



Requesting Department:  
Development Services

**TO: BOARD OF ADJUSTMENT**

**THROUGH: BRETT BURNINGHAM, INTERIM DEVELOPMENT SERVICES DIRECTOR, CHRISTINE SHEEHY, PRINCIPAL PLANNER**

**FROM: VICTOR MARTINEZ, CODE COMPLIANCE SUPERVISOR**

**RE: HEARING OFFICER DECISION APPEAL FOR CASE P18-0211 (Code Compliance Case 18-1492)** a request from Alfredo Lopez, owner of Platinum Paint & Body LLC, appealing the decision of the Town of Queen Creek's Hearing Officer made on August 21, 2018.

**DATE: OCTOBER 22, 2018**

#### **STAFF RECOMMENDATION**

Staff recommends that the decision of the Hearing Officer be affirmed.

#### **PROPOSED MOTION**

Move to affirm the decision of the Hearing Officer and deny the Appeal request, Case 18-0211, from Alfredo Lopez, owner of Platinum Paint & Body LLC.

#### **SITE LOCATION**

18570 S. 186<sup>th</sup> Way, Queen Creek, AZ 85142 (Parcel 304-62-189). Lot 7 of Power Marketplace Business Park.

#### **CODE VIOLATIONS**

Alfredo Lopez, owner of Platinum Paint & Body LLC, has installed temporary shade canopies without approvals and without a building permit, a storage container visible above the wall in violation of the Zoning Ordinance and has added metal supports to the building without approvals and without a building permit, which is in violation of the Zoning Ordinance. Article 3.2.A of the Zoning Ordinances states that all additions/alterations to a structure require a building permit, Article 3.3.F of the Zoning Ordinance states that any deviations from the approved site plan requires Town of Queen Creek approval and Article 4.6.D.5 of the Zoning Ordinance states that all storage areas shall not be visible over the six foot fence/wall.

## **SUMMARY**

A complaint was received by the Town of Queen Creek on April 17, 2018 of shade structures being installed on the property without a permit. A subsequent site inspection by Code Compliance Staff indicated that there was metal supports attached to the building, a shade structure that was installed without a permit, temporary shade structures installed on the property and a storage container installed on the property that is visible over the 6 feet block fence/wall.

A Civil Hearing was held on August 16, 2018 where testimony was given by Code Compliance Staff and Platinum Paint & Body LLC, being represented by Thomas N. Swift as their Legal Counsel.

On August 21, 2018 the Hearing Officer made a decision on the case where Platinum Paint & Body LLC was found responsible for having attachments to the building without a building permit, for having temporary shade structures in violation of the Zoning Ordinance and for having a storage container that is visible over the 6 feet block fence/wall.

Alfonzo Lopez, owner of Platinum Paint & Body LLC, is requesting that the Board of Adjustment reverse the decision of Finding of Responsible made by the Town of Queen Creek's Hearing Officer for Citation 18-008 that was issued to Platinum Paint & Body LLC.

## **DISCUSSION**

Alfredo Lopez, owner of Platinum Paint & Body LLC, operates an auto repair business in the Power Marketplace Business Park. The site is Lot 7. Alfredo Lopez, owner of Platinum Paint & Body LLC, leases a portion of the building for his business from Preventive Pest Control LLC. Vehicular access to Lot 7 is provided by an existing shared driveway with Lot 8 to the south. Lot 8 is currently vacant. Lot 6, north of the subject site, is also vacant. See Attached Aerial Photo Exhibit.

The site is developed with an enclosed rear yard that is accessed via rolling gates to provide a secure area for overnight parking of vehicles, parts and equipment. Aerial photography of the site was examined for 2011, 2012, 2013, 2014, 2015, 2016, 2017, and 2018. Between 2015 and 2016, a portion of the parking spaces north of the existing building were covered with new parking canopies and other miscellaneous improvements that were installed without obtaining any building permits or any approvals from the Town of Queen Creek. See Attached Aerials.

A Notice to Comply was issued to Alfredo Lopez, owner of Platinum Paint & Body LLC, on April 17, 2018 requiring that building permits be obtained for the parking canopies or that they be removed. Additionally, the installation of temporary shade structures and a storage container were observed during the site inspection at the property. These additions are not allowed based on the Design Standards and the Zoning Ordinance. The storage container is visible above the fence/wall line, which is in violation of the Zoning

Ordinance. Justin Bradshaw and Alfredo Lopez were both notified in person that the shade structures and storage container were not allowed since they are in violation of the Zoning Ordinance. Since no attempt has been made to obtain a building permit and the temporary shade structures and storage container remained, a Civil Citation (18-008) was issued to the property owner, Justin Bradshaw (Hunt, Oleson & Bradshaw LLC), and tenant Alfredo Lopez (Platinum Paint & Body LLC) on July 18, 2018.

This case was opened on April 17, 2018 due to citizen complaints that were submitted to the Town of Queen Creek regarding the shade canopies that were installed on the property for this business in violation of the Zoning Ordinance. The violations of installation of shade canopies, storage container and temporary shade structures were verified through an inspection conducted by Code Compliance Staff on April 17, 2018. The approved site plan for the entire site does not show any shade structures on the property. A Notice to Comply was sent to Platinum Paint & Body LLC via certified mail by the Building Official on April 17, 2018 with a compliance deadline of May 17, 2018.

Since the violation was not rectified within the time limit of 30 days, the Building Official transferred the case to the Code Compliance Team on May 23, 2018 for further enforcement. A Notice of Violation was personally served to Justin Bradshaw on May 23, 2018 by Code Compliance Staff. The violation was not rectified by the time period specified and the case was set for an Administrative Hearing on August 16, 2018.

Alfonzo Lopez, owner of Platinum Paint & Body LLC, and his attorney attended the hearing on August 16, 2018. Code Compliance Supervisor Victor Martinez, Building Official Michael Williams and Principal Planner Christine Sheehy presented testimony in regard to the verified violation. Alfredo Lopez and his Attorney, Thomas Swift, provided testimony for citation issued to Platinum Paint & Body LLC. In the Administrative Hearing, the property owner, Justin Bradshaw, provided testimony for the citation issued to Hunt, Oleson & Bradshaw LLC and admitted that Platinum Paint & Body LLC was in violation of the Zoning Ordinance.

After the August 16, 2018 Administrative Hearing, the Hearing Officer found the respondent Responsible after reviewing the facts and details relating to this case. The judgment of the Hearing Officer was based on testimony from both, the Code Compliance Supervisor and the respondent. The respondent was ordered to pay a \$3,500 non-compliance fine immediately and also a daily non-compliance fine of \$50 per day to commence on August 21, 2018 to accrue until compliance is verified. Daily fine is to be waived if property is in compliance within 60 days of August 21, 2018. (The property remains non-compliant.) **Platinum Paint & Body LLC has accrued \$6,000 in fines to date. No fine amount has been paid to date.**

On August 21, 2018, the Hearing Officer made a Finding of Fact and reached his conclusion, Finding of Responsible, pursuant to Section 2.6.l.4.b of the Town of Queen Creek Zoning Ordinance See Attached. Pursuant to Article 2.5 of the Town of Queen Creek Zoning Ordinance, the Board of Adjustment may either affirm the Hearing Officer's Order of Judgment or reverse the decision.

The Appeal from Platinum Paint & Body LLC was submitted to the Town of Queen Creek on September 20, 2018. Staff has reviewed the record and has reviewed the case with the Town of Queen Creek's Legal Staff, and firmly believes the evidence supports the decision of the Hearing Officer. **Staff recommends that the Board of Adjustment affirm the Hearing Officer's Order of Judgment.**

To date, Platinum Paint & Body LLC continues to be in violation of the Zoning Ordinance by still having temporary shade structures, a visible storage container and miscellaneous attachments to the building.

### **ROLE OF THE BOARD OF ADJUSTMENT**

Pursuant to Article 2.5 of the Town of Queen Creek Zoning Ordinance and Arizona Revised Statutes §9-462.06, the Board of Adjustment may either affirm the Hearing Officer's Order of Judgment or reverse the decision. The Board's scope of review shall be limited to determining whether the decision or interpretation by the Hearing Officer was in accordance with the intent and requirements of the Zoning Ordinance.

### **ATTACHMENTS**

1. Aerial Photo Exhibit
2. Approved Site Plan
3. Historical Aerials 2015, 2016, 2017 and 2018
4. Appeal Letter, Dated September 19, 2018
5. Notice to Comply, Dated April 17, 2018
6. Notice of Violation, Dated May 23, 2018
7. Hearing Summons, Dated July 18, 2018
8. Judgment and Orders of the Hearing Officer, Dated August 21, 2018

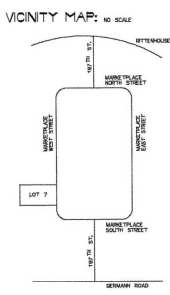
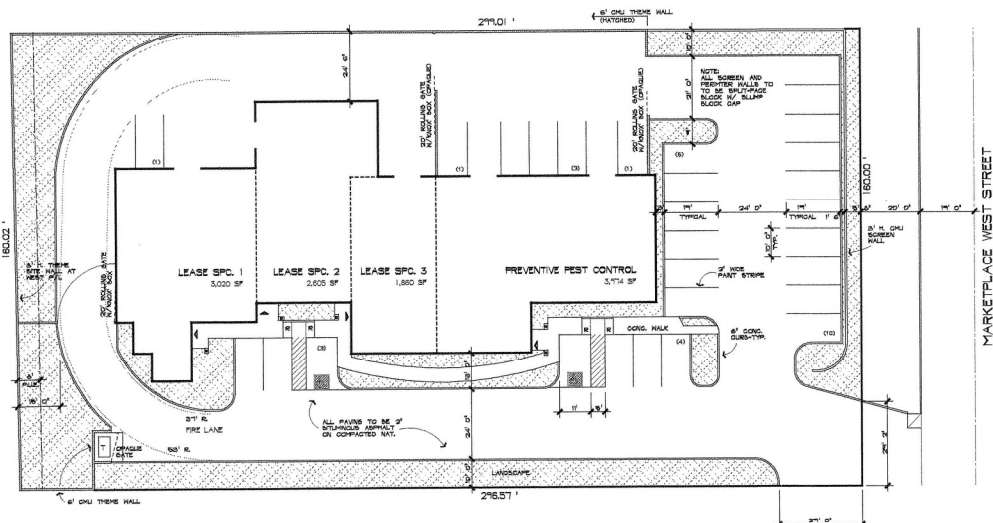
**Project Name: Platinum Paint & Body LLC (Lot 7, Power Marketplace Business Park)**

**Case Number: P18-0211**

**Hearing Date: October 22, 2018 (Board of Adjustment)**



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



**CODES:**  
 2003-I.B.C.  
 I.A.P.C.  
 1991 I.A.P.C.  
 2002 I.A.P.C.  
 WITH STATE AND D.O.G.C.  
 AND ORDINANCES

**SITE PLAN**  
 1/4" = 20' 0"



**SITE NOTES:**  
 ONLY RESTROOMS MAY BE CONNECTED TO SEWER.  
 FLOOR DRAINS WILL NOT BE PERMITTED IN WAREHOUSE AREAS.  
 SEPARATE WATER WITNESS BIOD FOR LANDSCAPE.  
 ALL AREAS SHALL BE SPRINKLED.  
 FIRE DEPARTMENT ACCESS AND WATER SUPPLY REQUIREMENTS SHALL BE IN PLACE PRIOR TO THE START OF VERTICAL CONSTRUCTION.  
 ON-SITE LIGHTING SHALL MEET OUTDOOR LIGHT CONTROLLING ORDINANCE.  
 MAXIMUM NOISE LEVEL 55 DECIBELS (NORMAL SPEAKING VOICE) AT PROPERTY LINE.  
 ALL UTILITY BOXES, VAULTS AND BACKFLOW PREVENTION DEVICES SHALL BE PAINTED TO MATCH THE BUILDING AND SCREENED FROM PUBLIC VIEW BY A MASONRY WALL OR A ROUND TOPPED WIRE MESH ENCLOSURE, PAINTED TO MATCH THE ADJACENT WALL.

**DATA:**  
**LEGAL:** LOT 7, BUSINESS PARK @ POWER MARKET-PLACE I.  
**OCCUPANCY:** B AND S-2  
**DESCRIPTION:** A ONE STORY TEXTURED AND PAINTED MASONRY BUILDING PROVIDING OFFICE AND WAREHOUSE SPACE FOR PREVENTIVE PEST CONTROL AND OFFICE AND WAREHOUSE SPACE FOR UP TO 3 OTHER BUSINESSES.  
**CONSTRUCTION:** T-8 / SPRINKLED  
**LOT AREA:** 47,645 SF / 1.07 AC.  
**LANDSCAPE AREA:** 6,680 SF / 47,645 = 14.2%  
**BLDG. AREA:**  

PREVENTIVE PEST	3,174 SF	WAREHOUSE (80%)
LEASE SPC. 1	3,020 SF	12,274 SF
LEASE SPC. 2	2,605 SF	10,208 SF
LEASE SPC. 3	1,860 SF	7,480 SF
TOTALS:	10,665 SF	30,432 SF

**PARKING:** OFFICE: 2,477 / 200 = 12 SPCS. REQUIRED  
 WAREHOUSE: 6,762 / 600 = 11 SPCS. REQUIRED  
 TOTAL PROVIDED: 21 SPACES ( 2 ACCESS. )  
**COVERAGE:** 11,437 / 47,645 = 24.1%

MARKETPLACE WEST STREET

A PROPOSED OFFICE & GRAY SHELL BUILDING FOR:  
**PREVENTIVE PEST CONTROL**  
 2215 W. MELINDA BLANE  
 PHOENIX, AZ 85027

**STONE**  
 DEVELOPMENT  
 7017 W. AUGUSTA AVE  
 PHOENIX, AZ 85035  
 PHONE: 623.430.8815



**WARNER & ASSOCIATES**  
 2148 W. KNOWLES CIRCLE  
 MESA, AZ 85202  
 P/FX 480 - 345-8322/3  
 GARY L. WARNER - ARCHITECT

CASE NO. PACS-0015

REVISIONS

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BY OWNER  
 BY CITY

DATE: 7/28/06

JOB NO. PPC-01

SHEET NUMBER  
 1  
 OF 2 SHEETS

DRAWN BY: GLW

**SITE PLAN**



# 2015 Maricopa County Assessor Aerial





# 2016 Maricopa County Assessor Aerial







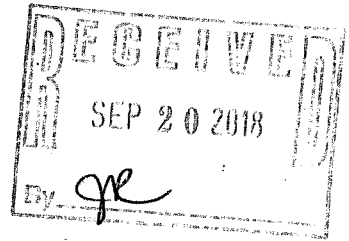
# 2017 Maricopa County Assessor Aerial





# 2018 Maricopa County Assessor Aerial





1 **Thomas N. Swift II, P.C.**  
2 **Thomas N. Swift, 006495**  
3 **Attorney at Law**  
4 **4701 South Lakeshore Drive, Suite 2**  
5 **Tempe, Arizona 85282**  
6 **(480) 897-1700/Fax (480) 897-1029**

7 Attorney for Platinum Paint & Body, LLC

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10 **TOWN OF QUEEN CREEK**  
11 **BOARD OF ADJUSTMENT**  
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15 } IN RE:  
16 } PLATINUM PAINT & BODY, LLC (d/b/a PRESTIGE  
17 } BODY SHOP)  
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Violation No. 18-1492  
(Consolidated)  
NOTICE OF APPEAL

29 In accordance with A.R.S. §§ 9-462.06(A),(C) and (D), Platinum Paint & Body, LLC d/b/a  
30 Prestige Body Shop hereby appeals the Judgment and Orders of the Hearing Officer dated August 21,  
31 2018. The grounds for the appeal from the Judgment and Orders of the Hearing Officer are as follows:  
32 (1) Platinum Paint & Body, LLC fully complied with the recommendations of the Town's building  
33 official, Michael Williams, to address the alleged violations; (2) the Town of Queen Creek is estopped  
34 from asserting that the storage container visible from off-site is in violation of the Zoning Ordinance by  
35 reason of the reliance of Platinum Paint & Body, LLC on the recommendations of Mr. Williams and that  
36 the fact that the Town itself uses storage containers that are visible from off-site; and (3) the Judgment

- 37 • • •
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1 and Orders are the result of selective enforcement of the Zoning Ordinance. Platinum Paint & Body,  
2 LLC requests that the Board of Adjustment set a hearing on its appeal.

3 DATED this 19 day of September, 2018.

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THOMAS N. SWIFT II, P.C.

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*Thomas N. Swift*

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Thomas N. Swift

4701 South Lakeshore Drive, Suite 2

Tempe, Arizona 85282

480/897-1700

Email: tnsswift@swiftlaw.phxcoxmail.com.

Attorney for Appellant Platinum Paint & Body, LLC

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A copy of the foregoing was  
hand delivered on this 20th  
day of September, 2018 to:

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Board of Adjustment  
c/o Town Clerk  
22358 South Ellsworth Road  
Queen Creek, Arizona 85142

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Brett Burningham  
Planning Administrator  
Town of Queen Creek  
22358 South Ellsworth Road  
Queen Creek, Arizona 85142

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and a copy mailed on the 19th of  
September, 2018 to:

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Bradley Burns, Esq.  
DICKINSON WRIGHT, PLLC  
1850 North Central Avenue, Suite 1400  
Phoenix, Arizona 85004  
Attorney for Town

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*Thomas N. Swift*

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TOWN OF  
**QUEEN CREEK**  
ARIZONA

# Notice to Comply

Development Services Department  
Building Safety Division  
22358 S. Ellsworth Road  
Queen, Creek, AZ 85142

**NTC# 2018-3**  
Investigation Fee: **YES**

To: Mr. Alfredo Lopez  
Platinum Paint and Body  
18570 186th Way, Suite 102  
Queen Creek, AZ 85142

Dear Mr. Lopez:

This notice is to inform you that on **April 17, 2018** a visual inspection was conducted at **18570 South 186<sup>th</sup> Way**. The following violations were identified:

Description: Installation of multiple shade canopies installed without building permits.

This constitutes a violation of the following section(s) of the Queen Creek Administrative and Technical Codes and the amendments thereto and/or the Zoning Ordinance.

X Queen Creek, Building Regulations, Administrative Section 7.1.4.1, Permits Required:

Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by "This Code", or to cause such work to be done, shall first make application to the building official and obtain the required permit or permits.

X Queen Creek, Building Regulations, Administrative Section 7.1.14.1, Unsafe Structures and equipment.

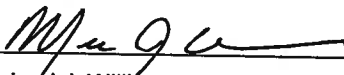
X Zoning Ordinance Violation.

**Corrective Action Requires:**

Remove all shade structures installed without Building Safety Division plan review, building permit issuance, or inspections on or before **May 17, 2018**. The illegal shade structures constitute a fire and life safety hazard as they block Fire Department emergency access to the facility. In addition, the illegal shade structures violate prior Planning Division approvals.

We appreciate your cooperation in this matter. If you have questions or additional information, please contact the Building Safety Division at 480-358-3009. Failure to comply within the time frame specified in this notice may result in the Town instituting the appropriate follow-up action.

Notice sent via Certified Mail and hand delivered to tenant, Platinum Paint and Body, Suite 102.

  
\_\_\_\_\_  
Michael J. Williams, Building Official

Date: 4/17/2018



## NOTICE OF VIOLATION

**Compliance Deadline: June 6, 2018**  
**Case: 18-1492**

January 25, 2018

Sent via: Hand Delivery

Hunt, Oleson and Bradshaw LLC  
C/O Justin Bradshaw, Statutory Agent  
1661 E Heather Dr  
Queen Creek, AZ 85242

Parcel: 304-62-189 Legal Description: POWER MARKETPLACE BUSINESS PARK MCR  
843-22, LOT #7

Dear Hunt, Oleson and Bradshaw LLC:

On April 17, 2018 the Town of Queen Creek received a complaint of your property having shade structures installed without approved building permits at 18705 E. Business Park Dr. On April 17, 2018, a Town Code Compliance Officer inspected the location and found that shade structures were installed and no building permit was obtained. Per the Town of Queen Creek's Building Regulations Section 7.1.4.1 and Zoning Ordinance Section 3.2.A, a building permit is required for the installation of the shade structures. A Notice to Comply was hand delivered to Alfredo Lopez with Platinum Paint & Body LLC on April 17, 2018. A Notice to Comply was also mail via certified mail to Justin Bradshaw with Hunt, Oleson and Bradshaw LLC on April 17, 2018 but it was returned as unclaim from the post office.

The Town relies upon the cooperation of every resident, land owner and business to help maintain a superior quality of life for our community. To foster neighborhood preservation, it is essential for each property owner to be respectful of the rights of neighbors and others in our community by maintaining one's property. We encourage you to voluntarily take the appropriate action to correct this condition. If you comply, no further enforcement actions will be necessary.

As always, it is the goal of the Town to resolve such matters in a cooperative, fair and efficient manner. Please address this violation immediately. If the Property is not brought into compliance, the Town will issue a Civil Citation. The Town may determine a separate violation results with each day your Property remains in violation of the Code starting from

Page 2 of 2  
Case: 18-1492  
May 23, 2018

the date of this Notice of Violation. Fines could be assessed on a daily basis and/or criminal charges filed. The Town's Civil Hearing Officer may hold an administrative hearing on the violation and may enter such rulings and orders as appropriate. Compliance can be achieved by applying for and obtaining an approved building permit from the Town of Queen Creek for the shade structures or by removing the shade structures.

If there is a reason you cannot fully remedy the violation on your Property, please contact staff. If you need further clarification or have additional questions, please contact me at 480-358-3307 prior to the Compliance Deadline.

Sincerely,

Victor Martinez  
Code Compliance Supervisor  
22358 S Ellsworth Road Queen Creek AZ 85142  
Phone 480-358-3307 /victor.martinez@queencreek.org



**Development Services Department  
CODE COMPLIANCE DIVISION  
CIVIL CITATION & HEARING SUMMONS**

**Citation Number: 18-008**

**Date:** 7/18/2018

**Violation Case Number:** 18-1492

**Time:** 7:35am

**Issued To:** Platinum Paint & Body LLC  
DBA Prestige Body Shop  
C/O Alfredo Lopez, Statutory Agent  
2702 W Goldmind Mtn Dr.  
Queen Creek, AZ 85242

**Sent via:** Certified Mail

**Violation Address:** 18570 S 186<sup>th</sup> Way, Queen Creek, AZ 85142

**Parcel Number:** 304-62-189

**Legal Description:** Power Marketplace Business Park MCR 843-22, Lot #7

**Chapter(s) / Section(s) / Article(s) of the Town of Queen Creek Ordinance Violated:**

1. Queen Creek Zoning Ordinance Article 3.2.A-Permits Required.
2. Queen Creek Zoning Ordinance Article 3.3.F-Deviation from Approved Site Plan
3. Queen Creek Zoning Ordinance Article 4.6.D.5-Industrial and Heavy Equipment Storage

**Description of Violation(s):**

1. The installation of a storage container, that is currently located on the northwest corner of the property, that is in violation of the Zoning Ordinance. Storage containers are not allowed as permanent uses.
2. Deviating from the approved site plan by adding metal supports, which are currently located on the northwest sides of the property and installing tent structures in the parking lot on the west side of the building.
3. The installation of a storage container that is visible over the six foot block fence.

**YOU ARE HEREBY NOTIFIED THAT A CIVIL HEARING ON THIS MATTER IS SET BEFORE THE HEARING OFFICER ON AUGUST 14, 2018 AT 10:00AM AT THE ADDRESS LISTED BELOW:**

-20727 E Civic Parkway, Queen Creek, AZ 85142

The purpose of this hearing is for testimony to be heard on the merits of this case. You have the right to represent yourself or be represented by counsel or other designated representative.

**“FAILURE TO PROVIDE NOTICE OF YOUR INTENT TO BE REPRESENTED BY COUNSEL OR DESIGNATED REPRESENTATIVE AT LEAST 15 (FIFTEEN) DAYS PRIOR TO THE HEARING CONSTITUTES A WAIVER OF THE RIGHT.”**

If you wish to plead RESPONSIBLE, you may appear at the hearing to enter this plea or submit a Statement of Responsibility to the Hearing Officer in writing indicating your wish to plead RESPONSIBLE, at the address listed below, prior to the hearing. Along with Statement of Responsibility you can mail in payment of \$250 per day, for the



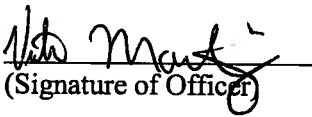
charge, starting from 7/18/2018 for the fine, or you can choose to request a Penalty Hearing to have the Hearing Officer determine the appropriate penalty to be imposed for this Ordinance Violation.

**YOUR FAILURE TO APPEAR OR RESPOND IN WRITING TO THE HEARING OFFICER WILL RESULT IN A DETERMINATION OF RESPONSIBLE AND THE HEARING OFFICER SHALL IMPOSE A CIVIL PENALTY.**

If you need additional information or have any questions, please call me at 480-358-3307 or you can e-mail me at [victor.martinez@queencreek.org](mailto:victor.martinez@queencreek.org).

**Code Compliance Officer:** Victor Martinez [victor.martinez@queencreek.org](mailto:victor.martinez@queencreek.org)

I certify, under penalty of perjury, that I have reasonable grounds to believe that the named defendant committed the civil code infractions described in the complaint and that a copy of the complaint has been served on the defendant.

  
(Signature of Officer)

7/18/2018  
(Date)

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22358 S. Ellsworth Rd, Queen Creek, AZ 85142 Phone (480) 358-3307 Fax (480) 358-3105  
Internet: [www.queencreek.org](http://www.queencreek.org)



QUEEN CREEK DEPARTMENT OF DEVELOPMENTAL SERVICES

**JUDGMENT AND  
ORDERS OF THE  
HEARING OFFICER**

VIOLATION NO: 18-1492 (Consolidated)

IN THE MATTERS OF: HUNT, OLESON & BRADSHAW LLC and  
PLATINUM PAINT & BODY LLC (DBA PRESTIGE BODY  
SHOP)

PROPERTY LOCATION: 18570 S. 186<sup>th</sup> Way  
Queen Creek, AZ 85142

PARCEL NO: 304-62-189

ZONING CLASSIFICATION OF PROPERTY: EMP A (Lot #7, Power Marketplace  
Business Park)

HEARING DATE: August 14, 2018

APPEARANCES: Present from the Town of Queen Creek were: Christine Sheehy, Principal Planner; Victor Martinez, Code Compliance Supervisor, Town Counsel Bradley Burns and Michael Williams, Building Official. Justin Bradshaw was present on behalf of Respondent Hunt, Oleson & Bradshaw LLC (the property owner, "OLESON"). Alfredo A. Lopez and his spouse were present on behalf of Respondent Platinum Paint & Body LLC (the property tenant, "PLATINUM"), along with their counsel, Thomas N. Swift.

**CHARGES:**

Installation of a permanent storage container visible from off-site without a permit (Zoning Ordinance Articles 3.2.A and 4.6.D.5);

Deviations from an approved site plan (Zoning ordinance Article 3.3.F).

FINDINGS  RESPONSIBLE ( ) NOT RESPONSIBLE ( ) DEFAULT ( ) DISMISS W/O PREJUDICE

FACTUAL BACKGROUND AND BASIS FOR FINDINGS:

The Respondents were first cited for these violations in April, 2018, nearly four months ago. The testimony and exhibits submitted at the hearing conclusively establish the existence of the cited violations with no confirmed corrective action having been undertaken during that time frame. The large metal storage container on the property is readily visible from off-site and was inarguably located on the property without a permit. At least one stand-alone shade structure is also readily visible in the photographs of the site, as are what appear to be metal beams, both attached to the building and freestanding, which are designed as supports for an even larger shade structure. The free-standing portion of that metal structure also presently blocks the fire lane preventing unrestricted access to the entire property in the event of a fire. Neither the storage container nor the shade structures are permitted by the approved site plan for the property.

As observed by the Hearing Officer in a previous matter involving these same respondents, neither the Hearing Officer nor the Town wishes to destroy PLATINUM's business. Unfortunately, it seems probable that PLATINUM has itself accomplished that given that the co-Respondent and owner of the property has given notice that it is terminating the existing lease. Hopefully, PLATINUM will be successful in finding a new and suitable location, and that in the future it will conduct its business in compliance with applicable zoning laws and other restrictions.

As for the property owner, the Hearing Officer recognizes that its ability to control its tenant's activities has limits. However, the Town is correct that the owner remains responsible for assuring that its property stays in compliance with the Zoning Ordinance. Among the items admitted in evidence at the hearing is a lease amendment in which PLATINUM not only agreed to be responsible for all compliance issues, but also agreed to take responsibility for any fines imposed by the Town due to non-compliance. The fine imposed upon PLATINUM under the terms of this Order takes that commitment into account.

Finally, the Hearing Officer notes that there were conflicting statements at the hearing as to whether the free-standing metal framework and/or supports attached to the building for the large shade structure were in fact removed as of the date of the hearing.

IT IS THEREFORE ORDERED THAT THE RESPONDENTS PAY THE FOLLOWING FINES/SANCTIONS:

NON-COMPLIANCE FINES: PLATINUM - \$3,000 (\$3,500 in the event inspection reveals that the metal supports for the large shade structure (attached and/or free-standing) have not been removed as claimed)

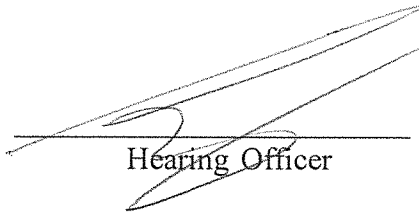
DAILY NON-COMPLIANCE FINE: PLATINUM AND OLESON - \$50 PER DAY COMMENCING EFFECTIVE THE DATE OF THIS ORDER, BUT TO BE WAIVED IF THE CITED VIOLATIONS ARE REMOVED WITHIN SIXTY (60) DAYS FROM THE DATE OF THIS ORDER..

NON-COMPLIANCE FINE IS DUE AND PAYABLE IMMEDIATELY AND IS INTENDED AS A SANCTION FOR NON-COMPLIANCE AS WELL AS REIMBURSEMENT FOR THE COSTS OF THE HEARING.

DAILY NON-COMPLIANCE FINE COMMENCES AS SPECIFIED IN THIS ORDER.

IN ACCORDANCE WITH THE PROCEDURES FOR CIVIL HEARINGS AND REVIEW OF HEARINGS, YOU HAVE THIRTY (30) DAYS FROM THE DATE OF THIS ORDER TO FILE AN APPEAL TO THE QUEEN CREEK BOARD OF ADJUSTMENT.

Dated: August 21, 2018



Hearing Officer