehicles".

A full site plan review or conditional use permit application means full fees and a full review routed for comment to all applicable agencies and departments.

Procedures: For staff: Number 3 under the Policy section of the document is not a procedure for a new special permit. Rather, it is a process to verify that the use existed prior to the existence of Director Classification No. 208. The request for verification will be entered into Navaline (HTE) as a Zoning Inquiry. The fee of \$510 for staff time will have to be entered into the system manually. The applicant will be given a letter (after all documentation is submitted and staff is able to verify compliance) that indicates that the subject tow yard is legally in operation.

Documents Referenced in this Policy/Procedure:

[Director Classification No. 208 dated June 17, 2010](#)

[Fresno Municipal Code](#)

Review and Responsibility: Current Planning Staff will ensure compliance with these policies when the public inquires about tow yards and when a site plan review or conditional use permit application for such a use is submitted.

Forms (attached): N/A

Signature:



Mike Sanchez, Planning Manager

Dated:

6/14/11

EXHIBIT “D”

DECLARATION OF BRADLEY K. BOULDEN
IN SUPPORT OF BAUER'S AUTO WRECKING
AND TOWING'S PLANNING COMMISSION APPEAL,
APPEAL NUMBER P23-03471

I, BRADLEY K. BOULDEN, declare as follows:

1. I am over the age of 18 and a resident of California. I have personal knowledge of the following facts and could testify competently to them if called to do so. The facts set forth herein are personally known to me and, unless otherwise noted, are based on my firsthand knowledge and/or observation.

2. I am an attorney licensed to practice law in the State of California and counsel for Bauer's Auto Wrecking and Towing ("Bauer's").


3. Attached hereto as "Attachment 1" is a true and correct copy of the email I sent to Phillip Siegrist of the Planning Department on or about May 12, 2023. The entire email is relevant to this Appeal, and the highlighted portions there specifically relevant to the issues discussed in Bauer's Supplemental Communication to the Planning Commission, Appeal Number P23-03471. Mr. Siegrist did in fact intimate the comments highlighted therein at a May 10, 2023 meeting between Mr. Siegrist, Mr. Ed Mason, and Bauer's counsel.

4. On or about June 7, 2023, a meeting between the CAO, Honorable Flores, and Bauer's counsel occurred. Deputy City Attorney, Dan Casas, when asked by Honorable Flores, stated that he had recently instructed Officer Richards to inspect every TSA towing company for C-002 compliance due to the fact that Bauer's counsel recently intimated that if Bauer's was not in C-002 compliance, other towing companies were also not and that Bauer's was being treated disparately. Mr. Casas intimated at the June 7 meeting that Dalan Richards from the FPD recently inspected all other TSA tow companies and found that they all were in compliance with C-002 prior to the June 7, 2023 meeting.

5. Additionally at the June 7, 2023 meeting, Honorable Flores inquired with the City Attorneys to have the Planning Department inspect Bauer's yard after discussion that Bauer's storage yard had a "paved" area therein. Counsel for Bauer's agreed with such inspection

1 inspection request, however the Planning Department did not physically set foot on Bauer's yard
2 to inspect it at all relevant times herein.

3 I declare under penalty of perjury under the laws of California that the foregoing is true
4 and correct, and that this declaration was executed in Fresno, California on December 28, 2023.

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7 Bradley K. Boulden
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ATTACHMENT “1”

Bradley K. Boulden

From: Bradley K. Boulden
Sent: Friday, May 12, 2023 1:16 PM
To: phillip.siegrist@fresno.gov
Subject: Bauer's Auto Wrecking & Towing; 103 N. Thorne Ave.
Attachments: Declaration-MikeSanchez-5-12-23.pdf, Receipt Bauer's \$510.pdf

Phillip,

Thank you again for meeting with Mr. Ed Mason of Bauer's Wrecking and Towing ("Bauer's") and I on Wednesday afternoon, May 10, 2023, as well as speaking to me telephonically just now. We greatly appreciate your willingness and agreement to meet with us, consider our position, and then take our information to meet with Jennifer Clark, the Director of Planning and Development, prior to reaching a final determination as to whether or not Bauer's complies with/complied with C-002 concerning the "paved" area where vehicles are stored. We are hopeful and confident, however, that this correspondence will dispose of this issue forthwith.

Given that we do not have a final determination yet, I do not believe we need to appeal this matter yet as a final action has not been rendered from the City Planning Department, only a hearsay position reached by the City Attorneys' Office/FPD stating that the Planning Department claims Bauer's is not in compliance with C-002 based on the Police Department's intimations about Bauer's yard and its position as to interpreting Mr. Mike Sanchez's approval letter dated August 5, 2011, alleging that Bauer's never originally complied with such letter by not having "paved" the towing storage area as indicated in section "1" on page three (3) of the letter, entitled "Storage Lot Area." Instead of finding the August 5, 2011, approval letter as just that—an approval letter, which it provided it was, the FPD/City Attorneys claim "Bauer's was aware it needed to pave the areas, and using base rock is not sufficient." As such, the FPD/City Attorneys claim Bauer's was never in compliance with C-002. We disputed that with you and argued why it was approved.

I believe that this tentative decision reached by the Planning Department was reached based on the wrong questions being asked and/or the Planning Department being provided with only part of the relevant information in this matter. Accordingly, since Bauer's did not yet receive a letter from the Planning Department notifying Bauer's that it failed to comply with C-002 in 2011, we reserve our right to appeal such decision with the Independent Hearing Officer should we presented with a final action.

In addressing this issue, it is my understanding that although the City Planning Department did not present and inspect Bauer's Auto Wrecking and Towing (Bauer's), based on information provided by the FPD, the Planning Department was asked to determine whether or not the FPD's findings on the area where towed vehicles were stored complied with Planning Department's "Tow Yard" Policy and Procedure No. C-002 requirement for a "paved" surface. It seems the FPD must have relayed to Planning/you that this storage area was not "paved" and/or perhaps contained base rock.

Based on this information, I believe you were tasked to make a determination, without all of the relevant facts, as to whether Bauer's towing storage area surface was "paved" pursuant to C-002 and with the FPD's/City Attorneys' wrongfully concluded assumption that Bauer's was not approved on August 5, 2011 due to some language in the approval letter. Via the City Attorneys, Mr. Casas and Nguyen-Bui, Bauer's was informed that the City Planning Department found Bauer's not in compliance with C-002 and then provided with your information.

As I informed you yesterday, however, Bauer's is not a new towing applicant. It was ordered to be "reinstated" on the current Tow Service Agreement recently by the Independent Hearing Officer. As such, we respectfully object to (and I previously objected to the City Attorneys) the City Planning Department becoming involved in this issue, as Bauer's was approved in 2011 and is to be reinstated. We realize this was the FPD/City Attorneys requesting your involvement, however, and we appreciate your help.

Nonetheless, the relevant inquiry in this matter is/was to determine if Bauer's was approved under C-002 in 2011. Based on the FPD's and City Attorneys' position in this matter questioning approval in 2011, this is the narrow issue. Thus, it

doesn't matter if Bauer's was not towing for the FPD for any period of time because it was found to be wrongfully terminated and awarded to be put back on the rotational tow list it was errantly terminated from by the Independent Hearing Officer. Bauer's was not required to now comply with C-002, as it did in 2011 when it was required to do so—the time when all current tow operators on the FPD's TSA qualified their tow yards to be in compliance with C-002.

Moreover, even though it is of no consequence, Bauer's yard remained the same, and Bauer's continued to operate as a towing company for the CHP and local Sheriff's Department during the entire time it was wrongfully terminated from the FPD's Tow Service Agreement. Further, as I mentioned, and as my client recalls, Bauer's was unequivocally approved by the Planning Department on August 5, 2011.

As we further discussed this matter yesterday, you informed my client and I that you currently have the same position that Mike Sanchez, the signatory on C-002, had in 2011—Fresno City Planning Manager. You also stated that Mr. Sanchez did have the authority to approve Bauer's and bind the City Planning Department if Mr. Sanchez approved Bauer's in 2011 pursuant to C-002. You also stated that you currently have the same authority to determine whether or not Bauer's currently complies with C-002, if Bauer's was a new tow company or was not approved in 2011. You were tasked with just looking at it through the lens of 2023 if the City Attorneys' and FPD's position that Bauer's was not approved in 2011 was correct, then currently, the Planning Department's/your position would be that Bauer's was not in compliance with C-002 at this time based on your interpretation of C-002.

In this vein, you also provided that the problem in this matter is that you were not sure whether Mr. Sanchez approved Bauer's tow storage yard as "paved" in 2011 given the language of Mr. Sanchez's approval letter to Mr. Mason dated August 5, 2011. But, you agreed that if Mr. Sanchez did approve Bauer's in 2011, this would not be an issue. It was just the not knowing for sure if Bauer's towing area storage surface was approved as "paved" that caused the Planning Department to look into this matter at the FPD's direction and conclude that Bauer's does not currently comply with C-002. This was of course prior to meeting with us and hearing our position and examination of the August 5, 2011, approval letter.

At our meeting, we explained what happened at the inspection and Mr. Sanchez's letter, as my client understood it and as I interpreted the plain language to mean. And, you agreed to accept an email (this one) with the details of my explanation and discuss my points with Ms. Clark before a final determination was made by Planning. You agreed that my insight as to the language of Mr. Sanchez's letter did have some possible validity, and that you would discuss my points with Ms. Clark to reach a final conclusion—agreeing to attempt to schedule a subsequent meeting with Ms. Clark and me if she seemed to stick to your original decision. Finally, and most importantly, you agreed that if Mr. Sanchez provided approval for Bauer's in 2011, and that if such approval could be verified, you believed this matter would not be an issue and conclude forthwith in Bauer's favor.

Thankfully, I was able to contact Mr. Sanchez and discuss this matter with him telephonically and in person with all the relevant documents. Mr. Sanchez, with detailed recollection, recalled Bauer's location, his inspection, and his August 5, 2011 approval letter, which he reviewed in great detail. He recalled going to Bauer's early in the morning before he went to work, just as Mr. Mason recalled. Mr. Sanchez was able to, through a Declaration attached hereto, provide that Bauer's was unequivocally approved on August 5, 2011—thereby seemingly and hopefully making this entire matter now a big to do about nothing for the Planning Department. Mr. Sanchez approved the towing storage area as an "other approved surface," as you will find in his Declaration.

In addition to obtaining the approval from the proverbial "horse's mouth" of Planning in 2011, if you will, we also assert that based on the legal claim of "waiver" or other likewise equitable tenets, the City has waived any right to claim that Bauer's failed to comply with C-002 given that:

- 1) Twelve years have passed since Bauer's was approved;
- 2) The fact that Directors 208 was dated 2010;
- 3) C-002 was dated June 14, 2011;
- 4) The "Approval Letter" signed by Mr. Sanchez was dated subsequent to both on August 11, 2011 and cc'd to FPD Captain Hall—long after my client paid the \$510.00 application fee (see attached receipt herein) and submitted the Planning Department's application, and all other required documents;
- 5) Bauer's then was approved by the FPD to sign the 2011 TSA in or about late October 2011, by the FPD (of course further indication that Bauer's was approved on August 5, 2011;

- 6) Bauer's also then signed the 2014 TSA and 2018 TSA, which has been extended and remains in force at this time; and
- 7) Pursuant to Page 2 of C-002, under "Procedures," Bauer's was provided the August 5, 2011 letter approving Bauer's as a "Legal Nonconforming Use" and provided that, "As a legal non-conforming use, the site may continue to legally operate as a tow yard with lien sales."

As such, we assert that the FPD's/City Attorneys' attempt to claim that Bauer's was not in compliance with C-002's requirement that the vehicle storage area be "paved" in 2011 and is thus today now not approved when it already passed and found in compliance in 2011 is not only revisiting a closed case where approval was awarded and still exists and governs this matter, but is completely unfair and not within the purview of California law.

In addition to a valid "waiver" or other equitable argument that the City waived this second take at Bauer's storage area, there is a strong argument that my client reasonably relied on a public employee/manager with the authority to bind the Planning Department that will testify that he did in fact approve Bauer's and other towing operators at this time—also having base rock as an "other approved surface" for the storage of towed vehicles. This is why my client intimated at our meeting that he believes that a great many, perhaps even the majority of other towing operators, have base rock in their towing storage areas for vehicles and were approved as "paved" or having an "other" approved surfaced area and remain approved since 2011. My client broached this subject not to show that such towing companies are not in compliance, but as further evidence that my client was treated as other towing companies at the time who were also approved having base rock as an "other approved surface" in 2011. Mr. Sanchez confirmed to me that he recalls many towing companies were also approved in 2011 with base rock, not paved asphalt, in their storage yard areas.

Given this information, we respectfully request that you and/or Ms. Clark please inform the FPD/City Attorneys that Bauer's base rock in the tow storage area for vehicles was approved in 2011 and therefore is not an issue, as Mr. Sanchez was able to clearly put this to bed. Bauer's can then re-commence towing under the current TSA, as recently reinstated by the Independent Hearing Officer.

Should you and/or Ms. Clark desire to meet with us or speak to us further about this matter, please feel free to contact me. In support of our position, please find attached hereto Mr. Sanchez's Approval Letter dated August 5, 2011, Bauer's receipt from the \$510.00 application fee, and the Declaration of Mr. Sanchez.

Thank you for your time and assistance with this matter. I have very much enjoyed meeting and working with you, and my client and I found you to be professional, reasonable, and accommodating. Should you desire a summary of my arguments at our meeting in support of Bauer's position on interpreting Mr. Sanchez's approval letter, please feel free to let me know. We believe it dovetails exactly with our position, and Mr. Sanchez confirmed our interpretation of his letter to me when we met.

Regards,

Bradley K. Boulden

BRADLEY K. BOULDEN
Attorney at Law

355 E. Avante Ave.

Fresno, CA 93720

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EXHIBIT “E”

September 26, 2023

Ed Mason
Bauer's Auto Wrecking
317 West Voorman Avenue
Fresno, CA 93706

Please reply to:
Phillip Siegrist
559-621-8061
phillip.siegrist@fresno.gov

**SUBJECT: ZONING INQUIRY NO. P23-02357 FOR INFORMATION FOR PROPERTY
LOCATED AT 317 WEST VOORMAN AVENUE (ASSESSOR'S PARCEL NO.
458-040-22)**

Thank you for your letter of inquiry regarding zoning of the subject parcel. The requested information about Fresno Municipal Code (FMC) Zoning Ordinance compliance has been obtained from public records in the Planning and Development Department. The City of Fresno, on December 3, 2015, adopted a new Citywide Development Code, Chapter 15 of the Fresno Municipal Code. In addition, a citywide rezoning was passed by the Fresno City Council on February 4, 2016, and became effective on March 7, 2016. This zoning inquiry reflects the updated zone district classification changes to the property.

You requested the following information:

- Confirm zoning
- Confirm conformity

In addition, you requested the following information:

This is an application for a Zoning Inquiry related to real property located at 317 West Voorman Avenue (Assessor's Parcel No. 458-040-22). This Zoning Inquiry is related to the implementation of the March 30, 2023, Decision and Order by the City of Fresno Independent Hearing Officer wherein Bauer's Auto Wrecking and Towing was ordered to be reinstated to the current Tow Services Agreement and related Rotational Tow List within 14 calendar days of the issuance of such Decision and Order, during which the Fresno Police Department was to confirm that Bauer's Auto Wrecking and Towing meets all standards and requirements under the current Tow Services Agreement and all applicable Fresno Municipal Code, State and Federal Laws.

The undersigned previously requested a determination from the Planning Director confirming its operations was in compliance with applicable Fresno Municipal Code standards, and received an oral conveyance, from the City Attorneys Daniel Casas and Jennifer Nguyen-Bui that, Bauer's property was required to comply with the requirements of Fresno Planning Department's Policy and Procedure C-002, including standards of pavement. This request is to seek a written determination from the Planning Director regarding such matters, and to request that such decision take into account the information submitted in support of this application.

The request is for the Planning Director's written confirmation that the use of the subject property for a Tow Yard satisfies relevant zoning laws of the City, based on the following facts and evidence. Alternatively, the request is for the Planning Director's written statement of the specific circumstances that exist that result in a violation of such laws, and particularly any violations of Policy and Procedures No. C-002. The facts and evidence are continued in Exhibit 1 attached to this Application. Please also first focus on the second and third attachments, as the D-5-31-23 attachment is unable to be removed from this Application from prior working on this Application on June 26, 2023. Thank you.

This letter verifies that the subject assessor's parcel pertains to ±2.19 acres of property located between West Voorman and West Nielsen Avenues, west of North Thorne Avenue in Fresno, California. Research of the property reveals the following:

1. The subject parcel is located within the boundaries of the updated Fresno General Plan adopted on December 18, 2014. The Fresno General Plan may be accessed by clicking the following link: [Long-Range Plans & Development Code](#).
2. The Fresno General Plan and the Downtown Neighborhoods Community Plan designate the subject property as Employment – Heavy Industrial planned land use. These planning documents serve the community as tools for coordinating local policies and implementation programs and determining the strategy for the continued land use development within the city.
3. The subject property is located in the IH (*Heavy Industrial*) zoning district. Pursuant to the FMC [Chapter 15, Article 13](#), the IH Zone District is intended accommodate the broadest range of industrial uses on sites identified in the General Plan. It includes manufacturing, assembly, wholesaling, distribution, and storage activities that are essential to the development of a balanced economic base. Small-scale commercial services and ancillary office uses are also permitted. The IH zone district is consistent with the Employment – Heavy Industrial planned land use designation.
4. Surrounding properties are classified as follows:
 - North: IH (*Heavy Industrial*)
 - South: IH (*Heavy Industrial*)
 - East: IH (*Heavy Industrial*)
 - West: IH (*Heavy Industrial*)
5. The subject property is currently developed and utilized as a Tow /Automobile Impound Yard (Bauer's Towing/Auto Wrecking).
6. Pursuant to FMC Section 15-6704 (Commercial Use Classifications), the existing use would be classified as Towing and Impound, which is a sub classification of the more general Automobile/Vehicle Sales and Services. Towing and Impound is defined as follows:

- **Towing and Impound.** Establishments primarily engaged in towing light or heavy motor vehicles, both local and long distance. These establishments may provide incidental services, such as vehicle storage and emergency road repair services (for automobile dismantling, see Salvage and Wrecking).

7. Development of the subject parcel was facilitated by, and in accordance with, the following applications, policies, etc.:

- Annexation No. 890: the subject property was annexed into the City of Fresno on July 21, 1980.
 - Per aerial images made available from the Map and Aerial Locator Tool (MALT) the subject property does not appear to be operating as a as a Tow Yard prior to being annexed into the City of Fresno in 1980.
- According to available City of Fresno Business Tax Division records, Bauer's Towing has been continually operating at this site and has maintained a valid Business Tax Certificate since August 1, 1984.
- **Director's Classification No. 208** (2nd amendment), approved on June 16, 2010 (initially adopted January 24, 2006), permitted "Towing, Storage and Lien Sales of Impounded Motor Vehicles" in the:
 - 1) C-M and M-1 Districts, subject to a conditional use permit, and conditions contained below; and
 - 2) M-2 and M-3 Districts, as a use permitted subject to a site plan review, and conditions listed below.

Conditions:

1. The operator shall be approved by an established Governmental Law Enforcement Agency.
2. Storage lots must provide either a minimum of 5,000 square feet in area, or the capability to store a minimum of 20 vehicles.
3. A minimum six-foot high solid fence or wall shall enclose any outside storage area to screen the stored vehicles and other property from public view.
4. The operator shall provide adequate security of vehicles and property at the storage site.
5. Property other than motor vehicles is limited to personal property found inside the impounded vehicle.
6. A paved surface, or other approved alternative surface, shall be provided for any outside vehicle or vehicle parts storage area.
7. Retail sales shall be limited to lien sales of vehicles and/or personal property not claimed by the owner.
8. There shall be no dismantling of motor vehicles.
9. In the C-M zone district, these uses are not permitted on property that is within 200-feet of property planned or zoned for residential uses.

10. In the C-M zone district, this use shall not be allowed on property that is in or within 200-feet of an integrated office/industrial business park or shopping center.

- **Policy and Procedure No. C-002** dated June 14, 2011, provided City staff, tow yard business owners and the general public the ability to verify whether or not a Tow Yard was legally established and/or a legally allowable use on a specific site.

According to item No. 3 of Policy and Procedure No. C-002 and as it relates to the subject property and use:

- All existing tow yards established prior to January 24, 2006 that were not previously required to file a special permit application may be determined to be a legally operating tow yard if the following conditions are met:
 - i. The applicant must have a legal business license for a tow yard with the City of Fresno for the year 2005 that shows that the specific site in question was in operation as a tow yard at that time. If no such license exists, all business license fees must be paid and the operator must provide proof to the satisfaction of the Director that the tow facility was in operation prior to January 26, 2006.
 - ii. The site must have no open or previous code enforcement cases related to the operation of a tow yard.
 - iii. If the site is in compliance with items 3-i and 3-ii above, the applicant must submit a request with the City to verify compliance and pay a fee of \$510. The applicant must submit a site plan and pictures showing that the following two requirements have been met:
 - a. **The areas where cars or vehicle parts are stored and vehicles drive must be paved. This pavement must be constructed to Public Works Standard P-21. A grading plan and permit will be required for the installation of pavement** on a site.
 - b. The area where cars are stored must be completely screened from view from the public right-of-way or residential areas by a solid fence or wall. A chain link fence with slats is acceptable.

A complete request must include: A City of Fresno Special Permit application signed by the property owner, a site plan drawing (this site plan does not need to be drawn by a professional, but must be to scale and show all buildings, structures, and storage areas), a detailed operational statement, and pictures of the site showing that the site is in compliance with the conditions noted above.

- iv. A tow yard must comply with following operational conditions contained in Director Classification No. 208 as applicable:
 - a. The operator shall provide adequate security of vehicles and property at the storage site.

- b. The storage of property other than motor vehicles is limited to personal property found inside the impounded vehicles.
 - c. Retail sales shall be limited to lien sales of vehicles and/or personal property not claimed by the owner.
 - d. There shall be no dismantling of motor vehicles.
- v. A site that is not in compliance with items 3-i and 3-ii above must file a full special permit application in order to legally establish and operate as a tow yard in accordance with item #1 above.

According to procedures outlined in Policy and Procedure No. C-002, requests for verification are to be filed as a Zoning Inquiry and the applicant is to be given a letter (after all documentation is submitted and staff is able to verify compliance) that indicates that the subject tow yard is legally in operation.

➤ **Zoning Inquiry No. Q-11-035** (submitted July 7, 2011 under HTE Naviline No. PZ11-80000105) dated August 5, 2011 was prepared and processed in response to Policy and Procedure No. C-002 dated June 14, 2011.

- It is noted that the subject site, specifically the areas where cars or vehicles are stored and vehicles drive, is not paved nor constructed to Public Works Standard P-21 as required in accordance with policy item 3-iii-a.
- It is further noted that base rock material does not meet the standards detailed in Public Works Standard P-21. Additionally, it is noted that there are no records of grading plans and permits being submitted or pulled for installation of pavement on the site.

Therefore, the site is not in conformance with the standards and requirements outlined under Policy and Procedure No. C-002 dated June 14, 2011.

8. Pursuant to FMC Table 15-1302 (Land Use Regulations – Employment Districts), Towing and Impound is permitted in the IH zone district with an approved Conditional Use Permit and subject to additional regulations in accordance with FMC Section 15-2765 (Vehicle Impound Yard (Tow Yard) and Transit Storage).

➤ Pursuant to FMC Section 15-2765-A (Existing Facilities), Existing facilities established prior to January 24, 2006 may continue to operate subject to the following conditions:

- 1) Compliance with all Conditions of Project Approval per the pertinent entitlement.
- 2) If an entitlement was not required per zoning regulations, the applicant shall provide evidence, satisfactory to the Director, that the facility:
 - a) Was established prior to January 24, 2006 and that the use has been in continuous use;
 - b) The site has had a valid business license since January 24, 2006; and
 - c) The site does not have any outstanding items from Code Enforcement.

9. The existing use was not established with an approved Conditional Use Permit or other land use entitlement. However, the existing use was established prior to January 24, 2006 (as evidenced in the Zoning Inquiry No. Q-11-035) and has been in continuous use, has maintained a valid business license since January 24, 2006 and has no outstanding Code Enforcement violations related to the use (Tow Yard). Therefore, according to the current zoning ordinance and regulations for the IH zone district, the current use (Tow Yard) of the subject property is a legal non-conforming use which is subject to the provisions of FMC Section 15-404, Legal Non-Conforming Uses.

- **Continuation of Legal Non-Conforming Uses.** Except as otherwise provided in this article, any Legal Non-Conforming use may be continued indefinitely. No Illegal Non-Conforming use shall be continued unless such use subsequently comes into conformity with the applicable provisions of this Code.
- **Expansion of Legal Non-Conforming Uses.** A Legal Non-Conforming use shall not be expanded unless a Conditional Use Permit is granted for such expansion. Prior to issuance of a Conditional Use Permit, it must be determined that at least one of the following three circumstances exists: 1. The resultant use and/or project design will reduce current adverse impacts on adjacent properties and/or on the general public; 2. The resultant use and/or project design will aid in the preservation of a historic resource; or 3. The expansion of the use or the enlargement of a structure housing a non-conforming use is necessary to comply with a requirement imposed by law for the operation of the particular use, including, but not limited to, regulations for disabled access or seismic retrofit.
- **Change of Legal Non-Conforming Use.** A Legal Non-Conforming use shall not be changed to, or substituted for, another non-conforming use unless a Conditional Use Permit is granted for such change or substitution. To grant such a Conditional Use Permit the Director must first find that, in addition to the findings required by Section 15-404-B, the resultant use will be more consistent with the uses permitted in the district than the former use.
- **Abandonment of Legal Non-Conforming Uses – All Other Districts.** A Legal Non-Conforming use shall not be re-established in any structure if such Legal Non-Conforming use has ceased for a consecutive 12-month period within five years of January 3, 2016. Once the five year period from the effective date of this Code has passed, a Legal Non-Conforming Use shall not be re-established in any structure in a Non-Residential District if such Legal Non-Conforming Use has ceased for a consecutive period of 90 days or more.

This information was researched by the undersigned per the zoning request. The undersigned certifies that the above information contained herein is believed to be accurate and is based upon, or relates to, the information supplied by the requestor. The City of Fresno assumes no liability for errors and omissions. All information was obtained from public records held by the

Zoning Inquiry No. P23-02357
317 West Voorman Avenue
September 26, 2023
Page 7

Planning and Development Department, which may be inspected during regular business hours.

A copy of the FMC may be obtained by contacting the City Clerk's office at (559) 621-7650. The FMC may also be searched on the Internet, free of charge, by going to www.fresno.gov. If you have questions regarding this matter, please contact me by telephone at (559)621-8486 or at Phillip.Siegrist.gov.

Sincerely,



Phillip Siegrist
Planning Manager
Planning and Development Department

Attachments: Director's Classification No. 208 dated June 16, 2010
Policy and Procedure No. C-002 dated June 14, 2011
City of Fresno Department of Public Works Standard P-21
Zoning Inquiry No. Q-11-035 dated August 5, 2011 (HTE Naviline No. PZ11-80000105)
Material Submitted by Applicant

EXHIBIT “F”

DECLARATION OF ED MASON
IN SUPPORT OF BAUER'S AUTO WRECKING
AND TOWING'S PLANNING COMMISSION APPEAL,
APPEAL NUMBER P23-03471

I, EDWARD MASON, declare as follows:

1. I am over the age of 18 and a resident of California. I have personal knowledge of the following facts and could testify competently to them if called to do so. The facts set forth herein are personally known to me and, unless otherwise noted, are based on my firsthand knowledge and/or observation.

2. I am an owner of Bauer's Auto Wrecking & Towing ("Bauer's).

3. Attached hereto as Attachment 1, are three (3) true and correct copies of aerial images I had taken of Bauer's subject vehicle storage lot on or about November 28, 2023. These images show Bauer's lot—with base rock removed—clearly indicate a "paved" area compared to an image set forth in Paragraph 4 below. The other images in Attachment 1 show the "paved" portion of Bauer's lot is at least 5,000 square feet (5,700 square feet and up to and possibly larger than 6,800 square feet).

4. Attached hereto as Attachment 2, is a Google Earth photograph of Bauer's subject vehicle storage lot dated November 5, 2023, wherein this image seems to not delineate a "paved" area, and may appear as if the entire subject storage lot is a dirt or base rock-laden lot. This is because I added base rock to the storage yard area where I was instructed to do so by Planning Manager Michael Sanchez, as needed, after August 5, 2011.

5. Attached hereto as Attachment 3 is a true and correct copy of the relevant pages of Honorable Independent Hearing Officer's Decision and Order dated March 30, 2023

6. Attached hereto as Attachment 4 is a true and correct copy of the relevant pages of the 2018 FPD Tow Service Agreement.

7. Attached hereto as Attachment 5 is a true and correct copy of the relevant pages of the 2011 FPD Tow Service Agreement.

8. Attached hereto as Attachment 6 are a true and correct copy of a Google Earth image and personal photograph I took of **Romo's Towing**. Romo's Towing is an FPD TSA tow

1 company dating back to at least 2010. I am informed and believe that these photographs
2 illustrate that Romo's has an overflow lot that seems to be dirt and/or out of C-002 compliance
3 as indicated by the "O/F" mark thereon.

4 9. Attached hereto as Attachment 7 are a true and correct copy of a Google Earth
5 image and personal photograph I took of **Ray's Towing** (2 photographs total). Ray's Towing is
6 an FPD TSA tow company dating back to at least 2010. These photographs illustrate that Ray's
7 not only has an overflow lot that seems to be out of C-002 compliance (dirt and not paved), but
8 also fails to have required fencing "slats" or the like to hide the FPD towed vehicles from view
9 required in C-002, paragraph 3.b. therein. Photograph 2 of Attachment 7 also illustrates that **D**
10 **& K Towing** has the same issue as Ray's Towing—an overflow lot that seems to be out of C-
11 002 compliance (dirt and not paved).

12 10. Attached hereto as Attachment 8 is a true and correct copy of a Google Earth
13 image dated November 5, 2023 of **Reyna Towing**. Reyna Towing is an FPD TSA tow company
14 dating back to at least 2010. I am informed and believe that these photographs illustrate that
15 Reyna's has an overflow lot that seems to be dirt and/or out of C-002 compliance as indicated by
16 the "O/F" mark thereon.

17 11. Attached hereto as Attachment 9 is a photograph I took of **Nelly's Towing** on or
18 around November 5, 2023. Nelly's Towing is an FPD TSA tow company dating back to at least
19 2010. Like Ray's Towing, as of the date of this photograph, Nelly's was not forced to comply
20 with C-002, paragraph 3.b., requiring its fence and the vehicles therein to be covered from the
21 public's view.

22 12. Attached hereto as Attachment 10 a true and correct copy of a Google Earth
23 image dated November 5, 2023 of **Kevin's Towing**. Kevin's Towing is an FPD TSA tow
24 company dating back to at least 2010. Like Ray's Towing, as of the date of this photograph,
25 Kevin's was not forced to comply with C-002, paragraph 3.b., requiring its fence and the vehicles
26 therein to be covered from the public's view.

27 ///

28 ///

1 I declare under penalty of perjury under the laws of California that the foregoing is true and
2 correct, and that this declaration was executed in Fresno, California on December 28, 2023.

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Edward Mason

ATTACHMENT “1”



Hardscape
Hardscape01
Area: 5776.77 ft²
Perimeter: 433' 0.82 ft/m
Show in Library

Scale: 100.0 %

3D Orientation: Object

Rotate X: 0.0 °
Rotate Y: 0.0 °
Rotate Z: 0.0 °



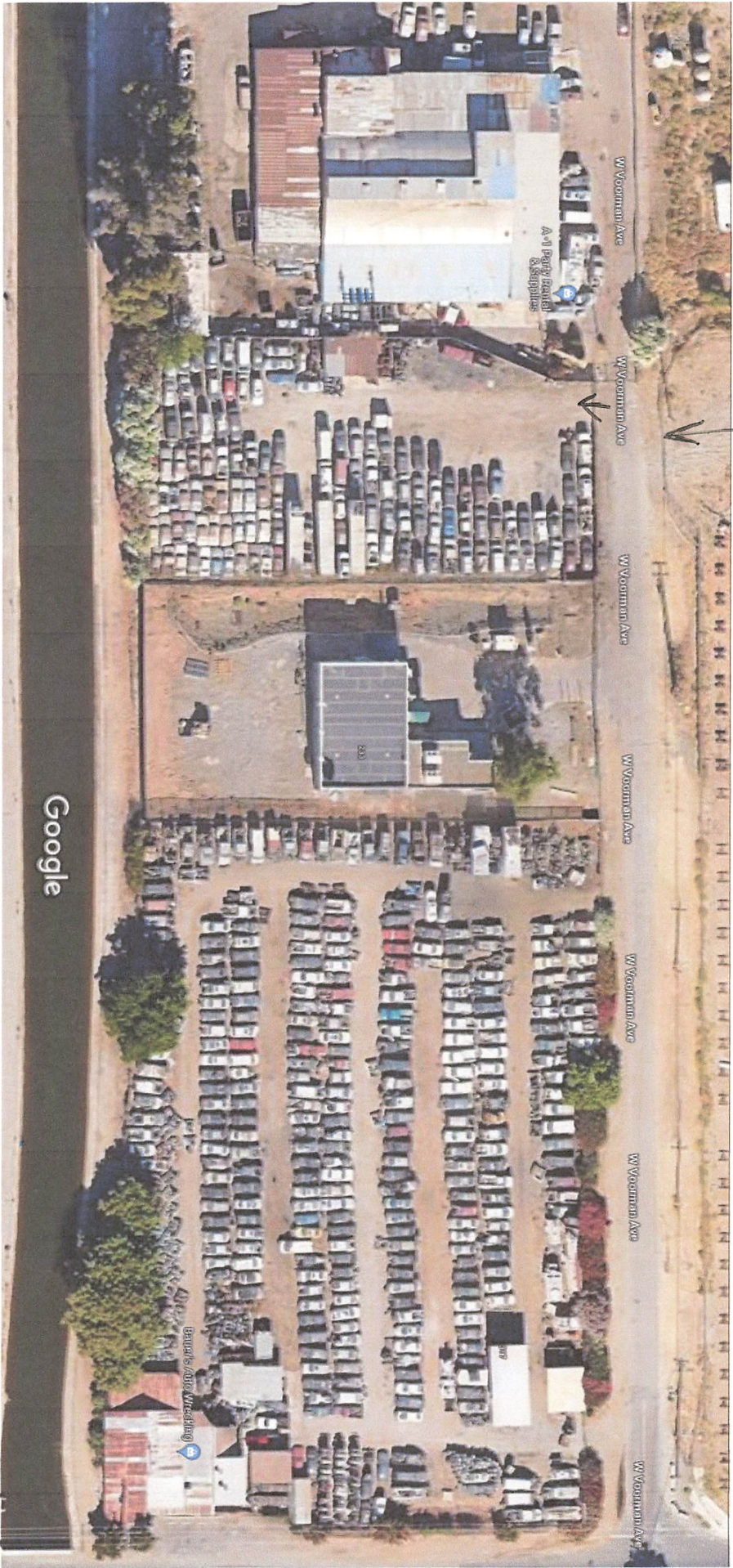


Hardscape
Hardscape01
Area: 6850.97 ft²
Perimeter: 457' 8.77 ft/m
Show in Library

Scale: 100.0 %
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ATTACHMENT “2”

Google Maps



Google

Imagery ©2023 Airbus, Maxar Technologies, U.S. Geological Survey, Map data ©2023 Google 50 ft

Spencer

ATTACHMENT “3”

**OFFICE OF THE INDEPENDENT
ADMINISTRATIVE HEARING OFFICER
CITY OF FRESNO, CALIFORNIA**

In the Matter of a Public Hearing on the
Determination of Whether Appellant Bauer's
Auto Wrecking & Towing, 103 North Thorne
Avenue, is to be Reinstated to the Current
Towing Services Agreement

**DECISION AND ORDER
OF
ADMINISTRATIVE HEARING
OFFICER**

March 30, 2023

On February 27, and March 8, 2023, at Fresno City Hall room 2165A, a public hearing was conducted to determine whether Bauer's Auto Wrecking & Towing, located at 103 North Thorne Avenue ("Appellant" "Bauer's", "Ed Mason", or "Mr. Mason"), is to be reinstated to the current Tow Services Agreement ("TSA") administered by the Fresno Police Department, Tow Unit ("Police Department", "FPD", "Tow Unit", or "City").

I. PRIOR HEARINGS AND DECISIONS

A. Termination from 2018 TSA: The appeal hearings on the termination of Appellant's tow company, "Bauer's Wrecking and Towing" from the 2018 TSA were held on March 10, and 29, 2022. The "Decision and Order of the Administrative Hearing Officer" ("May 24 Decision") was issued on May 24, 2022. In the "May 24 Decision", the Hearing Officer determined that the "Termination of the City of Fresno Non-Exclusive Tow Service Agreement" ("Notice of Termination") dated February 3, 2021, issued to Appellant by the City of Fresno Police Department Tow Unit be dismissed, and pursuant to Section 23 of the "Tow Services Agreement" fully executed by both parties on April 26, 2018, reasonable Attorney Fees and legal expenses be awarded to Appellant in an amount subject to proof. The Hearing Officer also expressly reserved the right to determine the amount and the method of awarding "make-up tows" as requested in Appellant's "prayer" found in his Counsel's "Closing Statement" if after "good faith" negotiations the parties could not agree as to this issue. As to both the awarding of attorney's fees and the determination of the number of "make-up tows", or in the alternative the monetary equivalent of the appropriate number of "make-up tows", both parties were to meet and confer in good faith to attempt to come to an agreement as to both issues. Only if the parties after good faith efforts of specifically defined periods of time could not come to an agreement on those issues could they request that the Hearing Officer schedule a hearing to allow the parties to argue the issues to the Hearing Officer and to allow the Hearing Officer to issue a decision regarding those issues.

The Hearing Officer also directed the parties in the “May 24 Decision” to meet and confer in good faith regarding the issue of whether Appellant would be reinstated onto the current TSA.

V. DECISION and ORDER

For the reasons provided above, the Hearing Officer finds as follows:

1. As to the documents (one-from each party) regarding the disciplinary actions relating to “Mel’s Towing” and whether “Mel’s Towing” was in “good standing” under the 2007 TSA at the time of its expiration; with the Appellant’s document tentatively marked as “Appellant Exhibit #4”, and the City’s document tentatively marked as “City Exhibit #D”, both documents are found not to be relevant, and are excluded.
2. For the reasons provided in Section IV, “Issues on Appeal”, Subsection F(1) of this “Decision and Order”, and Section 34 of the “Tow Services Agreement” fully executed by both parties on April 26, 2018, Appellant is to be reinstated to the current “Tow Services Agreement” and related “Rotational Tow List” within 14 calendar days of the date of the issuance of this “Decision and Order”. The Fresno Police Department Tow Unit will utilize the 14-day period to confirm with Appellant that his towing operation, doing business as “Bauer’s Auto Wrecking and Towing” meets all standards and other requirements pursuant to the current Tow Services Agreement and all applicable Fresno Municipal Code, State, and Federal laws, and for both parties to fully execute all necessary documents to carry out this order. Further, Appellant shall be included in the Tow Services Agreement presently being prepared for review, approval by the City Council, and execution by the Fresno Police Department, participating Tow Operators, and the City.
3. For the reasons provided in Section IV, “Issues on Appeal”, Subsection F(3) of this “Decision and Order”, and Section 23 of the “Tow Services Agreement” fully executed by both parties on April 26, 2018, Attorney’s Fees are awarded to Appellant for all relevant, compensable activity by his Attorney Brad Boulden regarding the issue of reinstatement to the TSA, subject to proof. As to hourly rate, Appellant will be compensated at the rate charged by Attorney Brad Boulden from the time Appellant was informed by the Fresno Police Department Tow Unit orally at the appeal hearing conducted on December 13, 2022 to the present. Additionally, said attorney’s fees are due and payable no later than thirty (30) calendar days from the date either Appellant or Attorney Boulden provides written invoices or other proof satisfactory to the City and/or FPD for such fees. Any payment of the attorney’s fees awarded herein paid after the 30 days shall be charged an additional ten percent (10%) interest on the outstanding amount due on the 31st day.
4. Both parties are directed to be diligent and use their best efforts in good faith to execute all tasks necessary to carry out and complete the Hearing Officer’s directives found in paragraphs 2 and 3 above within the time periods provided. Should both parties after good faith efforts fail to carry out and complete said directives with the given time period, the parties are directed to meet and make a good faith attempt to come to a mutually agreeable new or alternative deadline agreement in which to carry out and complete those directives. Should these efforts not result in an agreement, then the parties may jointly request in writing that the Hearing Officer consider argument from both parties and determine a new/extended

deadline for compliance with Hearing Officer's directives found in Paragraphs 2 and 3 above, and the possible awarding of any damages should he find that either party did not act in good faith when attempting to meet the original deadlines imposed by this "Decision and Order" pursuant to the 2018 TSA and/or FMC §1-410(e).

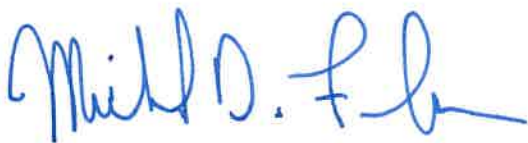
5. Pursuant to the reasons provided in Section IV "Issues on Appeal", Subsection F(2) above, the Hearing Officer denies Appellant's request for "make-up" tows or in the alternative the "monetary value" of the "make-up" tows for the time his company "Bauer's Auto Wrecking and Towing" was suspended and terminated from the "Tow Services Agreement" fully executed by both parties on April 26, 2018 until the present.

6. Pursuant to Fresno Municipal Code §1-410(e), the Hearing Officer expressly reserves jurisdiction on all issues necessary in making decisions or determinations involving any subsequent requests for appeals regarding the final disposition of the orders provided in paragraphs 2 and 3 above. The Hearing Officer also reserves the right to select the process under which any proceeding regarding the determination of a new or extended deadline for carrying out the Hearing Officer's directives as provided in paragraphs 2 and 3 above shall be conducted; including but not limited to limiting the presentations of parties' arguments solely to the submission of briefs and/or declarations, with no oral testimony to be allowed or considered.

NOTICE OF THE RIGHT TO APPEAL THIS DECISION

This is a final administrative decision as to what has herein been decided and ordered. The parties have ninety (90) days from the date of this Decision and Order to file a petition for a writ of administrative mandate of this Decision and Order, pursuant to Code of Civil Procedure section 1094.6. The appealing party may wish to seek the advice of an attorney in this regard.

Dated: March 30, 2023



Michael D. Flores
Independent Administrative Hearing Officer

ATTACHMENT “4”

**CITY OF FRESNO
NON-EXCLUSIVE FRANCHISE TOW AGREEMENT
FOR FRESNO POLICE DEPARTMENT**

This Non-exclusive Franchise Tow Agreement (TSA) is entered into effect on the "April 16, 2018" set forth below, at Fresno, California, between the City of Fresno, a municipal corporation (City) and Bauer's Auto Wrecking, a partnership, (the Tow Operator).

This Agreement, including all attachments, contains rules and regulations that a tow company agrees to comply with in order to participate in the tow operations of the City of Fresno Police Department (FPD). Participation in the FPD Rotation Tow Program (Tow Program) is voluntary. Compliance with all of the terms and conditions of the Agreement is mandatory for tow companies participating in the Tow Program. A Tow Operator, by agreeing to participate in the Tow Program, is not acting as an agent for FPD or City when performing services under this Agreement.

1. Governing Law and Venue

This Agreement shall be governed by, and construed enforced in accordance with, the laws of the State of California excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be the County of Fresno, California.

2. Entire Agreement

This Agreement, its attachments and exhibits, when accepted by the Tow Operator either in writing or commencement of performance hereunder, contains the entire Agreement between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein. No exceptions, alternatives, substitutes or revisions are valid or binding on City unless authorized by City in writing.

3. Amendments

No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on City unless authorized by City in writing.

4. Assignment or Sub Contracting

The terms, covenants, and conditions contained herein shall apply to the parties. Furthermore, neither the performance of this Agreement nor any portion thereof may be assigned or subcontracted by Tow Operator without the express written consent of City. Any attempt by Tow Operator to assign or subcontract the performance or any portion of this Agreement without the express written consent of City shall be invalid and shall constitute a breach of this Agreement.

5. Patent/Copyright Materials/Proprietary Infringement

Unless otherwise expressly provided in this Agreement, Tow Operator shall be solely responsible for obtaining a license or other authorization to use any patented or copyrighted materials in the performance of this Agreement. Tow Operator warrants that any Software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Tow Operator agrees that, in accordance with the more specific requirement below, it shall indemnify, defend and hold City and City Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.

6. Non-Discrimination

In the performance of this Agreement, Tow Operator agrees that it will comply with the requirements of section 1735 of the California Labor Code and not engage nor permit any Tow Operators to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Tow Operator acknowledges that a violation of this provision shall subject Tow Operator to all the penalties imposed for a violation of anti-discrimination law or regulation, including but not limited to, section 1720 et seq. of the California Labor Code.

related to, or involving this Agreement, unless City, on its own initiative, has already rendered such a final decision.

- 2) Tow Operator's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Agreement, Tow Operator shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Agreement adjustment for which Tow Operator believes City is liable.
- B) Pending the final resolution of any dispute arising under, related to, or involving this Agreement, Tow Operator agrees to diligently proceed with the performance of this Agreement. Tow Operator's failure to diligently proceed shall be considered a material breach of this Agreement.
- C) Any final decision of City shall be expressly identified as such, shall be in writing, and shall be signed by the City Hearing Administrative Officer, or Chief of Police, or his/her designee, as applicable. If City fails to render a decision within ninety (90) days after receipt of Tow Operator's demand, it shall be deemed a final decision adverse to Tow Operator's contentions. City's final decision shall be conclusive and binding regarding the dispute unless Tow Operator commences action in a court of competent jurisdiction.

29. Breach of Agreement

The failure of the Tow Operator to comply with any of the provisions, covenants or conditions of this Agreement shall be a material breach of this Agreement. In such event the City may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Agreement, undertake any of the individual actions or any combination of the following actions:

- 1) Afford the Tow Operator written notice of the breach and ten calendar days or such shorter time that may be specified in this Agreement within which to cure the breach;
- 2) Suspend and/or remove Tow Operator from the rotation;
- 3) Terminate the Agreement immediately, without any penalty.

The Parties hereto have executed this Agreement.

TOW OPERATOR:

By: [Signature] Title: Partner
Print Name: Edward Mason Date: 3/14/2018

TOW OPERATOR*:

By: [Signature] Title: Partner
Print Name: Sharon K. Baker-Mason Date: 3/14/18

*If a corporation or limited liability company, the document must be signed by two corporate officers. The first signature must be either the Chairman of the Board, President, or any Vice President. The second signature must be the secretary, an assistant secretary, the Chief Financial Officer, or any assistant treasurers. **In the alternative, a single signature is acceptable when accompanied by a corporate document demonstrating the legal authority of the signature to bind the company.**

CITY OF FRESNO,

A municipal corporation

By: [Signature] Date: 4/26/18
Jerry Dyer, Chief of Police

special operation until its conclusion and forfeit any rotational tow calls (FPD, California Highway Patrol, or other) received during the duration of the operation. "Good standing" shall mean that Tow Operator has not violated, or is not in violation of the terms of this Agreement, the provisions of the FMC, State, or Federal law. All special operations tows will be subject to the provisions of this Agreement. Tow Operator shall respond to a special operation with a flatbed tow truck with the capability of towing (2) vehicles.

4. Signage and hours of Operation

The storage yard or business office shall have a sign that clearly identifies it to the public as a towing service. The sign shall have letters that are clearly visible to the public from the street and must be visible at night. Tow Operator shall maintain all signage required pursuant to CVC sections 22850.3 and 22651.07 and include an after-hours contact phone number for Tow Operator.

All storage facilities must be accessible to City personnel, and for customer service including the release of vehicles twenty-four (24) hours per day and seven (7) days per week. Tow Operators shall respond to the release of vehicles within one hour of notification.

5. Response Time

Tow Operator shall respond to calls twenty-four (24) hours a day, seven (7) days a week, within the maximum response time limits as established by the Chief of Police or his/her designee. A reasonable response time is thirty (30) minutes or less, except during peak hours of 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m., (Monday through Friday), when the required response time will be extended to forty-five (45) minutes or less. Tow Operator shall respond with a tow truck of the class required to tow the vehicle specified by the DTS System.

6. Non-Response

This section is designed to ensure that Tow Operators respond to a tow when requested by the City. A Non Response in violation of this contract occurs when a Tow Operator fails to accept a call in DTS, fail/refuse to respond or declines a City requested tow.

The Tow Operator shall update the DTS System at the time of dispatch to a tow rotation request. If the Tow Operator is either unable to respond or unable to meet the maximum response time, the tow operator shall immediately update the DTS System accordingly. If, after accepting the call, the Tow Operator is unable to respond or will be delayed in responding, the Tow Operator shall immediately update the DTS system accordingly.

Each non-response will be immediately documented in the DTS System. Each non-response will be logged by the DTS System and reviewed by the City on a case by case basis. If the fault for the non-response is attributed to other than the Tow Operator, the Tow Operator will be placed back in the rotational list and called at the next opportunity in line.

Non Responses, determined to be the fault of the Tow Operator, will be handled as outlined in Section 33 Minor Violations.

When a Tow Operator will be temporarily unavailable to provide services due to preplanned/scheduled activity, such as a vacation, maintenance, medical leave, etc., the Tow Operator will notify City in writing via the DTS system at least forty-eight (48) hours in advance. City reserves the right to deny these requests to maintain adequate service levels for tow operations. Failure to notify the City will be considered a non-response.

7. Storage Responsibilities

It shall be the duty of the Tow Operator to provide impound and other storage service for all vehicles as directed by the City. The Tow Operator shall be responsible for all vehicles, accessories and equipment thereon and all personal property therein stored by Tow Operator. It shall be the Tow Operators' duty to protect such stored vehicles, accessories, equipment, and property against all loss or damage by fire, theft or other causes. The Tow Operator will have available for review by City personnel, all permits and proof of compliance to all local zoning, special use, conditional use and special requirements, laws and regulation. It is the responsibility of the Tow Operator to ensure vehicles are stored in a secured facility.

8. Size and Location of Storage Facility

All vehicles stored or impounded as a result of a tow ordered by the City shall be towed directly to a towing service storage lot unless the City, or in the case of a citizen's assist, a person legally in charge of the vehicle requests that it be taken to some other location. All vehicles towed as a result of action taken by the City will be

stored at the Tow Operator's principal place of business unless directed otherwise by the City's Tow Coordinator. Vehicles stored at an unauthorized storage facility will be considered a breach of this Agreement.

The tow yard shall be located within the City of Fresno's "Metropolitan Area." Metropolitan area is defined as within the borders of Copper Avenue to the north, American Avenue to the south, DeWolf Avenue to the east, and Chateau Fresno to the west. If the tow facility is located outside the City of Fresno, the tow operator is required to provide written proof that the yard is in compliance with the authorizing jurisdiction. All current tow yards contracted with the City of Fresno shall be in compliance with the current Development and Resource Management Department's Policy and Procedure C-002. Any new tow yards would follow FMC 15-2765 Land Use Regulations, Towing and Impound, Vehicle Impound Yard and Transit Storage requirements. The storage facility and business office will be located at the primary storage yard and shall be maintained in a functional, clean and orderly fashion. The facility shall have a telephone, on-site fax machine and the necessary computer equipment to properly run DTS software and to send and receive email.

In the event of criminal activity at a storage facility, the City may require the Tow Operator to take measures to assist in preventing such crimes. These measures could include, but are not limited to: the yard being illuminated during darkness, with security type lighting, to such a degree that visual observation of the entire yard may be accomplished at all times, improved fencing and/or security patrols.

Tow Operator shall be responsible for the security of vehicles and property at the place of storage. Tow Operator is responsible for the reasonable care, custody, and control of any property contained in towed or stored vehicles. The Tow Operator shall not remove personal property from a stored vehicle. Personal property is considered to be items which are not affixed to vehicle. If the registered owner removes personal property from a stored vehicle, the Tow Operator will maintain documentation of such and will require a signed receipt from the registered owner for property released. The Tow Operator shall immediately notify the City if any contraband, weapons or hazardous materials are found in the vehicle(s).

Tow Operators will ensure anyone with access to their facility will be authorized under the terms of this agreement as outlined in Section 12 of Attachment A, Sections, E and G. Any independent contractor requiring temporary access to the towing facility, such as utilities workers, landscapers, etc., must be monitored or supervised at all times.

9. Enclosed Facility

The Tow Operator may maintain, without charge to the City, separate and enclosed garage facilities no less than 1,000 square feet of clean working space. The facility must be constructed to include a roof and at least four walls of substantial design to withstand the elements and protect the vehicles from the weather. The facility should have a concrete floor and sufficient lighting. This inside facility must be located at the Tow Operator's primary storage yard. This inside facility is not required to qualify for the City's rotation, however, when inside storage is requested for a particular vehicle, the next Tow Operator in line meeting the needs of the City's request will be used.

10. DTS Requirements

Tow Operator shall utilize the most recent, updated and upgraded DTS software program, to dispatch and track, via a web-based Internet connection. Tow Operators will be required to enter the towed vehicle information as instructed by the City. At no time will a vehicle be released, subject to lien, or junked from impound without all required data fields being entered into the DTS system by the Tow Operator. The Tow Operator shall clearly identify and enter into DTS the name of the person to whom the vehicle was actually released. All City tow requests shall be made utilizing this program. Failure at any time to have the DTS program in full operation shall cause the immediate removal of the Tow Operator from the tow rotation and be grounds for immediate termination by City. Tow Operator must enter into a separate agreement, or license for the DTS software program with the owner of that proprietary software. The City shall not provide the DTS software program, any licensing or sub-licensing thereof or any intermediary services for the procurement by Tow Operator of the DTS software program. This Agreement shall not be executed by the City until Tow Operator has demonstrated to the City's satisfaction compliance with the requirements set forth herein. Tow Operator shall be liable for all fees, charges, prices, rates and service charges required from DTS. DTS shall be utilized in "real time" and all entries should reflect as such. Invoices shall be used from DTS when releasing vehicles and be pursuant to section 22651.07 of the CVC. The only Tow Operator personnel authorized to utilize and access DTS are those that have fully complied with the provisions set forth in Section 12, "Tow Operator Personnel" of this Agreement. If the Tow Operator is not in FULL compliance with the above stated requirement, the Tow Operator will be removed from the City towing rotation. In the event that DTS fails to provide software services, or the City elects to utilize a new software provider, the Tow Operator will be required to use the replacement towing software

In the event FPD serves Tow Operator with disciplinary action amounting to a suspension in excess of thirty (30) days, or termination of the TSA, the Tow Operator may request a hearing within fifteen (15) calendar days by submitting an appeal in writing to the Administrative Hearing Officer by way of the City Manager's Office. The written appeal shall be in compliance with FMC sections 1-407 and 9-1712. Notwithstanding any provision within Chapter 1, Article 4 of the FMC, any person who appeals a suspension in excess of thirty (30) days, or a termination of the TSA shall not be entitled to placement on the Tow Rotation List or to participate in tows until such time as any appeal hearing has been concluded and the Administrative Hearing Officer finds that no grounds for a suspension in excess of thirty (30) days, or a termination of the TSA has been established. Tow Operator's remedy shall be limited to reinstatement on the tow rotation list in such case and no other compensation or consideration will be allowed.

ATTACHMENT “5”

**CITY OF FRESNO
NON-EXCLUSIVE FRANCHISE TOW AGREEMENT
FOR FRESNO POLICE DEPARTMENT**

This Non-exclusive Franchise Tow Agreement (TSA) is entered into effect on the "effective Date" set forth below, at Fresno, California, between the City of Fresno, a municipal corporation (City) and [Tow Operator Name], [Legal Identity] (the Tow Operator).

This Agreement including all attachments contains rules and regulations that a tow company agrees to comply with in order to participate in the tow operations of the City of Fresno Police Department (FPD). Participation in the FPD Rotation Tow Program (Tow Program) is voluntary. Compliance with all of the terms and conditions of the Agreement is mandatory for tow companies participating in the Tow Program. A Tow Operator, by agreeing to participate in the Tow Program, is not acting as an agent for FPD or City when performing services under this Agreement.

1. Governing Law and Venue

This Agreement shall be governed by, and construed enforced in accordance with, the laws of the State of California excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be the City of Fresno, California.

2. Entire Agreement

This Agreement, its attachments and exhibits, when accepted by the Tow Operator either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire Agreement between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on City unless authorized by City in writing.

3. Amendments

No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on City unless authorized by City in writing.

4. Assignment or Sub Contracting

The terms, covenants, and conditions contained herein shall apply to the Parties. Furthermore, neither the performance of this Agreement nor any portion thereof may be assigned or subcontracted by Tow Operator without the express written consent of City. Any attempt by Tow Operator to assign or subcontract the performance or any portion thereof this Agreement without the express written consent of City shall be invalid and shall constitute a breach of this Agreement.

5. Patent/Copyright Materials/Proprietary Infringement

Unless otherwise expressly provided in this Agreement, Tow Operator shall be solely responsible for obtaining a license or other authorization to use any patented or copyrighted materials in the performance of this Agreement. Tow Operator warrants that any Software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Tow Operator agrees that, in accordance with the more specific requirement below, it shall indemnify, defend and hold City and City Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.

6. Non-Discrimination

In the performance of this Agreement, Tow Operator agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any Tow Operators to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Tow Operator acknowledges that a violation of this provision shall subject Tow Operator to all the penalties imposed for a violation of anti-discrimination law or regulation, including but not limited to, Section 1720 et seq. of the California Labor Code.

7. Termination

In addition to any other remedies or rights it may have by law, City has the right to terminate this Agreement without penalty immediately with cause and either party may terminate after thirty (30) days written notice without cause, unless otherwise specified. Cause shall be defined as any breach of agreement or any misrepresentation or fraud on the part of the Tow Operator. Exercise by City of its right to terminate the Agreement shall relieve City of all further obligation.

Signature Page

The Parties hereto have executed this Agreement.

Tow Operator:

By: _____ Title: _____
Print Name: _____ Date: _____

Tow Operator:

By: _____ Title: _____
Print Name: _____ Date: _____

*If a corporation, the document must be signed by two corporate officers. The first signature must be either the Chairman of the Board, President, or any Vice President. The second signature must be the secretary, an assistant secretary, the Chief Financial Officer, or any assistant treasurers. In the alternative, a single corporate signature is acceptable when accompanied by a corporate document demonstrating the legal authority of the signature to bind the company.

City of Fresno,

A municipal corporation

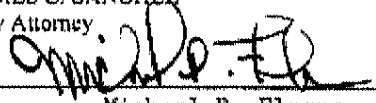
By: _____ Title: Chief of Police
Print Name: _____ Date: _____

By: _____ Title: City Clerk
Print Name: _____ Date: _____

APPROVED AS TO FORM

JAMES C. SANCHEZ

City Attorney

By:  _____ Title: Deputy City Attorney
Print Name: Michael D. Flores Date: October 14, 2011

ATTACHMENT A SCOPE OF WORK

1. Scope of Work

Tow Operator shall perform the towing, and storage of vehicles as directed by the City, and in addition, such other services as provided in this Scope of Work, and shall provide necessary storage facility, tow vehicles, labor, materials, equipment, machinery, and tools. The Tow Operator shall comply with all State laws and regulations, applicable to tow units and impound, towing, storage, selling or junking of vehicles. Tow operators must follow all guidelines set forth by equipment manufacturers recommendations as to their use and care of all towing related equipment. All permits and licensing fees as specified under California Vehicle Code (CVC) 34620 and California Vehicle Code 34334 shall be in full force and effect at all times during this Agreement. Any violation of this section will be considered a material breach of the Agreement and may result in immediate termination of this Agreement.

2. Towing Services and Duties

It shall be the duty of the Tow Operator, when so directed by the City, to provide prompt tow service for vehicles which are taken into custody by the City. This includes vehicles involved in collisions or disabled by any other cause, abandoned in public places or on private property. Vehicles impounded for evidence, impeding the flow of traffic, or which for any other reason, are within the jurisdiction of the Fresno Police Department. As required by law, Tow Operators are to remove from the street all debris resulting from said collisions and to clean the immediate area of such street. It shall also be the duty to provide for the safety and security of those vehicles and the contents thereof. These duties are inherent to the job and are to be included in the price of the basic tow bill.

The tow truck operator shall provide a business card to the registered owner or driver for the vehicle being towed. The business card shall contain the name, address and phone number of the tow company as well as the link to the vehicle search system in DTS as follows: www.findmytow.com

Tow truck operators and/or drivers will not be permitted to drive an impounded or recovered stolen vehicle or vehicle intended for storage from an FPD rotation call or special operation. Any exceptions must be at the direction of the FPD officer in charge of the scene and should be limited to repositioning the vehicle to allow for towing.

The City has designated two (2) tow companies (one (1) primary company and one (1) secondary company) for evidence impound tows and no other rotation tow company shall maintain custody over these vehicles at any time. If an officer impounds a vehicle for evidence and a non-preference rotational tow is dispatched, it is the responsibility of the tow driver to verify with the officer on scene as to whether a vehicle is to be held for evidence. If it is determined that the vehicle is to be held for evidence, the tow driver must immediately notify the officer on scene that the company is not authorized to handle evidence impounds and an evidence tow company shall be dispatched. Tow Operator shall then contact the Tow Unit on the same business day, or within the next business day if tow occurs after regular business hours. Acceptance of an evidence tow by a non-designated evidence tow company will result in disciplinary action and full financial responsibility for all tow and storage fees for each violation.

If terminated or suspended, Tow Operator and/or owner at the time of the suspension or termination, shall not be eligible for a rotation listing for the duration of the suspension or termination. The provision applies to the Tow Operator working in any capacity within any tow business or operating any tow business and to the tow business even if operated under new ownership.

Tow Operator shall not share equipment with any other tow company on, or applicant for, the Tow Rotation List, excluding equipment which may be unavailable due to repairs or when there is a need for equipment replacement and written notice has been obtained from FPD.

3. Special Operations

FPD conducts special operations coordinated through the Traffic Bureau throughout the year that requires tow companies at the location of the special operation. Tow companies on the Tow Rotation List that are in good standing with FPD may be invited to participate in these operations provided they are willing to remain with the special operation until its conclusion and forfeit any rotational tow calls (FPD, California Highway Patrol, or other) received during the duration of the operation. "Good standing" shall mean that Tow Operator has not violated, or is not in violation of the terms of this Agreement, the provisions of the Fresno Municipal Code (FMC), State, or Federal law. All special operations tows will be subject to the provisions of this Agreement. Tow Operator shall respond to a special operation with a flatbed tow truck with the capability of towing 2 vehicles. No ride alongs will be allowed on any special operations unless the ride along is the Tow Owner or a Tow Driver who is in training and has been approved by FPD.

8. Size and Location of Storage Facility

The tow yard shall be located within the City of Fresno's "Metropolitan Area." Metropolitan area is defined as within the borders of Copper Ave to the north, American Ave. to the south, DeWolf Ave. to the east, and Chateau Fresno to the west. Tow Operator shall be responsible for the security of vehicles and property at the place of storage. At a minimum, a 6 foot fence or enclosed secured area for outside storage. A minimum of 5,000 square feet or room for 20 vehicles shall be provided. All tow yards located within the City of Fresno shall be in compliance with the FMC, current Directors Class #208 and shall follow the current Development and Resource Management Department's Policy and Procedure C-002. If the tow facility is located outside the City of Fresno, the tow operator is required to provide written proof that the yard is in compliance with the authorizing jurisdiction. Tow Operator is responsible for the reasonable care, custody, and control of any property contained in towed or stored vehicles. The storage facility and business office will be located at the primary storage yard and shall be maintained in a functional, clean and orderly fashion. The facility shall have a telephone, on-site fax machine and the necessary computer equipment to properly run DTS software and to send and receive email.

In the event of criminal activity at a storage facility, the City may require the Tow Operator to take measures to assist in preventing such crimes. These measures could include, but are not limited to the yard being illuminated during darkness, with security type lighting, to such a degree that visual observation of the entire yard may be accomplished at all times, improved fencing and or security patrols.

All vehicles stored or impounded as a result of a tow ordered by the City shall be towed directly to a towing service storage lot unless the City, or in the case of a citizen assist person legally in charge of the vehicle, request that it be taken to some other location.

All vehicles towed as a result of action taken by the City will be stored at the Tow Operator's principal place of business unless directed otherwise by the City's Tow Coordinator. Vehicles stored at an auxiliary storage facility, will be considered a breach of Agreement. The Tow Operator shall not remove personal property from a stored vehicle. If the registered owner removes personal property from a stored vehicle, the Tow Operator will maintain documentation of such and will require a signed receipt from the registered owner for property released. The Tow Operator shall immediately notify the City if any contraband, weapons or hazardous materials are found in the vehicle(s).

9. Enclosed Facility

The Tow Operator may maintain, without charge to the City or any other person, separate and enclosed garage facilities no less than 1000 square feet of clean working space. The facility must be constructed to include a roof and at least four walls of substantial design to withstand the elements and protect the vehicles from the weather. The facility should have a concrete floor and sufficient lighting. This inside facility must be located at the Tow Operator's primary storage yard. This inside facility is not required to qualify for the City's rotation, however, when inside storage is requested for a particular vehicle, the next Tow Operator in line meeting the needs of the City's request will be used.

10. DTS Requirements

Tow Operator shall utilize the most recent, updated and upgraded Dispatch & Tracking Solutions software program (DTS), to dispatch and track, via a web-based Internet connection. Tow Operators will be required to enter the towed vehicle information as instructed by the City. This information must be entered into the DTS System by the Tow Operator before the 24 hour storage clock will start. Once the required information is entered into DTS, the DTS system will then automatically start the 24 hour storage timer. At no time will a vehicle be released, leased or junked from impound without all required data fields being entered into the DTS system by the Tow Operator. All City tow requests shall be made utilizing this program. Failure at any time to have the Dispatch & Tracking Solutions program in full operation shall cause the immediate removal of the Tow Operator from the tow rotation and be grounds for immediate termination by City. Tow Operator must enter into a separate agreement, or license for the Dispatch & Tracking Solutions software program with the owner of that proprietary software. The City shall not provide the Dispatch & Tracking Solutions software program, any licensing or sub-licensing thereof or any intermediary services for the procurement by Tow Operator of the Dispatch & Tracking Solutions software program. This Agreement shall not be executed by the City until Tow Operator has demonstrated to the City's satisfaction compliance with the requirements set forth herein. Tow Operator shall be liable for all fees, charges, prices, rates and service charges required from Dispatch & Tracking Solutions. DTS shall be utilized in "real time" and all entries should reflect as such. Invoices shall be used from DTS when releasing vehicles and be pursuant to Section 22651.07 of the CVC. The only Tow Operator personnel authorized to utilize and access DTS are those that have fully complied with the provisions set forth in Section 12, "Tow Operator Personnel" of the Agreement. If the Tow Operator is not in FULL compliance with the above stated requirement, the Tow Operator will be removed from the City towing rotation.

11. Official Notification by City Regarding Tow

Official notification by City regarding tow services is considered any form of written, email, verbal instructions or notifications

ATTACHMENT B
TOW FEES

Flat price per vehicle per call:

Light Duty Tow / Flatbed	\$ 180.00/Each
Medium Duty Tow	\$ CHP Rates Apply
Heavy Duty Tow	\$ CHP Rates Apply

Water Recovery: \$ CHP Rates Apply

Technology Fee:

DTS Software Fee Per Vehicle Towed \$ Charge listed in DTS Contract and DTS System

Storage Rates:

Passenger cars	\$ 40.00 /per day
Motorcycles	\$ 40.00/per day
Trucks or Trailers	\$ CHP Rates Apply

Inside Storage Rates:

Passenger cars	\$ 50.00 /per day
Motorcycles	\$ 50.00/per day
Trucks or Trailers	\$ CHP Rates Apply

Gate Fee: No gate fees may be charged between 8:00 a.m. through 5:00 p.m. Monday through Friday, excluding City recognized holidays as listed in the Agreement.

On Saturday and Sunday, between the hours of 8 a.m. and 12 p.m. a \$75.00 gate fee may be applied to the invoice in the DTS system. Any other after hours gate fee may be charged at all other times. The gate fee is not to exceed 50% of the flat rate charge for a light duty tow and may be charged to the vehicle's owner for releases or personal property recovery that occurs outside normal business hours (excluding lien fees, storage fees, taxes, or other additional fees.)

Gate fees for medium and heavy duty tows will be set at ¼ the CHP hourly rate for medium and heavy duty tows.

Non-tow service calls (out of gas, lockouts, and flat tires) shall not exceed one-half the flat rate charge for a light duty truck response.

City of Fresno Administrative / Franchise Fees:

Vehicle Collision Blocking a Roadway	\$ 60.00
Illegally Parked / Abandoned Vehicle	\$116.00
Unlicensed Driver / Expired Registration	\$189.00
Arrested / Suspended Driver	\$266.00
DUI Driver	\$450.00

All fees listed on the DTS invoice will be received in the form of major credit card, debit card or cash. No credit card fee will be charged pursuant to CVC 22651.1 and CCC 1748.1.

ATTACHMENT “6”



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7/0

Pen

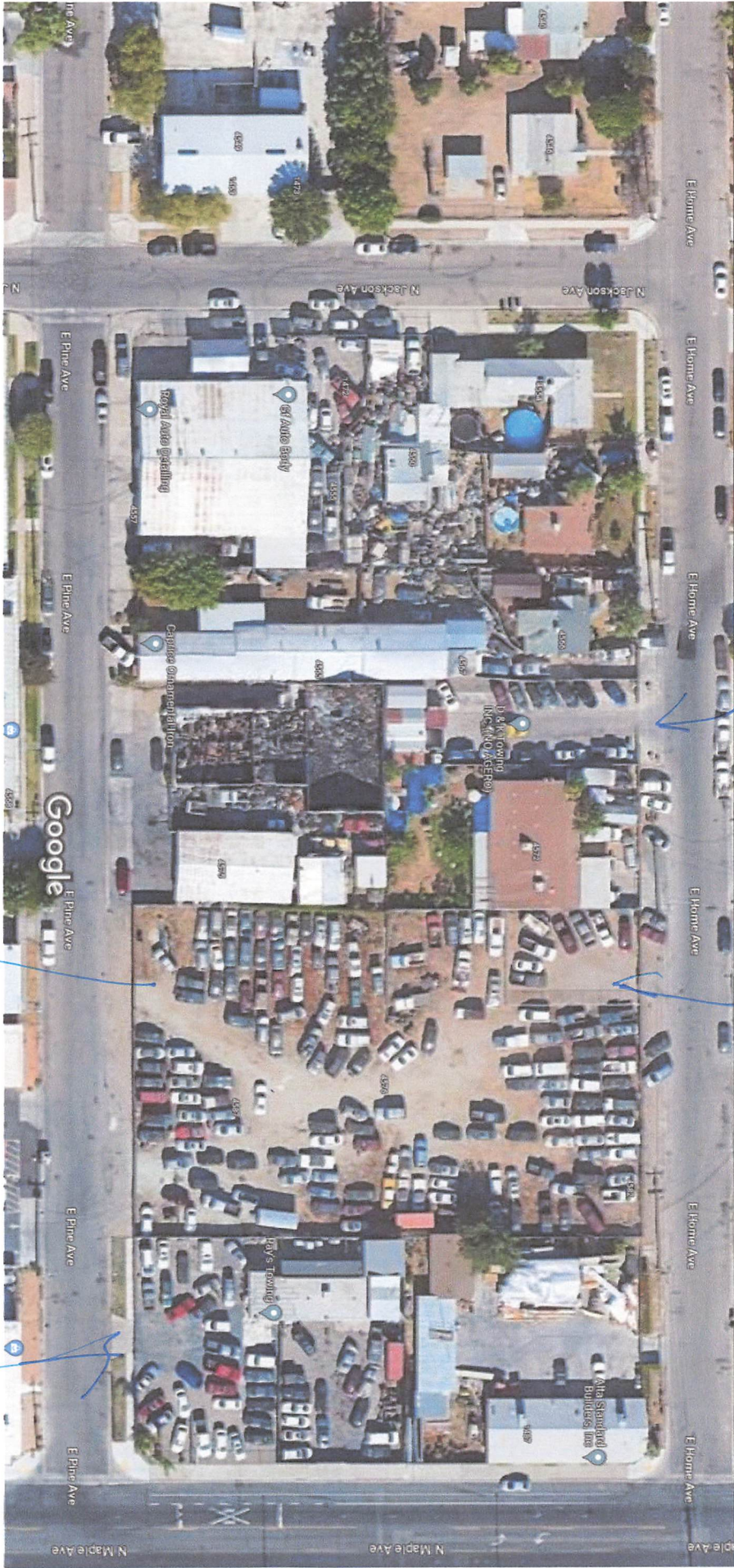
ATTACHMENT “7”



GROCERY
OUTLET
Sally's
BELMONT AVE

RAY'S
1483 N. W. 14th St. (954) 231-9344

Google Maps RAY'S & D&K



D&K

D&K over flow

RAY'S over flow

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ATTACHMENT “8”

Google Maps REYNA



Imagery ©2023 Airbus, Map data ©2023 Google 20 ft

Reyna

Reyna Over the

ATTACHMENT “9”



ATTACHMENT “10”

Google Maps

VENUES

OF



Imagery ©2023 Airbus, CNES / Airbus, Maxar Technologies, U.S. Geological Survey, Map data ©2023 Google 50 ft

New B.I.L

EXHIBIT “G”

FAX

To: BAUERS

Company:

Fax: 233-0513

Phone:

From: DalanR

Fax:

Phone: 559-621-5068

E-mail: Dalan.Richards@fresno.gov

NOTES:

FW: Compliance with Directors Code

Date and time of transmission: Thursday, June 30, 2011 3:28:38 PM
Number of pages including this cover sheet: 02

All Tow Operators.


Please make sure you contact Fresno Development and Resource Management Department as soon as possible to start the process for your Conditional Use Permit. Please read the forwarded email from Captain Hall. If you have any questions please contact me.

Officer Dalan Richards 847

Fresno Police Dept. Tow Unit


621-5068

From: Andrew Hall
Sent: Thursday, June 30, 2011 3:05 PM
To: Dalan Richards
Cc: Mike Sanchez; Richard Tucker
Subject: Compliance with Directors Code



Dalan;

I spoke to Planning Manager Mike Sanchez this afternoon and he indicated that as of today, only about half of the tow companies had contacted his office. He also indicated that none of our tow companies have completed the process and met the requirements of the Director's Code. Please remind the tow companies that per the City of Fresno Development and Resource Management Department, tow companies will not be allowed to participate in the New Tow Service Agreement until they have met the requirements of this code and we have received approval from Mike Sanchez's office.



Please forward this to our tow companies as a reminder.

Captain Andrew Hall

Traffic Bureau Commander

Fresno Police Department

(559) 621-5051