

SUPERIOR COURT OF CALIFORNIA • COUNTY OF FRESNO Civil Unlimited Department, Central Division 1130 "O" Street Fresno, California 93724-0002 (559) 457-1900		FOR COURT USE ONLY
TITLE OF CASE: City of Fresno vs Michael Occhlonero		
CLERK'S CERTIFICATE OF MAILING		CASE NUMBER: 15CECG01908


I certify that I am not a party to this cause and that a true copy of the Order Granting Motion For Preliminary Injunction and Preliminary Injunction was placed in a sealed envelope and:

- ☐ Deposited with the United States Postal Service, mailed first class, postage fully prepaid, addressed as shown below.
- ☒ Placed for collection and mailing on the date and at the place shown below following our ordinary business practice. I am readily familiar with this court's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service with postage fully prepaid.

Place of mailing: Fresno, California 93724-0002 on:

Date: September 9, 2015

Clerk, by


 N. Loveless

Deputy

Joseph Rubin
 907 Santa Fe Ave, Ste 201
 Fresno, Ca. 93721

Brian Leighton
 701 Pollasky Ave.
 Clovis, Ca. 93612

☐ Clerk's Certificate of Mailing Additional Address Page Attached

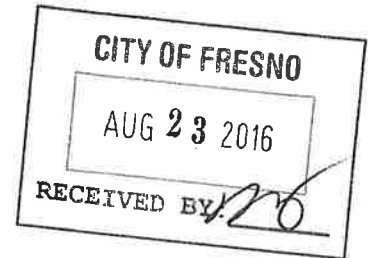
EXHIBIT 15

**LAW OFFICES
OF
BRIAN C. LEIGHTON**

701 Pollasky Avenue
Clovis, CA 93612

Telephone (559) 297-6190
Facsimile (559) 297-6194

August 22, 2016



Jennifer Clark, Director
Development and Resource Management
CITY OF FRESNO
2600 Fresno Street, 3rd Floor
Fresno, CA 93721-3504

**Re: APPEAL OF GREGORY OCCHIONERO, CARE OF BRIAN C. LEIGHTON,
LAW OFFICES OF BRIAN C. LEIGHTON 701 POLLASKY AVENUE,
CLOVIS, CA 93612**

**APPEAL - ZONE CLEARANCE REVOCATION NOTICE OF AUGUST 9, 2016 FOR
2680 N. MIAMI AVENUE, FRESNO, CA 93727 - APN 496-217-09**

Dear Director Clark:

Gregory Occhionero, through his counsel, Brian C. Leighton, hereby appeals your notice of August 9, 2016, revoking my client's Zone Clearance application submitted and approved for the property located at 2680 N. Miami Avenue, Fresno, California 93727. This appeal is filed pursuant to section 15-5017 of the newly adopted Fresno Municipal Code where it states under section A that decisions of the Director made pursuant to this code may be appealed to the Planning Commission by filing a "written appeal with the Director." Gregory Occhionero is the aggrieved person from your revocation notice, and I am Gregory Occhionero's counsel.

In December of 2015, the City decidedly changed its Municipal Code ordinances that have the following affects. The Occhioneros have operated the property at 2680 N. Miami Avenue since 1996, the first approved site plan was S-96-76, and the revised site plan was S-11-057 approved in 2011, where the City specifically stated that the property was not being used as a "recycling center." No different business operation has proceeded since then.

Later, the Planning Commission revoked said site plan, the Occhioneros, both Gregory and his parents, Michael and Vincenza Occhionero, filed a writ with the Superior Court in Fresno County which upheld the site plan revocations and the matter is now pending before the Fifth District Court of Appeal.

However on September 9, 2015, the City received an order granting the City's motion for a preliminary injunction which stated in pertinent part (which you stated in your revocation notice

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of August 9, 2016) that the Occhioneros “are enjoined and restrained from operating any storage and recycling facility on the property without obtaining the requisite approval, permits, and site plan for a M-1 property.” (Your notice and the preliminary injunction order which you attached to your revocation is attached hereto as Exhibit 1.)

You state THAT preliminary injunction order precluded the Occhionero approval, and/or justified your revocation of said Zone Clearance under FMC Code section 15-5004(B) “because information regarding the property and the preliminary injunction was omitted from the application,” and that “any approval of a Zone Clearance application for this property is void, in accordance with FMC 15-5010(C), due to misrepresentations made in the application by omitting any reference to the preliminary injunction currently prohibited any storage on the property.” (See attached Exhibit 1.)

When the Court issued its preliminary injunction order on September 9, 2015, the Fresno Municipal Code had zoned the property as a M-1 property, whereby now it is considered IL (light industrial) property. It also required my client to retrieve a “site plan” approval – which he did.

Under the new Fresno Municipal Code adopted in December of 2015 no “site plan” was required, because under the light industrial standard, per table 15-302, inside warehousing and storage and outside storage was a permitted use under light industrial.

The primary reason the Court issued the preliminary injunction was that the Occhioneros allegedly violated the restrictions of the site plan of 2011. Through negotiations with the City counsel and Mike Sanchez from your Department, it was stipulated that my clients did not operate a “recycling facility.”

Then on or about December 15, 2015, the City made major updates to its Municipal Code, and that “the new code reflects contemporary planning and business practices and sets clear, but fair, criteria for new development, proposals that conform to the new revision which will have a streamlined line approval process, and will boost economic development, in addition in fill has never been as feasible in Fresno as it will be under the new development code, ensuring that we have balanced growth in the coming years.”

In the City’s “User Guide to the New Development Code” it states in pertinent part – applicable to this appeal – throughout the “New Code will be much easier to use than the old code,” that the “New Code is easier to understand than the old-fashioned language of the old code . . .,” that “development proposals which conform to the new requirements will have a streamlined approval process, which should boost economic development” and – importantly:

“Some businesses are required to obtain a conditional use permit before they can open. This requires that they pay a fee and agree to certain restrictions, such as the hours that they can operate, in order

to ensure that they do not negatively impact their neighbors. While this is often an important tool for cities to use, too many types of businesses must go through this process before they can get up and running under the old code. The New Development Code includes built in measures to minimize conflicts between uses and reduces the number of businesses that will need a conditional use permit.

While most parts of Fresno will not see a dramatic change in what kinds of businesses and buildings are allowed, a few areas will see significant changes. The New Code provides strong protections for existing businesses, and buildings in these areas, ensuring that they can continue to operate for as long as their owners would like, without having to shut down or rebuild to meet the new standards. Instead the new rules will not apply until the owners decide that they like to try something new on their property.”

In Article 51 of part V regarding the new City codes, it discusses “Zone Clearance,” and beginning at page V-27, it states that one is required to get a “Zone Clearance” for any new or expanded use or structure, and that it applies to “applicable requirements of this code with any applicable policies or standards of the general plan and any operative plans.”

Under section 15-5102(A) it states “a Zone Clearance is required to confirm that the establishment of a new use is permitted as a matter of right and that no conditional use permit or other requirements are required prior to securing a tax certificate and commencing operations.”

Under section 15-5102(E) it states that:

“No Zone Clearance shall be required for the continuation of previously approved or permitted uses or structures or uses in structures that are not subject to any building code or development code regulations.”

Under section 15-5103, the code section states: “If the Director determines that the proposed use or building is allowed as a matter of right by this code, and conforms to all the applicable development and use standards, the Director shall issue a Zone Clearance.”

Importantly, when Mr. Occhionero applied for a Zone Clearance on July 21, 2016, no “site plan” was required, and the property was no longer zoned M-1, but “light industrial.”

Under the City’s new business-friendly code changes, no site plan was required, nor any conditional use permits because under the new Zone Clearance requirements and new Municipal Codes, there was no new development so no special permits nor site plans were required and no

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conditional use permits were required, and because businesses zoned IL (light industrial, per section Table 15-302) fully permitted inside warehousing and storage and outside storage.

The Superior Court stated in its preliminary injunction order (which you attached as part of your revocation notice) that the Occhioneros were “restrained from operating any storage and recycling facility on the property without obtaining the requisite approval, permits, and site plan for a M-1 property.” You cite that provision in your letter of revocation of August 9, 2016. However, the “requisite approval” in 2016 became a “Zone Clearance,” did not require a site plan, and it was no longer zoned M-1 property.

After citing the Superior Court’s Order quoted above, and quoted in your letter of revocation of August 9, 2016, you claim that the clearance application “that was submitted has been deemed incomplete by the Director of Development and Resource Management Department consistent with “Municipal Code section 15-5004(B), because information regarding the property and the preliminary injunction was omitted from the application.” You then claim that any “approval of a Zone Clearance application for this property is void, in accordance with FMC 15-5010(C) due to misrepresentations made in the application by omitting any reference to the preliminary injunction currently prohibiting any storage on the property. These two allegations by you are untrue. When you review the City’s Zone Clearance form (the completed one submitted by the Occhioneros on July 21, 2016, it required the description of business: “general location and/or type of property where business activity is being conducted; the number of employees; and the hours and weekdays of business activity.” As you can see from the attached Zone Clearance form approved by your Department on July 21, 2016, we fully complied with the “description of business.” (See attached Exhibit 2.) There was no requirement nor request to mention anything about the preliminary injunction, especially since it did not apply anymore because no new “site plans” were required, and we did get the “requisite approval” permits.

The next paragraph of the “Zone Clearance” form states:

“As the owner/manager of this business, I acknowledge the following: This clearance only verifies that the zoning of this property allows the business described above; any physical modifications to the site, including interior or exterior changes to the building, may require additional permits or approvals; Health Department approvals may be required; and business must apply for a City tax certificate and pay taxed to legally operate in the City of Fresno.”

First, Gregory Occhionero applied for a City tax certificate, paid the fee, which is also called a Business License, a copy of which is attached hereto and marked Exhibit 3 entitled “City of Fresno Business Tax Certificate” of Gregory Occhionero with the name of the location and the tax account number. Nothing in the Zone Clearance application, nor the requirements following the “description

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of business” did it require or even ask the question regarding any preliminary injunctions, and the preliminary injunction became moot once Gregory Occhionero applied for and received the “Zone Clearance,” no site plan was required, nor was there any requirements for a M-1 property.”

Gregory Occhionero could not have violated section 15-5004(B) “because information regarding the property and the preliminary injunction was omitted from the application,” because there was no question regarding nor obligation to provide that information, and that injunction became moot when a site plan approval was not – and no longer – required.

You further claim that “any approval of the Zone Clearance application for this property is void, in accordance with FMC 15-5010(C) due to misrepresentations made in the application by omitting any reference to the preliminary injunction currently prohibiting any storage on the property.” Your claim that it is being revoked “due to misrepresentations made in the application” is obviously void of merit because you cannot point out any “misrepresentations made in the application” since the application never requested that information, AND ALSO, BECAUSE THE COURT ONLY ENJOINED OCCHIONERO FROM CONTINUING THE OPERATION AND STORAGE OF SAID MATERIAL “WITHOUT OBTAINING THE REQUISITE APPROVAL, PERMITS, AND SITE PLAN FOR AN M-1 PROPERTY.” Thus, under the “business-friendly” form filled out by Occhionero, there is nothing required in said form that required Mr. Occhionero to state what you claim, and FURTHERMORE, the Court issued the preliminary injunction precluding the operation of said facility “without obtaining the requisite approval, permits and site plan for an M-1 property,” and at the time that Occhionero applied for the Zone Clearance” site plans were no longer required, nor was the property zoned M-1. That is why the Zone Clearance was filled out and presented to DARM and it was approved. There was no “misrepresentation made in the application” by omitting any reference to the preliminary injunction currently prohibiting any storage on the property.” That is not what the Court ordered; the Court stated that the Court Order would not apply to the Occhioneros if they obtained the requisite approvals. Since the Court Order was issued, the City has drastically changed its Municipal Code to make it more business-friendly and only required a “Zone Clearance” which, for light industrial, permitted the inside warehousing and storage and outside storage. The questions presented under “description of business” were fully answered, that there were no employees, that the facility would only operate Monday through Saturday, and only daylight hours, and that the facility was not open to the public, and no “physical modifications to the site plan are intended.”

The undersigned, the Occhioneros’ attorney, Brian C. Leighton, when he spoke to the person at the Planning Commission that approved the Zone Clearance, and asked the person whether or not anything else was required and he stated that only to pay the fee and get our business license which were both done on July 21, 2016. I specifically asked him whether or not any site plans were required or any conditional use permits and he said no because the light industrial zone which is where the Occhioneros’ business is located, required nothing else from me or Mr. Occhionero, except for the business license which I retrieved on behalf of Mr. Occhionero that same day. (See attached Exhibit 3.)

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In your letter of August 9, 2016, received on August 12, 2016, by the undersigned and by Mr. Occhionero, you revoked the Zone Clearance instead of requesting Mr. Occhionero to submit additional information pursuant to section 15-5004.

After the date of your letter August 9, 2016, and prior to its receipt on August 12, 2016, by the undersigned and Mr. Occhionero, the City of Fresno and the Occhioneros were before the Court, the Honorable Judge Black who issued the preliminary injunction regarding the City's request to find the Occhioneros in contempt of the preliminary injunction order. However, on August 3, 2016, pursuant to court order, the Occhioneros provided a further status conference to the Court explaining to the Court that Occhioneros had received a Zone Clearance on July 21, 2016, that no site plans were required, that the zoning had changed from a M-1 property to an IL property, and provided to the Court a copy of the Zone Clearance filed by a DARM employee approving said Zone Clearance, and also providing to the Court a copy of the business license as well as the fee paid therefore. A true and correct copy of the transcript of the hearing before Judge Black on August 10, 2016 (attached as Exhibit 4), shows that the Court did not find the Occhioneros in contempt, and the Court agreed that the hearing should be set off, that the City's counsel and the undersigned to work out a date for a hearing for Occhionero to file a motion to modify the preliminary injunction/order to show cause re contempt, and the Court agreed to said procedure. See official Reporter's Transcript attached hereto and marked Exhibit 4. The City's counsel, Mr. Jim Betts, stated that his office would coordinate with the undersigned's office. I understand that Mr. Rubin from that law firm was on vacation at the time and that when Mr. Rubin returned from vacation, he would coordinate the date for said new motion before the Court. (See pages 5-6 of said transcript.)

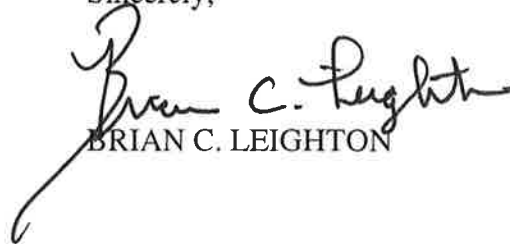
The primary reason the Court issued the preliminary injunction was because DARM, issued a notice to revoke the site plans, which were then appealed to the Commission, and the Commission determined that the Occhioneros had violated the site plans, and the Court determined and issued a preliminary injunction that without any approvals or permits, the Occhioneros could not operate a business within the City of Fresno. The approval of the Zone Clearance and the business license satisfied the City's "permit streamlining act," which did not require any new site plans. Therefore, the current conduct of the business of 2680 N. Miami cannot be in violation of any site plans, and the use there is fully permitted under light industrial. As stated on the application, which is true, pursuant to the new code definition of "warehousing, storage and distribution" is in section VI-15, and consistent with that definition, the filled out Zone Clearance form submitted by me on behalf of Mr. Occhionero correctly stated that the business is not open to the public and that there were no employees, and that no physical modifications to the site were intended. Contrary to your notice of August 9, 2016, there was nothing "incomplete" about our application and there were no "misrepresentations" made in said application.

Pursuant to section 15-5017C1 since Mr. Occhionero is timely filing an appeal, your revocation notice is stayed pending further review by the Planning Commission.

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In brief summary, your claims that there were misrepresentations in the application "by omitting any reference to the preliminary injunction currently prohibiting any storage on the property" is in error as a matter of law since the Court stated that the Occhioneros were restrained from operating any storage facility on the property without obtaining the requisite approvals, and permits which now the Zone Clearance had provided. Furthermore, there was no where on the application that the question was even asked, and the significant part to fill out under "Description of Business," which was then filled in by the undersigned, and the typed language after that on the Zone Clearance form does not seek such information.

Sincerely,



BRIAN C. LEIGHTON

Enclosures

cc: Clients

EXHIBIT "1"

2600 Fresno Street • Third Floor
Fresno, California, 93721-3604
(559) 621-8003 • FAX (559) 498-1012
www.fresno.gov

Development and Resource Management

Jennifer K. Clark, AICP, HDFFP
Director

August 9, 2016

Mr. Gregory Occhionero
757 Laverne Ave.
Clovis, California 93611

Mr. Brian C. Leighton
701 Pollasky Ave.
Clovis, California 93612

Re: Zone Clearance for 2680 N. Miami Ave.

Dear Mr. Occhionero and Mr. Leighton:

You are hereby notified that the Zone Clearance application submitted for the property located at 2680 N. Miami Ave., Fresno, CA, 93727, has been revoked, as Mr. Occhionero is enjoined from operating any storage and recycling facility on the property by the preliminary injunction granted September 9, 2015, to the City of Fresno ("City").

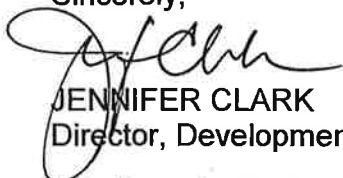
"...during the pendency of this action, or until further order of the court, defendants, as well as their agents, servants, and employees, are enjoined and restrained from operating any storage and recycling facility on the Property without obtaining the requisite approval, permits, and site plan for an M-1 property."

Additionally, the Zone Clearance application that was submitted has been deemed incomplete by the Director of the Development and Resource Management Department, consistent with Fresno Municipal Code (FMC) Section 15-5004(B), because information regarding the property and the preliminary injunction was omitted from the application.

Further, any approval of a Zone Clearance application for this property is void, in accordance with FMC 15-5010(C), due to misrepresentations made in the application by omitting any reference to the preliminary injunction currently prohibiting any storage on the property.

To avoid further escalation of this matter, the City requests that Mr. Occhionero immediately cease all storage and recycling facility operations occurring on the property, as the Zone Clearance is considered to be revoked and void. The City retains its rights to pursue its legal and equitable remedies against Mr. Occhionero if these activities do not stop.

Sincerely,


JENNIFER CLARK
Director, Development and Resource Management

Attachment: September 9, 2015 Order Granting Motion for Preliminary Injunction

cc: Bruce Rudd, City Manager

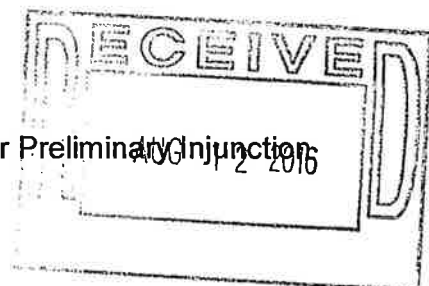


EXHIBIT I

FILED

SEP 09 2015

FRESNO COUNTY SUPERIOR COURT

By _____ DEPT. 502

SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO

B.F. SISK COURTHOUSE, CIVIL DIVISION

CITY OF FRESNO, et al.,

Plaintiffs,

vs.

MICHAEL OCCHIONERO, et al.,

Defendants.

Case No. 15CECG01908

ORDER GRANTING MOTION FOR
PRELIMINARY INJUNCTION AND
PRELIMINARY INJUNCTION

I.

INTRODUCTION

Plaintiffs allege claims for: 1) statutory violations of the Fresno Municipal Code; 2) public nuisance; and 3) Declaratory Relief. The claims arise out of defendants' use of real property located at 2680 N. Miami Ave., Fresno, California ("Property") allegedly in violation of City zoning laws and the City fire code. Pending trial on that complaint, plaintiffs herein seek a preliminary injunction.

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II.

SUMMARY OF FACTS

Defendants have been operating their business on the Property since 1996. The Property is owned by defendants, Vincenza and Greg Occhionero, and the business is operated by their son, defendant, Michael Occhionero. In 1996 defendants obtained a permit and Site Plan authorizing the use of the 5,000 square foot facility for storing and baling foam plastics, along with limited outside storage for baled recycled products. The Site Plan was later modified in 2011 for a reduction in the required parking area and allowing for additional outside storage of sorted or baled materials. Under this Site Plan, the owners were required to maintain the Property in a manner consistent with the conditions of approval as outlined in their approved "Site Plan" numbered S-96-76 and S-11-057 and applicable codes.

Since 2003, the Property has been the subject of significant Code Enforcement Activity. The City has issued many corrective notices and citations related to the Property. On March 13, 2003 it issued a notice of violation. There were four administrative citations. On April 2, 2004 the City issued a correction notice and order. On November 5, 2009 it issued a correction notice and compliance order and on October 24, 2013 it issued a correction notice and order.

Moreover, defendants have refused to allow City inspectors on the Property and have been recalcitrant in correcting issues raised by the City. On several occasions the City has been required to pursue inspection and abatement warrants.

In late 2012 and into 2013, the City's Fire Department and Code Enforcement identified further hazards and violations on the Property and, as a result, the City issued a Correction Notice and Order on October 24, 2013 which identified several violations of defendants' site plan and City codes (1) there were materials stored throughout the Property which were not approved under Site Plan No. S-11-057, including scrap metal, appliances, bed frames, televisions and other electronic devices; (2) there were materials stored in unapproved areas in

1 violation of the Site Plan and the Municipal Code, including the driveways, ingress and egress
2 lanes, parking stalls and areas immediately next to the building on the Property and above the
3 height of the fence surrounding the Property; (3) unauthorized relinquishment of parking stalls
4 required under the Site Plan by storing materials in areas designated for parking and for
5 accessing parking; (4) the landscaping on the Property was not being maintained; (5) defendants
6 maintained a public nuisance on the Property by failing to comply with the conditions of
7 approval under the Site Plan, a violation of the Fresno Municipal Code.

8 The Correction Notice and Order required the identified violations be corrected by
9 November 13, 2013 and advised defendants as follows:

10 It is very important that you clean-up, remove, repair, or cease unlawful
11 use of said property within the specified time period. Failure to correct the
12 violations within the time frame provided will result in further action by the City,
13 including citations, administrative fees, abatement by the City, and/or legal action.
14 If further action is required, you will be held responsible for the City's costs to
15 enforce the code and/or abate the violations.

16 Defendants did not appeal the Notice and Order and also failed to correct the violations
17 by November 13, 2013. As a result, on November 23, 2013, the City sought and obtained an
18 abatement warrant from the Superior Court pursuant to Code of Civil Procedure Section
19 1822.50, et seq. On December 16 through 18, 2013, the City abated the violations by removing
20 materials and other items from the Property that the City determined had contributed to the
21 violations mentioned in the Notice and Order issued on October 24, 2013.

22 On February 27, 2014, the City issued an Order and Notice of Permit Revocation relating
23 to the Property owners' Site Plan and modification thereof. In part, the Order states:

24 NOTICE IS HEREBY GIVEN TO ALL INTERESTED PERSONS that the
25 Director of the City of Fresno Development and Resource Management

1 Department, pursuant to the authority vested in her by the City of Fresno City
2 Charter and Municipal Code, has determined it necessary to protect the public
3 health, safety and welfare to revoke all privileges granted under the above-
4 referenced permits. The revocation shall take effect April 2, 2014, which is not
5 less than thirty (30) days following the posting of and service of this notice as
6 provided for under Section 12-405.E of the Municipal Code.

7 THE CAUSE OF THIS ORDER is the permit holder's failure to comply with the
8 conditions of approval imposed by the decisions granting Site Plan S-96-76 and
9 Major Revised Exhibit S-11-057 relating to 2680 N. Miami Avenue, Fresno, CA
10 93727; and other grounds, all as explained in the Director's letter dated February
11 27, 2014, revoking the Site Plan S-96-76 as well as Major Revised Exhibit S-11-
12 057.

13 The owners of the Property, Vincenza and Greg Occhionero, appealed the Notice of
14 Revocation to the City Planning Commission and on April 2 and 16, 2014 the Planning
15 Commission held a hearing on the appeal. Ultimately, on May 21, 2014, the Planning
16 Commission upheld the revocation of defendants' Site Plan/Special Permit.

17 After the Commission's decision, defendants filed a Petition for Writ of Mandamus,
18 challenging that decision. This matter was briefed, argued, and submitted to Judge Carlos
19 Cabrera in on April 17, 2015. Defendants never sought a stay under Code of Civil Procedure
20 Section 1094.5(g). At several hearings pertaining to the writs, the City's counsel advised counsel
21 for the defendants that his clients' continuing to engage in the same activities in the same manner
22 on the property would likely result in the instant civil action, in which injunctive relief would be
23 sought based on such activities.

24 Judge Cabrera found no violation of due process based on defendants' claims that they
25 had no advance notice of the evidence the City intended to present to the Commission. The

1 Judge also found no violation of due process based on time restrictions set out at the hearing. The
2 Judge found the Commission had not predetermined its decision and no violation of due process
3 because the Commission pursued revocation of the site plan while a valid appeal was pending
4 concerning defendants' contest of the underlying allegations of Code violations. Finally, Judge
5 Cabrera found that substantial evidence supported the revocation of defendants' permit.

6 Applying the independent judgment standard of review, Judge Cabrera found that the six
7 reasons stated for revocation were established: defendants consistently stored unsorted, non-
8 baled and unapproved materials in a disorderly manner throughout the property; they
9 consistently relinquished the required parking stalls as well as areas designated for
10 ingress/egress; they failed to maintain the required landscaping; and they maintained a public
11 nuisance on the property by failing to comply with the October 24, 2013 Notice/Order. The
12 Judge agreed with the Commission that "the piles of product depicted in the photographs could
13 not reasonably be categorized as 'sorted' under any reasonable definition or interpretation."
14 Finally, he found that even if the Commission erred with regard to there being a violation as to
15 the height of the materials stored the error was *de minimis* given the fact the other violations
16 "amply support revocation of the site plan."

17 Despite the fact that their permit has been revoked and that the revocation has been
18 upheld by a Superior Court Judge, the Property owners have continued to use the Property for
19 their business, continue to bring materials onto the property and continue to violate Fresno
20 Municipal and Fire Codes. In fact, the condition of the Property has become worse, not better,
21 since the permit revocation.

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III.
DISCUSSION

A. Preliminary Injunction Standard.

The parties agree that to obtain a preliminary injunction, plaintiffs must establish: (1) a reasonable probability of prevailing on the merits; and (2) that the harm to plaintiff resulting from a refusal to grant preliminary injunction outweighs the harm to the defendant from imposing the injunction. (*IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 69-70; see also Code Civ. Proc. Sections 526 and 731.) Where a governmental entity establishes there has been a violation of a statute or ordinance, and establishes a reasonable probability it will prevail on the merits, a rebuttable presumption arises that the harm to the public outweighs the harm to defendant. (*Id.* at p. 72.) At that point, defendant must show that it would suffer grave and irreparable harm if the preliminary injunction were issued. If that is done, then the court must balance the actual relative harm to the parties. (*Id.*) "The ultimate goal of any test to be used in deciding whether a preliminary injunction should issue is to minimize the harm which an erroneous interim decision may cause." (*Id.* at p. 73.)

B. Likelihood of Success.

1. Public Nuisance.

a. Nuisance Per Se.

Plaintiffs argue they has demonstrated a probability of prevailing under the required "reasonable" standard because defendants' activities constitute a nuisance *per se*.

A City or State legislature has the power to declare certain uses of property a nuisance. (Gov. Code Section 38771—"By ordinance the city legislative body may declare what

1 constitutes a nuisance.”) A legislatively declared nuisance constitutes a nuisance *per se*. (*Beck*
2 *Development Co. v. Southern Pacific Transportation Co.* (1996) 44 Cal.App.4th 1160, 1207;
3 *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153, 1163-1164.) Once a violation of a
4 local law is declared to be a public nuisance, no proof of actual harmful effect is necessary. (*Id.*
5 *See also McClatchy v. Laguna Lands, Limited* (1917) 32 Cal.App. 718, 725—“Nuisances *per se*
6 are so regarded because no proof is required, beyond the actual fact of their existence, to
7 establish the nuisance. No ill effects need be proved.”) Where a legislature has defined a
8 condition or activity as a nuisance, “it would be a usurpation of the legislative power for a court
9 to arbitrarily deny enforcement merely because in its independent judgment the danger caused by
10 a violation was not significant.” (*Fallen Leaf Protection Assn. v. State of California* (1975) 46
11 Cal.App.3d 816, 826.)

12 Plaintiffs have presented evidence of a violation declared to be a public nuisance under
13 Fresno Municipal Code Section 10-605, pursuant to which a public nuisance exists when there
14 is: 1) a violation of the Fire Code; 2) a violation of a zoning ordinance; or 3) a violation of the
15 Fresno Municipal Code declaring a violation amounts to a public nuisance. Fresno Municipal
16 Code Section 12-411(B) states that any building or structure that is, *inter alia*, maintained
17 contrary to the Fresno Municipal Code, and any use of land, building or premises contrary to the
18 provisions of the Zoning Ordinance, and any violation of any condition of any permit issued by
19 the City, including a condition of approval or a covenant entered into as a condition of the
20 permit, shall be declared unlawful and a public nuisance, and the matter may be abated or
21 corrected by, *inter alia*, administrative citation.

22 Here, the complaint alleges multiple violations of the zoning ordinance, Fire Code, and
23 Fresno Municipal Code, including using the Property for a non-permitted use for M-1 zoning,
24 namely using the property for storage and recycling without proper approval, permits or site
25 plan, and improper storage of combustible materials and not allowing sufficient ingress and

1 egress to the property, in violation of the Fire Code. These violations clearly constitute a
2 nuisance *per se* under Fresno Municipal Code Section 10-605.

3 Defendants argue that plaintiffs did not prove that the Property was not used as allowed
4 for an M-1 zone, since they are not a recycling business, so they were never required to get a
5 permit to *be* a recycler, and they had permission to bring the "combustible materials," i.e., the
6 foam rubber/polyurethane foam) onto the Property. However, the court finds defendants went
7 well beyond the permit's authorization with regard to the manner of storing this property which
8 did and does constitute a danger. The court thus finds plaintiffs have shown a probability of
9 success on their claim that defendants' use of the Property constitutes a nuisance *per se*.

10
11 b. Public Nuisance.

12
13 Plaintiffs argue that even if the court does not find a nuisance *per se*, the evidence
14 supports finding the existence of a public nuisance. A "nuisance" includes "anything injurious to
15 health, including...an obstruction to the free use of property, so as to interfere with the
16 comfortable enjoyment of life or property." (Civ. Code § 3479.) A *public* nuisance is anything
17 "which affects at the same time an entire community or neighborhood, or any considerable
18 number of persons, although the extent of the annoyance or damage inflicted upon individuals
19 may be unequal." (Civ. Code § 3480.) Remedies against nuisance include injunctive relief. (Civ.
20 Code § 3491; Code Civ. Proc. § 731—authorizing a civil action by, *inter alia*, a City, in the
21 name of the People of the State of California, to abate a public nuisance.)

22 The City has the power to protect its citizens from improper land use and fire hazards,
23 and authority to enact and enforce ordinances regarding land use, permits, and nuisance
24 abatement. (*Fonseca v. City of Gilroy* (2007) 148 Cal.App.4th 1174, 1181; *City of Costa Mesa v.*
25 *Soffer* (1992) 11 Cal.App.4th 378, 385; *Golden Gate Water Ski Club v. County of Contra Costa*
(2008) 165 Cal.App.4th 249, 255—zoning violations constitute public nuisance; *City of Los*

1 *Angeles v. Shpegel-Dimsey, Inc.* (1988) 198 Cal.App.3d 1009, 1017—fire hazard constitutes
2 public nuisance under Civ. Code §§ 3479 and 3480.)

3 The photographs and declarations plaintiffs have presented amply demonstrate that the
4 current conditions are untenable. The property violates several statutes and amounts to a public
5 nuisance. Further, plaintiff has established that the conditions on the property have become
6 increasingly worse over the last year.

7 Defendants do not address the issue of whether or not there is a nuisance, other than
8 attempting to argue they have not gone beyond their permit, or violated any Code. They attempt
9 to argue that the rebuttable presumption as stated in *IT Corp. v. County of Imperial, supra*,
10 should not arise because in that case the court said it only arose because the statute that was
11 violated specifically provided for injunctive relief, and Fresno Municipal Code Section 12-
12 411(B) does not do so. However, that is not accurate: Section 12-411(B) provides that if there is
13 a violation constituting a public nuisance it “may be abated or corrected by...court process...”
14 which certainly includes injunctive relief. Moreover, there are numerous other provisions of the
15 Fresno Municipal Code and the Civil Code that contemplate court intervention to pursue an
16 injunction. (See Civ. Code Sections 3490-3494; FMC Sections 1-301; 1-304(f); 10-615; 12-
17 411(B).)

18
19 2. Violation Of The Fresno Municipal Code.
20

21 As has been mentioned above, the evidence establishes, and the court finds, plaintiffs
22 have established a probability of success on their claim that defendants are in violation of several
23 sections of the Fresno Municipal Code.
24
25

1 3. Declaratory Relief.

2
3 The court finds plaintiffs are likely to establish that the Fresno Municipal Code and Fire
4 Code sections are controlling and apply to defendants' property. Persons owning property are
5 charged with knowledge of the relevant statutes affecting the use, control, or disposition of that
6 property. (*City of West Hollywood v. Beverly Towers, Inc.* (1991) 52 Cal.3d 1184, 1193.)
7 Ignorance of the law is no excuse. (*Arthur Andersen v. Superior Court* (1998) 67 Cal.App.4th
8 1481, 1506; *Brumagim v. Tillinghast* (1861) 18 Cal. 265, 271—"Every man...must be taken to
9 be cognizant of the law; otherwise, there is no saying to what extent the excuse of ignorance
10 might be carried. It would be urged in almost every case.")

11
12 C. Balance of Hardships.

13
14 *IT Corp. v. County of Imperial, supra*, provides that where a governmental entity
15 establishes there has been a violation of a statute or ordinance, and that statute provides for
16 injunctive relief, and the governmental entity establishes a reasonable probability it will prevail
17 on the merits, a rebuttable presumption arises that the harm to the public outweighs the harm to
18 defendant. (*Id.* at p. 72.) Plaintiffs have established that the rebuttable presumption applies here.
19 Thus, it is defendants' burden to show that they would suffer grave and irreparable harm if the
20 preliminary injunction were issued. Only if they succeed in doing this does the court perform a
21 balance of the actual relative harm to the parties, with the ultimate goal being to minimize the
22 harm an erroneous interim decision might cause. (*Id.* at p. 72-73.)

23 Defendants attempt to show grave and irreparable harm through the declaration of Mr.
24 Occhionero, who states that this is his only job and if injunction is granted he will not have any
25 other source of income. However, this does not establish grave and irreparable harm: Mr.
Occhionero's income was interrupted by virtue of losing the business permit and being told to

1 cease and desist operations. Defendants have not shown they cannot use the Property for
2 something else; they may also seek a new entitlement from the City to operate the same business,
3 under a new site plan and any necessary permits the City dictates are necessary.

4 Defendants also refer to the alleged wrongs perpetrated on them at the Commission
5 hearing, and insist that because this matter is being appealed "and will continue to be appealed"
6 and has not yet been finally ruled upon, an injunction should not issue. However, defendants
7 have never sought a stay of the revocation of their Site Plan under Code of Civil Procedure
8 Section 1094.5, subdivision (g). It is thus undisputed that they have no operating permit for their
9 business and they are operating illegally.

10 Thus, even were the court to engage in a balancing of the harms, the balance tips strongly
11 in plaintiffs' favor. "The police power is one of the most essential powers of government and
12 one that is least limitable." (*Fallen Leaf Protection Assn. v. State of California*, *supra*, 46
13 Cal.App.3d at p. 825.) Zoning law seek to promote public health, safety and welfare by confining
14 certain classes of buildings and uses to defined locations. Such laws address issues such as undue
15 concentration of population; overcrowding of land or buildings; establishing residential districts
16 to promote the public welfare; protection of property values; advancement of the attractiveness
17 of the City; establishing trade and industrial districts; securing safety from fire, panic and other
18 dangers; promoting public sanitation; exclusion of dangerous, offensive, and unwholesome
19 trades and industries from certain districts; protection of adequate light and air; lessening
20 congestion in the streets, and reduction of traffic hazards. (*City of Los Angeles v. Silver* (1979)
21 98 Cal.App.3d 745, 749-50.) Moreover, protecting the public from fires is a primary function of
22 a municipal government.

23 The City argues that it suffers significant injury from defendants' blatantly ignoring of
24 the City's zoning ordinances and Fire Code, and their apparently intentional refusal to apply for
25 the necessary permits. This prevents the City from fulfilling its duty to enforce its codes, and also

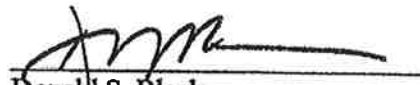
1 sends the wrong message to other citizens regarding the importance of complying with zoning
2 laws, and about the City's lack of commitment to protect other citizen's property and businesses,
3 and about laws being equally enforced. The court agrees.

4
5 IV.

6 DISPOSITION

7
8 The court grants plaintiffs' motion for a preliminary injunction. Plaintiffs have suggested
9 several proposed injunctions. Given the undisputed fact that defendants are operating their
10 business illegally, and have blatantly and intentionally refused to comply with the law, the court
11 opts for the first option proposed by plaintiffs. Therefore, during the pendency of this action, or
12 until further order of the court, defendants, as well as their agents, servants, and employees, are
13 enjoined and restrained from operating any storage and recycling facility on the Property without
14 obtaining the requisite approval, permits and site plan for an M-1 property.

15
16
17
18 Dated: 9-9-15

19 
20 Donald S. Black
21 Judge of the Superior Court
22
23
24
25

SUPERIOR COURT OF CALIFORNIA • COUNTY OF FRESNO Civil Unlimited Department, Central Division 1130 "O" Street Fresno, California 93724-0002 (559) 457-1900		FOR COURT USE ONLY
TITLE OF CASE: City of Fresno vs Michael Occhlonero		CASE NUMBER: 15CECG01908
CLERK'S CERTIFICATE OF MAILING		

I certify that I am not a party to this cause and that a true copy of the **Order Granting Motion For Preliminary Injunction and Preliminary Injunction** was placed in a sealed envelope and:

- ☐ Deposited with the United States Postal Service, mailed first class, postage fully prepaid, addressed as shown below.
- ☒ Placed for collection and mailing on the date and at the place shown below following our ordinary business practice. I am readily familiar with this court's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service with postage fully prepaid.

Place of mailing: **Fresno, California 93724-0002** on:

Date: **September 9, 2015**

Clerk, by _____



N. Loveless

Deputy

Joseph Rubin
907 Sante Fe Ave, Ste 201
Fresno, Ca. 93721

Brian Leighton
701 Pollasky Ave.
Clovis, Ca. 93612

☐ Clerk's Certificate of Mailing Additional Address Page Attached

EXHIBIT "2"



2600 Fresno Street - Third Floor
Fresno, California 93721-3604
(559) 621-8277 FAX (559) 498-1026

Development and Resource Management Department

Jennifer K. Clark, AICP, Director

ZONE CLEARANCE

- ☐ Continuation of a previously approved business / use
☒ Establishment of a business / by-right use, no associated physical development

Business Name: None yet determined

Business Address: 2680 N. Miami Ave. Fresno CA. 93727

Owner / Manager Name (please print) Gregory Oechler

Business Phone #: 559-930-7775 Owner/Manager Cell # 559-930-7775

Description of Business (General location and/or type of property where business activity is being conducted; the number of employees; and the hours and weekdays of business activity):

Zoned I.L (Light Industrial) Permitted Per Table 15-302; Inside
Warehousing and storage and outside storage. Monday through
Saturday ^{operations} daylight hours only. No employees and not opened
to the public. No physical modifications to the site are intended.

As the owner / manager of this business, I acknowledge the following: this clearance only verifies that the zoning of this property allows the business described above; any physical modifications to the site, including interior or exterior changes to the building, may require additional permits or approvals; Health Department approvals may be required; and business must apply for a City tax certificate and pay taxes to legally operate in the City of Fresno.

Gregory Oechler

Signature of Owner / Manager

Mailing address: 757 LAVERNE LAVERNE, CLAVIS CA.
93611

July 21, 2016

Date

BOXES BELOW ARE FOR CITY STAFF TO COMPLETE

Zone District: <u>IL</u>	Planning has verified that this use is allowed by right and does not require a change of occupancy group.	
DARM Zoning Clearance APPROVED <u>7.21.16</u> ZONE CLEARANCE STAMP WITH PLANNER'S INITIALS	Use category from Table 15-1__02: _____	
Business Tax Staff Initials <u>KJ</u>	<input type="checkbox"/> It is not a special use listed in Chapter 15, Article 27 <input type="checkbox"/> It is a use listed in Chapter 15, Article 27 but there are no physical changes needed to the property, and the applicant has been advised of Article 27 requirements.	
Verification that copy has been e-archived	PZ No <u>6.00101220</u>	Fee \$ <u>20</u>

EXHIBIT 2

CITY OF FRESNO
 *** CUSTOMER RECEIPT ***
 Oper: FRESRLM2 Type: DV Drawer: 1
 Date: 7/21/16 01 Receipt no: 96034

	Year	Number	Amount
PZ	2016	101228	
		PLANNING & ZONING	
			\$20.00

Tender detail	
CA CASH	\$20.00
Total tendered	\$20.00
Total payment	\$20.00

Trans date: 7/21/16 Time: 11:25:42

Jun 21, 2016 11:22:42 AM PDT
 File Edit List Commands Help
 SUNGARD PUBLIC SECTOR
 NavLine

Payment Due Selection

Project number: 16 00101228
Project description: ZC GREGORY OCCHIONERO
Project type: ZONE CLEARANCE

Select	Amount To Apply	Balance Due	Fee Description	Transaction Amount
<input checked="" type="checkbox"/>	20.00	20.00	SPECIAL CONSULTING SERVICE	20.00

20.00

☒ OK
☐ Exit
☐ Cancel
☐ Select all fees

EXHIBIT "3"



Why are business taxes assessed?

To help fund certain governmental services, such as police, fire, street maintenance, parks, economic development, and general administration.

When are business taxes due?

Taxes are due on or before the payment due date on the tax return.

The City mails business tax return forms for your business. Late fees of at least twenty per cent (20%) are assessed if such taxes are not paid (or postmarked) by the due date.

How are business taxes determined?

Depending on your type of business, business taxes are either a fixed amount (flat tax) or a variable amount based on the gross receipts of your business. The business tax return form sent to you will provide the specific instructions on how to determine the proper amount of tax due.

Where are business taxes paid?

You may mail your payment to:

Fresno City Business Tax Section
PO Box 45017, Fresno 93718-5017

If you are paying your current tax renewal before the due date, you may renew online at the link below.

Your Web Security Code is found on your renewal form.

www.businessstax.fresno.gov/webrenewals

If your business tax return cannot be mailed or postmarked before the due date, and you need help calculating the late penalty, please bring the tax return and payment to our office:

Fresno City Hall, Tulare and P Street, Second Floor
Monday - Friday 10:00a.m. - 5:00 p.m.

Whom do I contact to update my Business Tax Certificate records or to get additional information?

If the business ownership, business name, location, mailing address, or phone number changes, or the business closes, you are required to report the change to our office. For changes or additional information, please contact our Customer Service Division at:

Telephone: (559) 621-6880 Mon. - Fri. 10 AM - 5 PM

Fax Machine: (559) 498-2544

Mailing Address: PO Box 45017, Fresno 93718-5017

Some business may receive additional tax return or permit renewal forms from the City. Additional taxes or permit fees may be required if your business is located within certain special assessment districts or engaged in a particular type of business activity. Additional taxes or permit fees are required for hotels and motels (room tax), taxicab companies and drivers, card rooms, billiard rooms, mobile food vendors and certain other activities.

In most instances, a separate Business Tax Certificate must be filed for each location of the same business within Fresno. With few exceptions, a Business Tax Certificate must be renewed either monthly, semi-annually or annually for it to remain valid. Obtaining a Business Tax Certificate does not entitle the holder thereof to carry on any business without having complied with all applicable provisions of the Fresno Municipal Code (FMC), or carry on any business in any building or location where the conduct of such business would be in violation of the FMC.

Your Tax Certificate is attached at the bottom of this form. Please detach and display your Tax Certificate in your place of business. Businesses which do not maintain a fixed location, or are located outside the City of Fresno, should carry this Tax Certificate while conducting business within the City.

CITY OF FRESNO BUSINESS TAX CERTIFICATE

EXPIRES: 09/30/2016

Business Name: GREGORY OCCHIONERO

Location: 2680 N MIAMI AVE

Contact/Owner: GREGORY OCCHIONERO

Tax Account No. 430038

This tax certificate may be accepted as valid up to thirty (30) days after the expiration date above if appropriate tax returns have been filed and business tax paid before the due date. This tax certificate must be available for inspection by any authorized City of Fresno employee. Businesses that do not maintain a fixed location, or are located outside the city, should carry this Tax Certificate while conducting business within the City. This certifies that the noted business has a Business Tax Certificate with the City of Fresno. It does not entitle the holder to carry on business activities in a manner inconsistent with any applicable provision of the Fresno Municipal Code.

GREGORY OCCHIONERO
757 LAVERNE AVE
CLOVIS CA 93611-1483

Michael Lima

Michael Lima
City Controller

EXHIBIT

3

City of Fresno Business Tax/Dog License Division
2600 Fresno St Room 2162 Fresno CA 93721
(559) 621-6880

City of Fresno .15 / 541568
07/21/2016 11:59:15 Reg A72407-CS-BT2
Account: 430038 - GREGORY OCCH
Starting Balance \$.00
Validation Receipt

CHARGES-	
3410410101520215	
771004 Tax Certificate Appl\$	10.00
3210424066400205	
SB1186 SB1186	\$ 1.00
<hr/>	
Sub-total	\$*****11.00

PAYMENT-	
1 - 6507	\$ 11.00
<hr/>	
Nothing due	\$*****0.00

EXHIBIT "4"

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF FRESNO
CENTRAL DIVISION

Before the Honorable Donald S. Black, Judge
Department 502

-oOo-

THE PEOPLE OF THE STATE OF)
CALIFORNIA,)

Plaintiff,)

-vs-)

MICHAEL OCCHIONERO,)

Defendant.)

Case No. 15CECG01908

**CERTIFIED
TRANSCRIPT**

-oOo-

REPORTER'S TRANSCRIPT

AUGUST 10, 2016

FRESNO, CALIFORNIA

REPORTED BY MIRANDA K. ANTHONY, CSR NO. 13453

EXHIBIT 4

A P P E A R A N C E S:**FOR THE PLAINTIFF:**

BETTS, RUBIN & MCGUINNESS
BY: JIM BETTS
907 Santa Fe Avenue, Suite 201
Fresno, California 93721

FOR THE DEFENDANT:

LAW OFFICES OF BRIAN C. LEIGHTON
BY: BRIAN C. LEIGHTON
701 Pollasky Avenue
Clovis, California 93612

I N D E X

SESSIONS

PAGE

AUGUST 10, 2016

AFTERNOON SESSION

4

1 WEDNESDAY, AUGUST 10, 2016 -- AFTERNOON SESSION

2 (The following proceedings were had in
3 open court, in the presence of the Court
4 and Counsel, to wit:)

5 THE COURT: City of Fresno versus Occhionero,
6 15CECG01908.

7 MR. BETTS: Good afternoon, your Honor. Jim Betts
8 for plaintiff.

9 MR. LEIGHTON: Good afternoon, your Honor. Brian
10 Leighton.

11 THE COURT: All right.

12 Well, this is on for a status conference. I read
13 both of your submissions.

14 Mr. Leighton, let me start with you. You made some
15 requests in your statement related to the preliminary
16 injunction here.

17 MR. LEIGHTON: Yes.

18 THE COURT: I don't think this is the time or place
19 to take those up. If you think the preliminary
20 injunction should be vacated, what you need to do is
21 file a motion.

22 MR. LEIGHTON: Yes. That's what I mentioned in my
23 moving papers. And when I got the approval, on July 21,
24 I couldn't do it in the 20 days. That's why it wasn't
25 filed beforehand.

26 I'm more than happy to do that. And -- well, I

1 don't know. Does the Court have any other questions?

2 THE COURT: I wanted to say something to
3 Mr. Betts -- correct? -- nothing else for you?

4 And it seems, to me, you're in the position that
5 Mr. Occhionero is in violation of the Court's order.

6 MR. BETTS: Absolutely, your Honor.

7 THE COURT: And, again, I don't think this is the
8 time or place to take that up. But I think you know
9 what you need to do, if that's your position.

10 MR. BETTS: Okay. Well, I presume you mean we
11 would schedule an order to show cause and contempt.

12 THE COURT: That would be my guess. So I'm not
13 sure if there's anything else you wanted to do today.
14 You both look kind of perplexed at the moment.

15 MR. BETTS: Well, your Honor, it's a common state
16 for me. I don't know about Brian. Well, I'll tell you,
17 I put in my moving papers and declarations the City
18 officials told me that's all I had to do for them to
19 operate their business.

20 THE COURT: I don't think we need to do this now.

21 MR. LEIGHTON: Correct. I'm just wondering how far
22 so we want to kick this out, because I think I have to
23 give 30 days' notice hearing to file a motion to modify
24 the preliminary injunction, slash, order to show cause
25 and contempt, or something like that.

26 MR. BETTS: I will meet and confer with

1 Mr. Leighton -- or, actually, my partner, Mr. Rubin.

2 THE COURT: Okay.

3 MR. BETTS: I would anticipate the Court will find
4 some kind of consolidated hearing on -- pursuant to --

5 THE COURT: It would make sense if you would
6 coordinate that.

7 MR. BETTS: And we -- despite the emotion of the
8 litigation, we have very good rapport with Mr. Leighton,
9 so we'll, absolutely, make that happen.

10 THE COURT: Good.

11 MR. LEIGHTON: I just want you to know
12 Mr. Occhionero and Mrs. Occhionero were here. They were
13 ordered to be here.

14 Thank you, your Honor.

15 MR. BETTS: Thank you.

16

17

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26

1 STATE OF CALIFORNIA)
2 COUNTY OF FRESNO) ss.
3

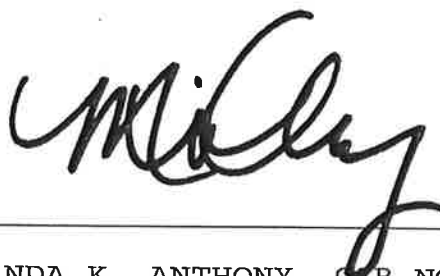
4 I, MIRANDA K. ANTHONY, Certified Shorthand
5 Reporter, in and for the State of California, do hereby
6 certify:

7 That the foregoing proceedings were taken before
8 me at the time and place herein set forth; that any
9 witness in the foregoing proceedings, prior to
10 testifying, were duly sworn; that a record of the
11 proceedings was made by me using machine shorthand which
12 was thereafter transcribed under my direction; that the
13 foregoing is a true record of the testimony given.

14 I further certify that I am neither financially
15 interested in the action, nor a relative or employee of
16 any attorney or party to this action.

17 IN WITNESS WHEREOF, I have this date subscribed my
18 name.

19
20 Dated: 08/16/16



21
22
23 MIRANDA K. ANTHONY, CDR NO. 13453
24
25
26

LAW OFFICES OF BRIAN C. LEIGHTON

701 POLLASKY AVE.
CLOVIS, CA 93612

6561

90-4149/1211
2

CHECK ARMOR

DATE 8/23/16

PAY
TO THE
ORDER OF

City of Fresno
Fifty & 80/100

\$ 50.00



United Security Bank
7088 N 1st Street (888) 683-6030
Fresno, CA 93720



Security
Features
Printed on
Back

DOLLARS

Brian C. Leighton

FOR Ochionero Zone Clearance Revocation
Appeal fee per Mike Sanchez

⑈006561⑈ ⑆22244495⑆ 002 122987⑈

MP

EXHIBIT 16

**CITY OF FRESNO
DEVELOPMENT AND RESOURCE MANAGEMENT DEPARTMENT
NOTICE OF PUBLIC HEARING
APPEAL HEARING ON THE REVOCATION
ZONE CLEARANCE FOR 2680 NORTH MIAMI AVENUE**

NOTICE IS HEREBY GIVEN that in accordance with the procedures of Fresno Municipal Code Article 4, Chapter 12, Section 12-401-H, the Fresno City Planning Commission will conduct a public hearing to consider an appeal of the Director's decision to void Zone Clearance Application for 2680 North Miami Avenue. The Notice of Appeal was filed by Attorney Brian C. Leighton, on behalf of Michael and Vincenza Occhionero, and pertains to approximately 0.52 acres of property located at 2680 N. Miami Avenue, which is situated on the southeast corner of Miami and Brown Avenues Assessor's Parcel Number 496-217-09. The subject property is zoned IL, *Industrial Light*. At this hearing the Planning Commission will consider:

AN APPEAL OF THE VOID OF ZONE CLEARANCE FOR 2680 NORTH MIAMI AVENUE

The Zone Clearance Application for 2680 North Miami indicated that the property was to be utilized for a business engaged in interior warehousing and storage and outside storage. The City contends that the application should be rendered void based on various omissions/misrepresentations.

FRESNO CITY PLANNING COMMISSION

Date: October 19, 2016

Time: 6:00 p.m., or thereafter

Place: Fresno City Hall, Second Floor, Council Chamber
2600 Fresno Street, Fresno, California 93721

Any interested person may appear at the public hearing and present testimony in regard to this matter. If you challenge the above application in court, you may be limited to raising only those issues, you, or someone else, raised at the public hearing described in this notice, or in written correspondence delivered to the Planning Commission at, or prior to, the public hearing.

NOTE: Fresno Municipal Code Section 15-5007-B requires that this notice be sent to owners of property within 1000 feet of the subject property. The City of Fresno Development and Resource Management Department has mails this notice to the property owners within 1000 feet.

For additional information, contact Mike Sanchez, Department of Development and Resource Management, City Hall, 2600 Fresno Street, Fresno, California 93721-3604, by telephone at (559) 621-8040 or via e-mail at Mike.Sanchez@fresno.gov.

JENNIFER CLARK, Secretary
Fresno City Planning Commission

YVONNE SPENCE, CMC
Fresno City Clerk

Dated: October 12, 2016

Assessor's Parcel No. 496-217-09

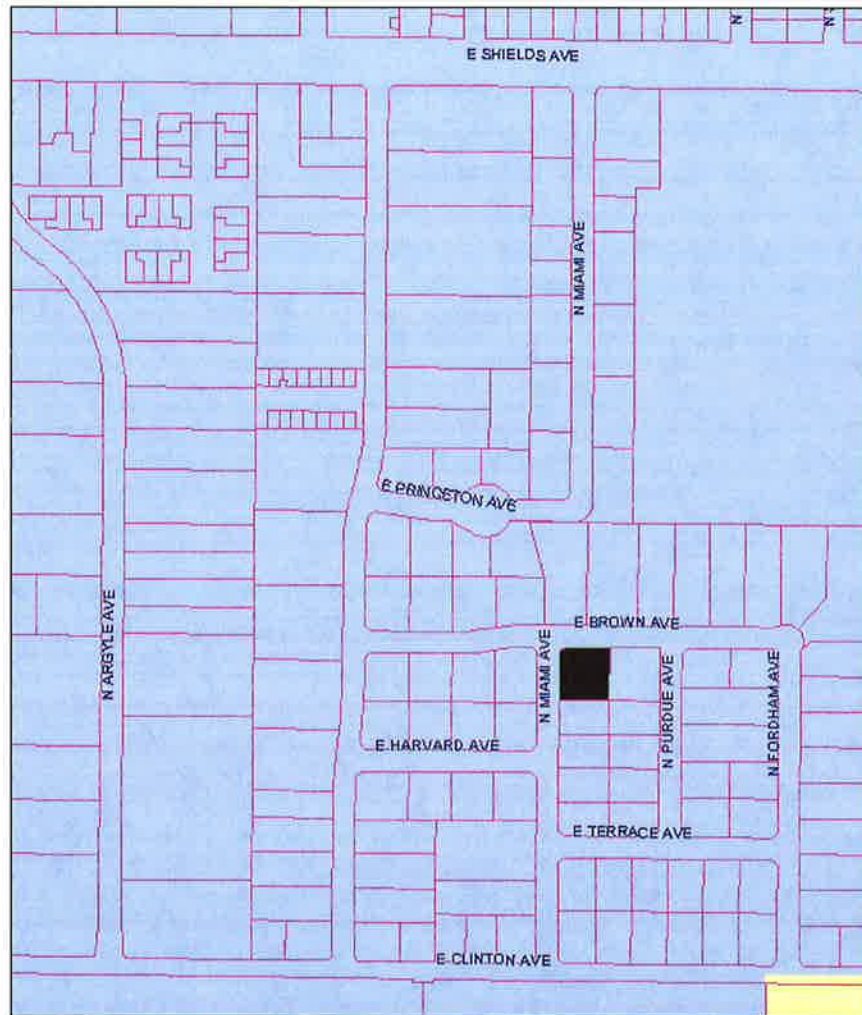
SEE MAP ON REVERSE SIDE

Development and Resource Management Department
2600 Fresno Street, Room 3076 • Fresno, CA 93721 • Phone (559) 621-8277 • Fax (559) 498-1026



M. Sanchez
DEVELOPMENT AND RESOURCE MANAGEMENT DEPARTMENT
2600 FRESNO ST
FRESNO CA 93721-3604
THIS IS A LEGAL NOTICE
Zone Clearance
2680 North Miami Avenue

VICINITY MAP



Subject Property

