

1 event” held during non-regular designated hours of the museum’s operation, which including  
2 evenings. (Defendant’s Exhibit “C”). The lease also states that Fire Memories shall comply with  
3 all city ordinances “such as regulations for special events.”

4 Nowhere in the applicable code section does it limit its use for the purposes solely  
5 mentioned in the ordinance. The section specifically states, “[t]he following temporary use *may be*  
6 *permitted*, subject to the issuance of a Temporary Use Permit.” Fire Memories overlooks this  
7 statement when contending that a temporary use permit is not applicable to them. Without doubt,  
8 City of Banning *Municipal Code* § 17.108.020 is applicable to all special events held on city owned  
9 property, including Fire Memories’ museum.

10 Furthermore, Fire Memories’ “person most knowledgeable” and owner, Doug Hammer,  
11 admitted at deposition the City of Banning required Fire Memories to seek prior approval and a  
12 temporary use permit for any and all events held at the museum after normal business hours:

13 **Q. The city wanted you to talk to them before you would throw some even after**  
14 **hours; right?**

15 **A. Yes.**

16 **Q. Any they wanted you to talk with them about, among other things, considering**  
17 **getting a temporary use permit, didn’t they?**

18 **A. Yes. (Hammer Depo. 84:19-25)**

19 \*\*\*

20 **Q. All right. This lease required you to contact the city if you were going to do**  
21 **something off hours. You would agree; right?**

22 **A. Yes. (Hammer Depo. 96:12-15)**

23 \*\*\*

24 **Q. So don’t you agree that you were violating your lease every time you were**  
25 **having one of these events off hours without contacting the city?**

26 **A. ... “yes.” (Hammer Depo. 96-97:22-1)**

27 Fire Memories’ argument that Debbie’s Franklin’s party at the museum “is not an event that  
28 would require a temporary use permit” is also false. (MSJ, 12:22-23.) In fact, Doug Hammer also  
stated to the contrary:

**Q. Now, it says that – completing that sentence under use of the premises it says, ‘If**  
**an event is planned for hours other than the regulated designated hours of**  
**museum operation’ – which would absolutely be Debbie Franklin’s birthday**  
**party, would you agree; right?**

1           A.     Yes. (Hammer Depo. 80-81:21-2)

2           Furthermore, three to four months after the incident at issue, Fire Memories applied for and  
3 received a temporary use permit from the City of Banning for another birthday celebration for over  
4 fifty people at the museum. (PAF No.32)

5           At the very least, Fire Memories was required under the lease to prior consent from the City  
6 of Banning's City Manager every time it held an event at the Museum during non-normal business  
7 hours or at night:

8           Q.     And the lease says if you're going to have an event off hours, you shall get prior  
9                 written consent from the city manager; right?

10          A.     Yes. (Hammer Depo. 81:16-19)

11          Accordingly, the required Temporary Use Permit would have required Defendant to make  
12 "arrangements for temporary parking facilities, including vehicular ingress and egress" as well as  
13 "submittal by Defendants of location(s) of informational and safety signage at the Premises" for the  
14 celebration (See FAC ¶¶ 21-22). Hence, a Temporary Use Permit would have required Defendant  
15 to submit and determine proper parking arrangements and provide proper safety signage for its  
16 guests, including Dr. Roy Azarnoff and Pat Azarnoff.

17          As such, Defendant owed a duty to the Azarnoffs, and as a direct and proximate result of the  
18 wrongful breach of the lease agreement and applicable municipal code, the Azarnoffs were harmed.

19          IV.     **DEFENDANT'S MOTION MUST BE DENIED BECAUSE DEFENDANT**  
20                 **EXPOSED PLAINTIFFS TO AN UNREASONABLE RISK OF HARM**

21          Defendant contends that it did not expose Roy and Pat Azarnoff to any unreasonable risk of  
22 harm, because "Plaintiffs cannot prove that Fire Memories created or knew of a dangerous  
23 condition on its own premises which exposed Roy and Pat Azarnoff to an unreasonable risk of  
24 harm." (MSJ, 13:1-2.) To the contrary, there were concrete actions that Defendant took that caused  
25 Plaintiffs to park on the south side of Wilson Street, and to cross Wilson Street in order to reach  
26 Defendant's event to which they were invited.

27          Defendant was aware that co-defendant, Debbie Franklin, was going to invite between  
28 seventy and eighty people to her husband's birthday party-- the event at issue in this suit. (PAF No.  
36) Fire Memories Museum has a capacity of 125 people, yet it provides 14 visible parking spots