

Exhibit G – Director’s Classification No. 208



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:

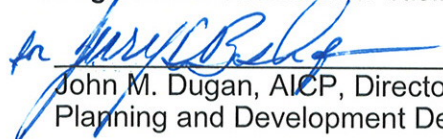
Title: "Towing, Storage and Lien Sales of Impounded Motor Vehicles"

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.