

Exhibit F – Appeal Letter

BRADLEY K. BOULDEN

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File No. 9800.02

October 10, 2023

RECEIVED

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Planning & Development Department
City of Fresno

Via Hand Filing

Jennifer Clark
Director
Planning Department
2600 Fresno Street #3043
Fresno, CA 93721

Re: Appeal of Zoning Inquiry P23-02357 to Planning Commission.

To Ms. Clark and The Planning Commission:

This appeal is made pursuant to Fresno Municipal Code ("FMC") Section 15-5017 and arises from the City of Fresno's Planning Department's September 26, 2023 letter and decision (the "Decision") concerning the application for a Zoning Inquiry No. P23-02357 related to real property located at 317 West Voorman Avenue (Assessor's Parcel No. 458-040-22).

The underlying 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 ("Bauer's") was ordered to be "reinstated" to the current Tow Services Agreement ("TSA") and related Rotational Tow List within 14 calendar days of the issuance of such Decision and Order, during which the Fresno Police Department ("FPD") was to confirm that Bauer's meets all standards and requirements under the current TSA and all applicable FMC, State, and Federal Laws. The FPD acknowledges Bauer's has complied with all necessary to again complete tows under the TSA except for one wrongfully claimed issue. Despite the fact that Bauer's unequivocally received approval to City of Fresno Policy and Procedure No. C-002, dated June 14, 2011 ("C-002"), which is evidenced in numerous ways herein below, the FPD and Planning Department refuse to acknowledge such approval. The FPD, with great bias and a blatant grudge against Bauer's, leans on the Planning Department's refusal to acknowledge this past and continuing approval. The FPD then errantly, wrongfully, and with actual knowledge of Bauer's 2011 approval, refuses to reinstate Bauer's to the FPD TSA and allow it to participate in tows thereunder.

This appeal is based on the underlying documents submitted in the Zoning Inquiry, as well as the documents submitted in support of this Appeal, and any other subsequently submitted documents and/or evidence or testimony at the hearing on this Appeal.

The Planning Department's six-page Decision/letter (attached hereto as Item 1) can generally be summarized as follows:

- 1) Bauer's Auto Wrecking's storage yard is not "paved" or constructed to Public Works Standard P-21 as required by 3-iii-a of C-002, therefore, it is not in conformance with Policy and Procedure No. C-002 dated June 14, 2011 (see Decision Page 5 under bolded section entitled: "Zoning Inquiry No. Q-11-035"); and
- 2) Because Bauer's was established in its current and continuous use prior to January 24, 2006, the subject property is a legal nonconforming use which is subject to the provisions of Section 15-404 of the Fresno Municipal Code and thus may continue to operate as a towing company in its originally approved capacity (See Decision top of Page 6, Section 9).

Specifically, the FPD relies on the first part of the Decision to hold that Bauer's cannot participate in the TSA—despite the fact the FPD was ordered to immediately place Bauer's back on the TSA (and provide it tows thereunder) and that Bauer's undoubtedly passed C-002 in August 2011. The Decision, which directly impacted the FPD's decision, fails, however, to acknowledge and confirm that the Planning Department approved Bauer's under C-002 in its decision and letter dated August 5, 2011. Accordingly, Bauer's should prevail in this Appeal to the Decision and at the coming hearing for the following reasons:

- 1) The Planning Department concedes in its Decision (Section 7, Page 5) that Bauer's submitted **Zoning Inquiry No. Q-11-035**, on July 7, 2011 (under HTE Navaline No. PZ11-80000105) in response to Policy and Procedure No. C-002 (C-002 dated June 14, 2011). Thus, Bauer's towing and storage yard were reviewed for C-002 compliance in 2011.
- 2) Attached hereto as Item 2 is the Planning Department's response to **Zoning Inquiry No. Q-11-035** dated August 5, 2011, addressed to Mr. Edward Mason (an owner of Bauer's Auto Wrecking and Towing) concerning the legal status of the subject property to support use as a Tow Yard. The decision confirmed that the use of a tow yard on this site was a **legal nonconforming use**. Item 6(a) of that prior Zoning Inquiry determination confirmed that the applicant was to maintain a paved services as delineated on its Exhibit A (an illustration made a part of the decision/letter). It also stated that the applicant was to, ". . . apply an additional layer of base rock, as necessary, within six months of that date of this letter, to those areas where towed vehicles will be stored."

Page 1 of this Letter at 6.a. also notes that, "*Applicant shall maintain a paved surface pursuant to the attached Exhibit A-1.*" This indicates that the City of Fresno's Planning Department reviewed the site and advised Bauer's that it was to maintain its paved surface

as it was indicated in Exhibit A-1 attached to that August 5, 2011 decision. It was not therein highlighted where any additional “paving” or the like was to be placed to comply with C-002.

Further, the Zoning Inquiry’s decision letter of August 5, 2011, regarding pavement was not a requirement of pavement to be constructed under Policy and Procedures No. C-002, which at item 3(iii)(a) requires pavement to be constructed in accordance with Public Works Standard P-21. Instead, the requirement was to use the base rock as the relevant pavement surface; and, to add more, as needed, withing six (6) months. This is evident from the fact that the August 5, 2011 decision described the base rock as being located in those areas where towed vehicle’s will be stored. It makes no mention of any further paving requirements. And, the decision letter did not disallow the use of towing and storing vehicles at the subject property. It was clearly communicated to Bauer’s that it was approved to tow and store vehicles by the Planning Department.

At Paragraph 9 of Manger Sanchez’s C-002 Approval Letter of August 5, 2011, further evidence that Bauer’s was approved is identified via the fact that this decision does not “legalize” any other uses on the subject site. It goes on to then list potential uses on the site “*that are NOT approved,*” which again confirms that Bauer’s was found to be in conformity with C-002 as a legal nonconforming use approved to “*continue to legally operate as a tow yard with lien sales*”, as is found in Paragraph 6 therein.

Moreover, the FPD, who required compliance with C-002 in order to sign and participate in Tow Service Agreements with the FPD in 2011 (October of that year), 2014, and 2018, allowed Bauer’s to sign all such agreements and participate in such contracts. Bauer’s was approved and its approval was never questioned, conditioned upon anything, or further reviewed following August 5, 2011.

- 3) Bauer’s was approved under C-002 is further evidenced by the Attached Item 3 hereto, which is the Declaration of Mr. Mike Sanchez, the prior City of Fresno Planning Manager, and the issuer of the August 5, 2011 Zoning Inquiry decision. Mr. Sanchez confirmed that the subject property received an evaluation in accordance with the requirements and standards of C-002. Mr. Sanchez also confirmed that he personally assessed those compliances based on the property’s status as a legal nonconforming use, and the authorities established by Condition 6 of Director’s Classification No. 208, Second Amendment, to authorize an approved “alternate” surface as the relevant pavement. Further, the City has neither subsequently repealed, nor modified Director’s Classification No. 208, as amended by its Second Amendment. (See Item 4 attached hereto.)
- 4) In Item 5 attached hereto (a fax to Bauer’s and all towers of an email from FPD Captain Hall to Officer Richards dated June 30, 2011), Captain Hall advised Officer Richards to let all current FPD TSA towing operators (Bauer’s included) know that Captain Hall spoke to Mike Sanchez on this day. Captain Hall advised Officer Richards to let all towing companies know that towing operators who have not “received approval from Mike

Sanchez's office" will not be able to be a tow company on the 2011 TSA. This email evidences the fact that both the Planning Department and the FPD knew Bauer's complied with C-002 in August of 2011 or Bauer's would not have been able to sign the 2011 TSA two months later. Such compliance should not be stripped from Bauer's due to any grudge by the FPD.

- 5) As is evidenced in a confirming email attached in Item 6 attached hereto, dated May 15, 2023, concerning a meeting on May 10, 2023, involving Ed Mason from Bauer's, Bauer's legal counsel, and Phillip Siegrist, the current City Planning Manager (Mr. Sanchez's former position), Mr. Siegrist provided that he had a problem with interpreting Mr. Sanchez's August 5, 2011 letter. Mr. Siegrist stated that he was not sure whether Mr. Sanchez approved Bauer's pursuant to C-002. But, Mr. Siegrist agreed that if Mr. Sanchez did approve Bauer's in 2011, this would not be an issue. It was not knowing for sure if Bauer's towing area storage surface was approved under C-002 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. Mr. Siegrist 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. Mr. Siegrist additionally provided that he had 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; and, that Mr. Siegrist was only 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.

Clearly, the Planning Department has been fixated only on whether or not Bauer's is current under C-002 as if its return to the FPD's TSA is as a new towing company—not taking into consideration that Bauer's was ordered to be "reinstated." This error has caused unjustness and unfairness to Bauer's, and the FPD knows Bauer's was approved in 2011 under C-002, as the FPD confirmed this with Bauer's at such time and let it execute the first of three (3) TSA's two (2) months later in October 2011. It subsequently never inspected Bauer's or any other tow companies and let those all companies that passed in 2011 sign TSA's in 2014, 2018, and extensions in 2021, 2022, and 2023. The only company that the FPD now claims has a C-002 issue, is Bauer's, after it prevailed at the aforementioned appeal and was ordered to be reinstated to the current TSA.

- 6) An email dated July 15, 2011 to Mike Sanchez, attached in Item 7, indicates that as of this date, it seems that subordinate to Mr. Sanchez, Bonique Emerson, had not presented to personally inspect Bauer's towing and storage yard, though Mr. Sanchez clearly had. The timing of the email evidences that the Planning Department was considering Bauer's property given the C-002 requirements as effectuated in June 2011. Mr. Sanchez seems to have visited the property prior to this date and subsequently visited the property thereafter. Mr. Sanchez testified (and will testify at a later hearing if called to do so) in his declaration that he approved Bauer's under C-002. This email specifically mentions that Mr. Sanchez would visit the property a week and a half or so after July 15, 2011, which is consistent with Mr. Sanchez's Declaration. Thus, the facts that: a) Bauer's is vehement it was told it

passed C-002 in 2011; b) Mike Sanchez testified unequivocally in his declaration that Bauer's passed C-002 in 2011; and c) Mike Sanchez visited the property right before issuing the August 5, 2011 decision, confirm that Bauer's did in fact pass C-002 compliance in 2011.

- 7) In the August 5, 2011 decision letter, the approval, once granted, is permanent unless or until the property is used in a manner that exceeds the authorization therein. The Approval Letter provides in Paragraph 7 on page 2 therein, provides that the non-conforming use of land may be continued as long as it meets three limitations: (1) the use is not expanded/extended; (2) the use is not changed; and (3) the use is not discontinued. (See Paragraph 7 on page 2 therein.)

Support for this position is furthered on page 2 of C-002 entitled, "Procedure", which specifically mentions that the portion relevant to Bauer's—given Bauer's existence as a tow unit with the same boundaries since the 1990's—is to verify its existence PRIOR TO DIRECTOR'S No. 208. This allowed Bauer's to be "grandfathered-in" and have its storage area surface approved as an "other approved surface", due to the fact it pre-dated Director's No. 208 and C-002.

- 8) In addition to the above, Planning Policy and Procedure C-002 does not provide for any further review of the granting of the Legal, Non-conforming Use for Bauer's. C-002 does not establish that towers who pass C-002 will have to subsequently comply with it. Article 50 of the Fresno Municipal Code entitled "Common Procedures" provides in Sections 15-5010 A. "Scope of Approvals" and D. "Periodic Review" suggests that without a condition or portion of the Approval Letter or C-002 providing for periodic review, such additional reviews are not proper unless and until the use of the property exceeds the scope of the Approval Letter or C-002. This is not the case here, as the September 26, 2023 Decision (see top of Page 6, Section 9) confirmed that Bauer's use has been continuous, unchanged, and not abandoned; thus, Bauer's can continue to operate as a towing and storage yard having a legal, non-conforming use. Thus, it's prior confirmed C-002 approval should continue—not only from the Planning Department, but from the FPD as well.

Based on the foregoing, we respectfully request that the Planning Commission make the finding that Bauer's did pass C-002 in 2011; thus, Bauer's continues to be C-002 compliant. If Bauer's would not have been approved, Bauer's would have spent monies quite differently in its business during such time to gain approval. It cannot go backwards. It is being falsely and wrongfully precluded from taking tows under the current TSA, despite the fact it was awarded placement thereon—through reinstatement (not a new application or newfound requirement to now meet C-002)—by the Independent Hearing Officer. Thus, to hold that Bauer's is not in compliance with C-002 misses the mark. It is unjust and unfair given Bauer's approval in 2011; therefore, the Planning Department should be estopped from denying Bauer's 2011 approval—especially given that Planning had in its file—and since May 2023 via the Declaration of Mike Sanchez—all relevant information to hold that Bauer's did pass C-002 in 2011 and is thus still in compliance therewith it. Accordingly, Bauer's respectfully requests that the Planning Departments Decision

Director Jennifer Clark
Fresno Planning Department
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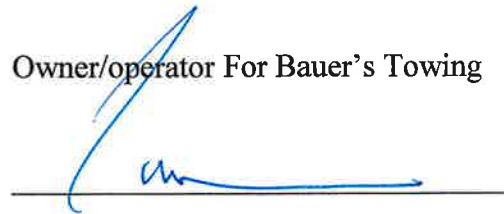
be overturned and that it be found that Bauer's complied with C-002 in 2011 and thus is still in compliance with this policy and procedure.

Signed as to form and content.

Owner/operator For Bauer's Towing

Dated:

10/10/2023



Ed Mason

Please feel free to contact my office to schedule a mutually agreeable date for the hearing on this appeal. Thank you for your assistance with this matter.

Respectfully Submitted,



Bradley K. Boulden

BKB:ivs

Encl.: Items 1-7 attached hereto
(41 total pages, including Items and letter)

ITEM "1"

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

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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

ITEM "2"



Development and Resource Management Department

Mark Scott, Interim Director

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

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).

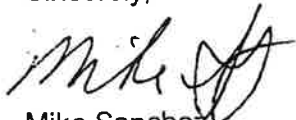
Thank you for your recent inquiry as to whether the existing tow yard on subject site is considered a legal non-conforming use. A review of the City of Fresno Municipal Code (FMC), the City of Fresno Official Zone Map, and review of permit, business license, code enforcement and entitlement records reveals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

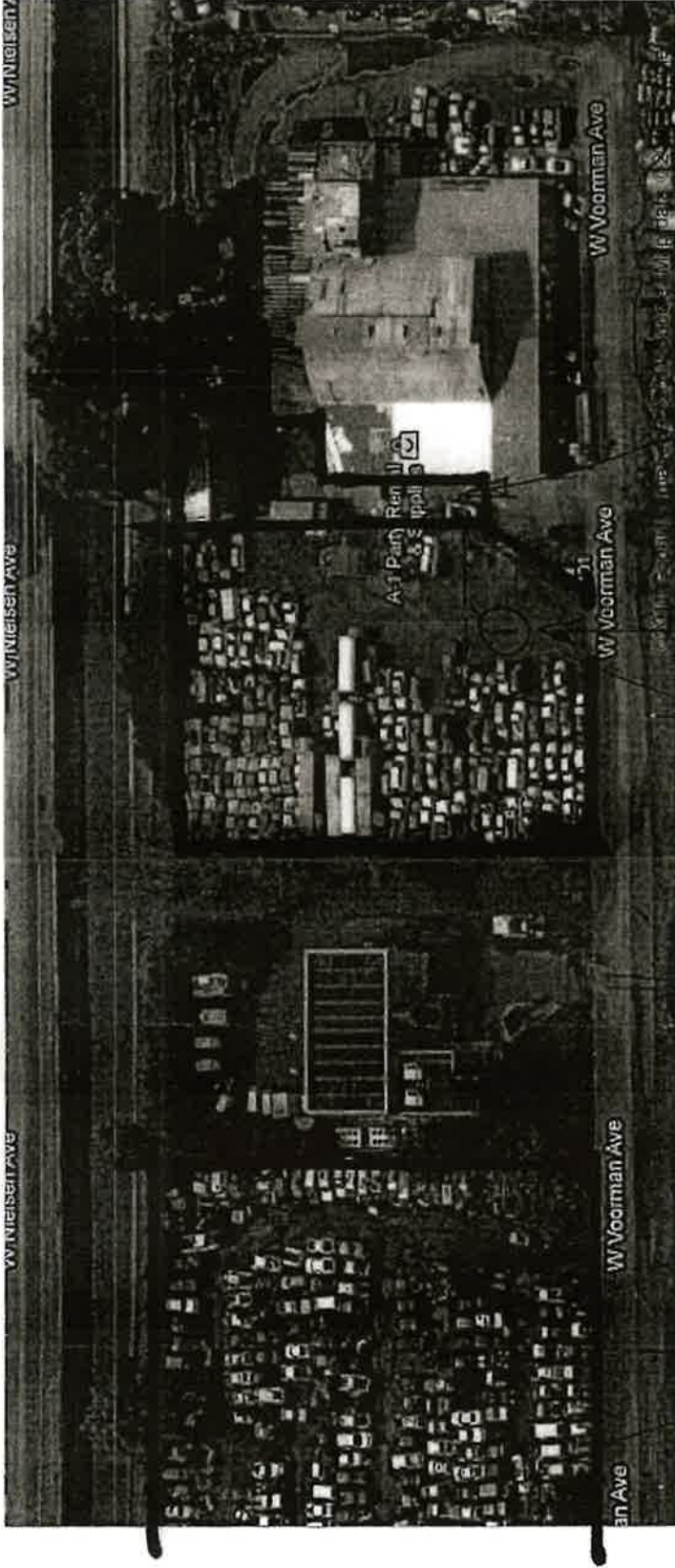


Mike Sanchez,
Planning Manager

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

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

Google maps



Auto Dismantling YARD.

HOUSE ADDRESS TO STORAGE AREA

STORAGE LOT AREA

FRONT PORTION of YARD FOR TUNED VEHICLES

NOTE
 to Apply Condition 6a per 8/5/11 Appeal letter.

BAUER'S AUTO WRECKING
 103 N. Thorne
 Fresno, CA 93706

EXHIBIT A-1
 8/5/11

ITEM "3"

1 **DECLARATION OF MICHAEL SANCHEZ**

2 I, MICHAEL SANCHEZ, declare as follows:

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

7 2. In or around August 2011, I was the City of Fresno's Planning Department
8 Manager. On or about August 5, 2011 before 8:00 am, and before my workday on campus at
9 City Hall began, I recall presenting at Bauer's Auto Wrecking & Towing (Bauer's) in Fresno,
10 California to do a final inspection on the property to make sure it was in compliance with Tow
11 Yards Policy and Procedure No. C-002, which included making sure that the areas where cars or
12 vehicle parts were stored and vehicles drive were "paved" or otherwise approved. I met Mr. Ed
13 Mason on behalf of Bauer's, and I recall that Bauer's had completed the necessary application,
14 paid the \$510.00 fees required under C-002 to become approved if he passed my inspection, and
15 submitted all other necessary application/paperwork/documents to pass C-002. All that remained
16 to approve Bauer's in compliance with C-002 was to pass my inspection on this day.

17 3. On the morning of August 5, 2011, on behalf of the Planning Department, I
18 specifically remember walking the property after having reviewed all documents necessary at the
19 time we met or prior to such inspection, and approving Bauer's, as I found that it passed C-002,
20 thereby allowing Bauer's to tow for the City of Fresno Police Department according to the City
21 of Fresno's Planning Department's requirements and C-002.

22 4. As is set forth in the letter attached hereto as Attachment "A" and in Exhibit "1"
23 attached thereto, in conjunction with Bauer's approval, Bauer's was only to add some base rock
24 to the areas where towed vehicles will be stored, "as necessary", within six (6) months; however,
25 Bauer's was fully approved by the City Planning Department and in compliance with C-002 at
26 the inspection on August 5, 2011.

27 5. At the time of my inspection on August 5, 2011, Bauer's vehicle storage area
28 approved contained base rock. This is why in my approval letter of August 5, 2011 (as in my

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



Michael Sanchez

ATTACHMENT "1"

August 5, 2011

Please reply to:
Mike Sanchez
(559) 621-8040

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).

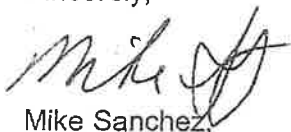
Thank you for your recent inquiry as to whether the existing tow yard on subject site is considered a legal non-conforming use. A review of the City of Fresno Municipal Code (FMC), the City of Fresno Official Zone Map, and review of permit, business license, code enforcement and entitlement records reveals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

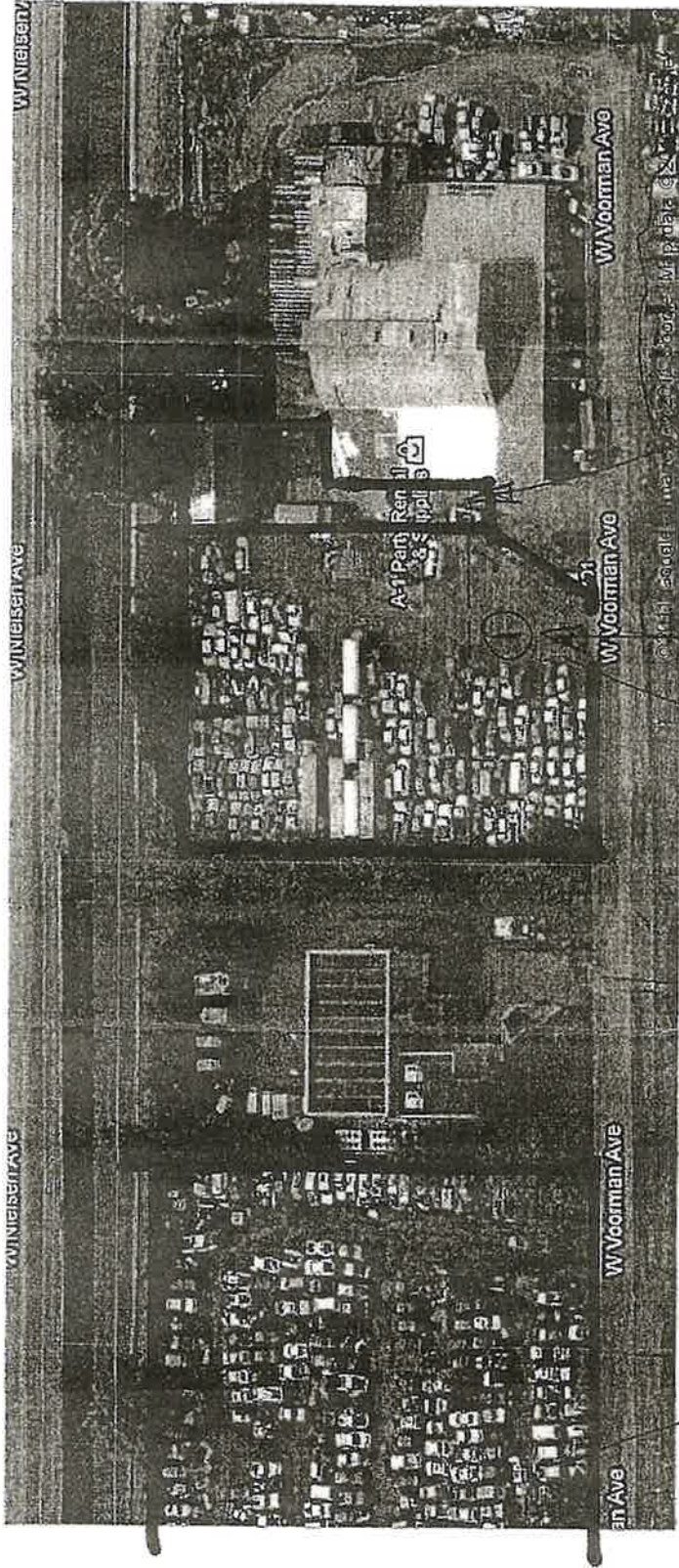


Mike Sanchez,
Planning Manager

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 on screen, use the "Print" link next



Auto Dismantling YARD

NOTE
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 TUNED VEHICLES

FRONT PORTION TO STORAGE AREA

EXHIBIT A-1
8/5/11

ITEM "4"



MEMORANDUM

DATE: June 17, 2010

TO: JOHN M. DUGAN, AICP, Director
Planning and Development Department

THROUGH: JERRY D. BISHOP, Assistant Director
Planning and Development Department

MIKE SANCHEZ, Planning Manager
Planning Division

FROM: BONIQUE SALINAS, Planner
Planning Division

SUBJECT: DIRECTOR CLASSIFICATION NO. 208 SECOND AMENDMENT. ORIGINALLY A REQUEST TO ADD "TOWING, STORAGE AND LIEN SALES OF IMPOUNDED MOTOR VEHICLES" AS A USE PERMITTED IN THE M-1, M-2 AND M-3 DISTRICTS. NEW REQUEST IS TO ALLOW THIS USE IN THE C-M DISTRICT.

DIRECTOR ACTION

The Director hereby approves this amendment of Director Classification No. 208 as follows:


Title: "Towing, Storage and Lien Sales of Impounded Motor Vehicles"

Zone District: C-M and M-1 Districts, subject to a conditional use permit, and conditions listed below.

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 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, these uses are not permitted on property that is in or within 200-feet of an integrated office/industrial business park or shopping center.


John M. Dugan, AICP, Director
Planning and Development Department


Date

This second amendment to Director Classification No. 208 has been requested by Mr. Raul Reyna of RR-M Reyna Towing. Mr. Reyna has requested that Towing, Storage and Lien Sales of Impounded Motor Vehicles be added as a use permitted in the C-M (*Commercial and Light Manufacturing*) District.

In January of 2006 the Director of the Planning and Development Department approved Director Classification No. 208 which added Towing, Storage and Lien Sales of Impounded Motor Vehicles as uses permitted in the M-1, M-2 and M-3 zone districts. In April of 2007 Director's Classification No. 208 was slightly modified. Condition No. 1 of this Director's Classification was amended to permit a tow yard if the operator was approved by an established Governmental Law Enforcement Agency rather than requiring that the operator be in conformance with a valid contract with the City of Fresno and be identified as a "Police Tow List Operator".

This third request proposes to expand these same uses (Towing, Storage and Lien Sales of Impounded Motor Vehicles) to the C-M (*Commercial and Light Manufacturing*) zone district.

BACKGROUND INFORMATION

This Director Classification has been requested by Staff of the Code Enforcement Section of the Planning and Development Department. Currently, there are number of businesses being conducted that are working with, and under supervision of, an established law enforcement agency, for the towing and storage of vehicles, with occasional lien sales, that have been impounded. There is no current category listing for this use with its many facets. Therefore to facilitate code interpretation and application, this Director Classification has been requested.

There are two issues regarding this use that must be answered in this investigation: Firstly, are the lien sales considered the Retail Sales of Automobiles? If it is, the business must also meet all of the requirements of the Fresno Municipal Code (FMC) regarding Auto Sales.

Secondly, many of the vehicles stored at these facilities are damaged, and in some cases, in pieces as a result of an accident, which gives the appearance of a junk yard. If this is a junk yard, it can only be located in the M-3 District subject to a conditional use permit.

While being approved for this service, the business is obligated to follow strict guidelines on the structure of the business. This results in a land use that is unique and not identified in the Zoning Ordinance.

ANALYSIS

Section 12-408 of the Fresno Municipal Code (FMC), enables the Director, subject to certain standards and findings, to add a use to a zone district, either by right or subject to a conditional use permit

The first step in this procedure is to examine the classification of the use. Section 12-408-B states: "The Director may classify such use as a permitted use, or as a permitted use subject to Conditional Use Permit. In no instance shall the Director determine that a use be permitted in a district when such use is specifically listed as first permissible in a less restricted district." A listing of the districts, from most restrictive to least restrictive is found in Section 12-317-B-1-c (FMC).

As described, this use has many facets of land use. It is a motor vehicle towing company. It is a storage facility for motor vehicles, both operative and non-operative. It is a storage facility for (personal) property other than motor vehicles. It conducts the sale of those motor vehicles upon which a lien has been placed. Current Code deals with most of these land use categories. The problem is that the proposed use is none of the above categories in their truest sense, and the overall operation is so restricted, it is none of the above, nor is it the full combination of those classifications.

These operations, approved by an established law enforcement agency, have very stringent rules and

regulations by which to operate, makes them a unique land use.

The basic premise of this use, a towing company with a storage yard, is a use permitted in the Industrial Zone Districts. What really separates the proposed use from being just a towing company with a storage yard, are two operational variations: 1) Storage of motor vehicle parts; and 2) Lien sales of motor vehicles.

Firstly, there is an appearance that one of the aspects of the business is to dismantle the motor vehicles that are brought in to the storage yard. Many of the vehicles that are brought in have sustained damage from accidents or having been stripped after being stolen. As a result the separate parts are also stored on site, and well as the motor vehicles, both operative and non-operative. Because of the nature of impounded vehicles, the operator is required by both local and State regulations to store and display vehicles and parts in a prescribed manner. While this may give the visual appearance of a junk yard, or the retail sales of autos, it is neither. In order to place and maintain proper controls over such a use, a condition of approval is that the operator shall be approved by an established law enforcement agency to tow and store impounded vehicles.

Secondly, again by local and State regulations, the business is authorized to place a lien against the motor vehicles, vehicle parts and personal property not claimed by the owner, and after the prescribed period of time, sell those items.

It is the opinion of staff, that this is a special situation where after storing a vehicle for a specified time, the business is permitted to dispose of an unclaimed vehicle or other property after the placing of a lien upon that property. This is an effort to dispose of property that has gone unclaimed. It is not an operation whose primary business is to obtain vehicles for the purpose of retail sales.

Based upon the discussion above, and for the purpose of classifying this use, the following are proposed:

- Title: "Towing, Storage and Lien Sales of Impounded Motor Vehicles"
- Zone District: C-M and M-1 District, subject to a conditional use permit, and conditions listed below.
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.

As a result of the analysis of this request, staff recommends that the use be added to the C-M and M-1 Zone District, subject to a conditional use permit, and to the M-2 District as a use permitted, which cumulatively will add the use to the M-3 District as a use permitted.

FINDINGS

The second step in this process is to make the required findings in accordance with Section 12-408-C of the Fresno Municipal Code. Based upon the title, description and conditions listed above, staff makes the following findings:

1. *That the subject use and its operation are compatible with the uses permitted in the district where it is proposed to be allowed;*

The basic use of this operation is a towing company with a storage yard. This type of use is permitted by the current FMC. The additional aspects of the operation, the storage of auto parts and other property, and the conduct of lien sales, are secondary in nature, and are tightly controlled as a result of working with an established law enforcement agency. As such, this use is considered compatible with other industrial uses.

2. *That the subject use is similar to two or more uses permitted in the district within which it is proposed to be allowed;*

This use is basically a specialized storage yard. There are seven types of storage yards listed in the M-1, M-2 and M-3 Districts to which the proposed use is similar in nature. **These same types of storage yards are allowed in the C-M zone district with the exception of draying and freight and trucking terminal storage yards. Transit storage is allowed in the C-M zone district and is similar in nature to the proposed use.**

3. *That the subject use will not cause substantial injury to the value of the property in neighborhoods or districts within which it is likely to be located;*

Because of the limited and controlled operation of this proposed use, it will blend in properly with surrounding industrial uses and not cause substantial injury to the value of properties in the neighborhood. Furthermore, being subject to a conditional use permit in the C-M and M-1 Districts, which are the industrial districts that are more likely to be near land planned or zoned for residential uses, will enable the city to better monitor the operation. **In addition, if this use is proposed in the C-M zone district, two conditions have been added that will prevent this type of use from being within 200-feet of property planned or zoned for residential uses or on property that is in or within 200-feet of an integrated office/industrial business park or shopping center. These conditions will protect the integrity and appearance of established residential areas and business parks.**

4. *That the subject use will be so controlled that the public health, safety, and general welfare will be protected.*

Being subject to approval of an established law enforcement agency to conduct this business, and subject to a conditional use permit in the C-M and M-1 Districts, and subject to a Site Plan Review for the M-2 and M-3 Districts, the public health, safety and welfare will be protected.

CONCLUSION

Based upon the discussion above, and with the imposition of the suggested conditions, staff supports this Director Classification as proposed above.

RECOMMENDATION

Staff recommends that the Director approve this Classification as a use permitted subject to a conditional use permit in the C-M and M-1 Districts, and as a use permitted in the M-2 and M-3 Districts as described and conditioned above.

ITEM "5"

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

ITEM "6"

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

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ITEM "7"

Robert Berend

From: Bonique Emerson
Sent: Friday, July 15, 2011 10:57 AM
To: Mike Sanchez
Cc: Robert Berend; Kevin Fabino
Subject: Bauer's Tow Yard

Mike,

I was working on the Tow Yard Land Use verification application for Bauer's Towing and when I looked at Google drive-by photos, it was pretty clear to me that the site where the cars are being towed to is not paved (I've attached a picture below for reference). The applicant (Edward Mason) didn't submit pictures of the paved yard as requested. When I called to ask him about whether or not his site was paved, he said he had spoken to you and that you had ok'd his yard after you did a site visit. I don't feel comfortable writing a letter stating that he complies with the new policy if I can't verify that he does. I told him this and he got irate on the phone and I ended the phone call. I told him that you would be back in a week and a half and he could talk to you at that time. A week and a half is not that long to wait but that set this guy off. Bob and I are setting this one aside for now (I'll leave it on your desk).

Bonique