

## CLOVIS CITY COUNCIL MEETING

**December 19, 2022**

**6:02 P.M.**

**Council Chamber**

Meeting called to order by Mayor Ashbeck  
Flag Salute led by Councilmember Mouanoutoua

Roll Call: Present: Councilmembers Basgall, Bessinger, Mouanoutoua, Pearce  
Mayor Ashbeck

### **PUBLIC COMMENTS – 6:03**

### **CONSENT CALENDAR – 6:03**

Councilmember Mouanoutoua abstained from voting on Item 6 due to owning property within 1000 feet of the project site.

Motion by Councilmember Bessinger, seconded by Councilmember Pearce, that the items on the Consent Calendar, with the exception of Item 6, be approved. Motion carried by unanimous vote.

1. Administration - Approved - Minutes from the December 12, 2022, Council Meeting.
2. Finance – Received and Filed – Investment Report for the Month of August 2022.
3. Finance – Received and Filed – Treasurer’s Report for the Month of August 2022.
4. General Services – Approved - **Res. 22-148**, Authorizing Amendments to the City’s Classification and Compensation Plans to Adopt a Communications and Marketing Analyst with a Salary Range of \$7,711 - \$9,373 per month; and Approved – **Res. 22-149**, Amending the City’s FY 2022-23 Position Allocation Plan by deleting one (1) Public Affairs and Information Manager and adding one (1) Communications and Marketing Analyst.
5. General Services – Approved – **Res. 22-150**, Amending the City’s FY 2022-2023 Position Allocation Plan by deleting one (1) Principal Office Assistant and adding one (1) Administrative Assistant position within the Police Department.

6:05 – ITEM 6 - Planning and Development Services – Approved – Final Acceptance for Final Map for Tract 6221, located at the northwest corner of Ashlan Avenue and Locan Avenue (Wilson Premier Homes, Inc.) (Councilmember Mouanoutoua has a conflict of interest on this item)

Motion for approval by Councilmember Bessinger, seconded by Councilmember Pearce.  
Motion carried 4-0-0-1 with Councilmember Mouanoutoua abstaining.

### **PUBLIC HEARINGS – 6:06**

6:06 – ITEM 7 - CONTINUED - **RES. 22-XX**, CUP2022-005 APPEAL. CONSIDERATION OF A RESOLUTION DENYING A REQUEST BY GEORGE BEAL TO OVERTURN THE PLANNING COMMISSION’S APPROVAL OF CUP2022-005, WHICH ALLOWS A 24-HOUR CONVENIENCE STORE AND THE SALE OF LIQUOR AND ALCOHOLIC BEVERAGES

FOR OFF-SITE CONSUMPTION ON PROPERTY LOCATED ON THE NORTHEAST CORNER OF N. TEMPERANCE AVENUE & OWENS MOUNTAIN PARKWAY. DAVE VIRK, LLC, OWNER/APPLICANT; BOTTOM LINE GROUP LLC – SETH RAMIREZ, OWNER'S REPRESENTATIVE; GEORGE BEAL – BEAL DEVELOPMENTS LLC; APPLICANT OF APPEAL.

Seth Ramirez, owner/applicant representative, commented that the applicant accepts the continuance of this item to the January 9, 2023, City Council meeting.

George Beal, appellant, commented that he accepts the continuance of this item to the January 9, 2023, City Council meeting.

Motion to continue this item to the January 9, 2023, City Council meeting by Councilmember Mouanoutoua, seconded by Councilmember Bessinger. Motion carried by unanimous vote.

6:10 – ITEM 8 - CONTINUED – **RES. 22-XX**, AC2022-001, A RESOLUTION OF THE CITY OF CLOVIS MAKING FINDINGS AND A DETERMINATION TO AUTHORIZE A CERTIFICATE OF TENTATIVE CANCELTION FOR LAND CONSERVATION CONTRACT NO. 6273, FOR PROPERTY LOCATED NEAR THE SOUTHEAST CORNER OF SHAW AND DE WOLF AVENUES. PRECISION CIVIL ENGINEERING, INC., APPLICANT; FRANK AND GEORGIA W. SORRENTI, PROPERTY OWNERS.

Motion to continue this item to a date uncertain by Councilmember Basgall, seconded by Councilmember Bessinger. Motion carried by unanimous vote.

#### **ADMINISTRATIVE ITEMS – 6:12**

6:12 – ITEM 9 - RECEIVED AND FILED - FINANCE DEPARTMENT UPDATE.

6:24 – ITEM 10 - APPROVED – **RES. 22-151**, FINAL AMENDMENTS TO THE 2021-22 BUDGET IN CONFORMANCE WITH THE BUDGET ORDINANCE; AND RECEIVE AND FILE – YEAR-END REPORT FOR ALL FUNDS AS OF JUNE 30, 2022.

Motion for approval by Councilmember Bessinger, seconded by Councilmember Mouanoutoua. Motion carried by unanimous vote.

6:39 – ITEM 11 - APPROVED - 2021-22 ANNUAL COMPREHENSIVE FINANCIAL REPORT.

Motion for approval by Councilmember Bessinger, seconded by Councilmember Mouanoutoua. Motion carried by unanimous vote.

6:56 – ITEM 12 - APPROVED - MODIFICATIONS TO THE 10-DAY PUBLIC NOTICE PROCEDURES FOR LAND USE AND PLANNING PROJECTS FROM PLANNING AND DEVELOPMENT SERVICES.

Motion for approval by Councilmember Bessinger, seconded by Councilmember Basgall.  
Motion carried by unanimous vote.

**COUNCIL ITEMS – 7:23**

7:23 – ITEM 13 - APPROVED – VARIOUS CITY COUNCIL COMMITTEE APPOINTMENTS.

Motion for approval by Councilmember Bessinger, seconded by Councilmember Basgall.  
Motion carried by unanimous vote.

7:36 – ITEM 14 - APPROVED – 2023 ANNUAL SCHEDULE FOR CITY COUNCIL MEETINGS AND CANCELLATION OF THE JANUARY 3, 2023, CITY COUNCIL MEETING.

Motion for approval to cancel the January 3, 2023, City Council meeting by Councilmember Bessinger, seconded by Councilmember Pearce. Motion carried by unanimous vote.

Motion for approval of the 2023 City Council meeting schedule by Councilmember Bessinger, seconded by Councilmember Pearce. Motion carried by unanimous vote.

**CITY MANAGER COMMENTS – 7:44**

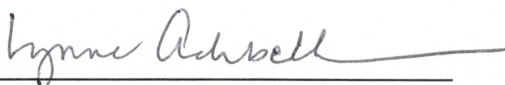
**COUNCIL COMMENTS – 7:44**

**CLOSED SESSION – 7:52**

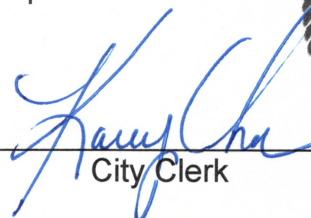
ITEM 15 - GOVERNMENT CODE SECTION 54956.9(D)(2) CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION SIGNIFICANT EXPOSURE TO LITIGATION THREE POTENTIAL CASES BASED ON CLAIMS RECEIVED FOR THE SUNNYSIDE AVENUE WATER MAIN BREAK AND PROPERTY FLOODING INCIDENT ON JANUARY 3, 2022.

Mayor Ashbeck adjourned the meeting of the Council to January 9, 2023

Meeting adjourned: 8:40 p.m.



Mayor



City Clerk





# CITY *of* CLOVIS

## MEMORANDUM

TO: Clovis City Council

FROM: Planning and Development Services

DATE: December 19, 2022

SUBJECT: Consider Approval, Res. 22-\_\_\_\_, CUP2022-005 Appeal. Consideration of a resolution denying a request by George Beal to overturn the Planning Commission's approval of CUP2022-005, which allows a 24-hour convenience store and the sale of liquor and alcoholic beverages for off-site consumption on property located on the northeast corner of N. Temperance Avenue & Owens Mountain Parkway. Dave Virk, LLC, owner/applicant; Bottom Line Group LLC – Seth Ramirez, owner's representative; George Beal – Beal Developments LLC; applicant of appeal.

Staff: Marissa Jensen, Assistant Planner  
 Recommendation: Deny appeal and approve project

ATTACHMENTS:

1. Modified Resolution 22-\_\_\_\_
2. December 16, 2022 Request for Continuance by Applicant
3. October 24, 2022 Correspondence with ABC
4. December 16, 2022 Letter from Clovis Police Department
5. Resolution 11-135 (Delegating ABC Licensing to Police Department)

### UPDATED RECOMMENDATION

Deny the appeal and uphold the Planning Commission's approval of CUP2022-005 with the addition of a condition of approval prohibiting the sale of alcohol. A modified resolution reflecting the updated recommendation is included as **Attachment 1**.

The applicant for the conditional use permit has requested that the Council continue this item to a future meeting to allow additional time to respond to the new information described below (**Attachment 2**). Neither the appellant nor staff objects to the continuance; if a continuance is acceptable to the Council, staff recommends that the item be continued to the January 9, 2023 meeting.

### BACKGROUND

CUP2022-005 proposes a 24-hour gas station and convenience store. The operational characteristics of the project include a Type 21 liquor license which allows for the sale of beer, wine, and distilled spirits. George Beal has appealed the conditional use permit, citing specific objections to the 24 hour time frame and the liquor sales.

The discussion provided in the original staff report for the appeal states that the census tract where the subject property is located (Tract 55.12) is not overconcentrated with liquor licenses. This information was based on correspondence from the Fresno Division of the Alcoholic Beverage Control (ABC) on October 24, 2022 (**Attachment 3**). At the time, ABC data showed that only 2 licenses had been issued in that tract, when 4 licenses are allowed based on population. On Thursday, December 15, 2022, ABC informed Planning Staff that the information they had provided in October was incorrect, apparently due to a problem with their data system. While Census Tract 55.12 allows for 4 off-site liquor licenses, there are currently 6 off-site liquor licenses, meaning that the Census Tract is oversaturated by 2 existing licenses.

The Clovis Police Department handles all matters related to ABC and liquor licenses. The new information regarding oversaturation was provided to the Police Department. Upon their review, Police Department provided comments stating that they would be opposed to the establishment of any new businesses selling liquor for off-site consumption within this census tract (**Attachment 4**). The City has the authority to approve new licenses in overconcentrated areas through the issuance of a "Letter of Public Convenience and Necessity". In this instance, the Police Department has determined that the proposed Type 21 liquor license is not a public necessity or a convenience and that allowing for additional licenses in this census tract could cause concern for the public and the quality of life within the City.

The Clovis Police Department was granted full authority for decisions related to obtaining ABC licenses. This authority was established by City Council in October of 2000 and reaffirmed through Resolution No. 11-135, adopted by City Council on December 12, 2011 (**Attachment 5**). Thus, based on adopted City Policy, the Police Department's decision on this matter is final and may not be appealed to the Council. Considering this information, staff is recommending that a condition of approval be added that prohibits the sale of alcohol in conjunction with the project. No other changes to the proposed 24 hour gas station and convenience store are recommended.

**RESOLUTION 22- \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVIS DENYING THE APPEAL AND APPROVING CONDITIONAL USE PERMIT 2022-005 TO ALLOW A 24-HOUR CONVENIENCE STORE AND THE SALE OF LIQUOR AND ALCOHOLIC BEVERAGES FOR OFFSITE CONSUMPTION AND A QSR DRIVE THROUGH USE WITHIN THE SUNRISE PAVILION PLANNED COMMERCIAL CENTER AND FINDING THE PROJECT IS EXEMPT FROM CEQA PURSUANT TO A CLASS 32 CATEGORICAL EXEMPTION**

**WHEREAS**, George Beal – Beal Developments LLC (Appellant), 1175 Shaw Avenue #104, Clovis, CA 93612, applied for an appeal to the Planning Commission’s approval of Conditional Use Permit 2022-005 for a 24-hour convenience store and the sale of liquor and alcoholic beverages for off-site consumption, located on the northeast corner of N. Temperance Avenue & Owens Mountain Parkway; and

**WHEREAS**, the Planning Commission considered Conditional Use Permit 2022-005 and the CEQA analysis outlined in the staff report provided for its October 27, 2022 meeting and determined the Project meets the requirements of a Class 32 (Infill Development) Categorical Exemption pursuant to CEQA Guidelines section 15332 on October 27, 2022; and

**WHEREAS**, at the duly noticed public hearing held on October 27, 2022, the Planning Commission approved CUP2022-005 by vote of 5-0; and

**WHEREAS**, the Municipal Code allows the applicant or any aggrieved person to appeal the Planning Commission’s approval of a CUP to the City Council, where the City Council may consider any issues(s) associated with the appeal in addition to the specific grounds for the appeal; and

**WHEREAS**, the City published notice of the public hearing in the Fresno Business Journal on Monday, December 5, 2022, mailed public notices to property owners within 850 feet of the Property ten (10) days prior to the City Council hearing, and otherwise posted notice of the public hearing according to applicable law; and

**WHEREAS**, the City Council held a noticed public hearing on December 19, 2022, to consider the Project; and

**WHEREAS**, the City Council has reviewed the record of proceedings as reflected in the October 27, 2022 staff report, which includes the November 10, 2022 submittal of appeal to CUP2022-005, and other oral and documentary evidence presented to the City Council during the appeal; and

**WHEREAS**, new information was received from The Fresno Division of Alcoholic Beverage Control after the Planning Commission’s approval of the project, indicating that the subject Census Tract is oversaturated; and

**WHEREAS**, the Clovis Police Department does not support an additional off-site liquor license within the Census Tract; and

**WHEREAS**, the Clovis Police Department holds the specific authority for all alcohol licensing issues due to the approval of Council on Resolution No. 11-135 and the Police Department's decision on alcohol licensing matters is final.

**NOW, THEREFORE, BE IT RESOLVED**, that the City of Clovis resolves as follows:

1. Denies the appeal and upholds the Planning Commission's approval of CUP2022-005 for the reasons expressed during the public hearing as further set forth in the administrative record.
2. Conditions of approval 1 and 2 for CUP2022-005 are modified to prohibit the sale of alcohol as follows:

*No 1. This Conditional Use Permit approval is for a 24-hour convenience store with fuel sales and the sale of liquor and alcoholic beverages for offsite consumption (Type 21-ABC License) and a QSR drive through use at the northeast corner of Temperance & Owens Mountain Parkway, as indicated as "West Building" on the site plan exhibit included in the October 27, 2022 Planning Commission staff report.*

*No. 2. This Conditional Use Permit ~~allows for~~ prohibits the sale of alcohol within a convenience store, subject to all applicable Alcoholic Beverage ABC license requirements and Clovis Police Department approval and conditions.*

3. The Project satisfies the required findings for approval of a conditional use permit, as follows:
  - a. The proposed use is conditionally allowed within, and would not impair the integrity and character of, the subject zoning district and is in compliance with all of the applicable provisions of this Development Code.
  - b. The proposed use is consistent with the General Plan and any applicable specific plan.
  - c. The design, location, size, and operating characteristics of the proposed use are compatible with the existing and future land uses and would not create significant noise, traffic, or other conditions or situations that may be objectionable or detrimental to other allowed uses operating nearby or adverse to the public interest, health, safety, convenience, or welfare of the City.
  - d. There are adequate provisions for public access, water, sanitation, and public utilities and services to ensure that the proposed use would not be detrimental to public health and safety.
  - e. The subject parcel is physically suitable in size and shape for the type and density/intensity of use being proposed.
  - f. The proposed project has been reviewed in compliance with the provisions of the California Environmental Quality Act (CEQA).
4. The City Council finds that the Project is categorically exempt from CEQA pursuant to CEQA Guidelines section 15332 (Class 32 – Infill Development).

5. The basis for the findings is detailed in the December 19, 2022 staff report and the staff report addendum, which are hereby incorporated by reference, the entire Administrative Record, as well as the evidence and comments presented during the public hearing.

\* \* \* \* \*

The foregoing resolution was introduced and adopted at a regular meeting of the City Council of the City of Clovis held on December 19, 2022 by the following vote, to wit.

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

DATED: December 19, 2022

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk



**From:** Seth Ramirez <SethR@bottom-line.com>  
**Sent:** Friday, December 16, 2022 3:33 PM  
**To:** Marissa Jensen; Lily Cha  
**Cc:** Jay Virk; Orlando Ramirez  
**Subject:** [External] Request for Continuance of CUP2022-005 and Related Item

Hi Marissa and Lily,

We wanted to send you notice in writing of our request for continuance of the items planned for this Monday, Dec. 19th until the next scheduled City Council meeting. The latest information we received regarding ABC's and Clovis PD's intent to deny all offsale of alcohol products greatly impacts the feasibility of our project and the short notice makes it extremely challenging for us to prepare a response by this Monday's meeting.

Please let me know if there is anything else you need from us to accomodate this request. Thank you for your continued help with our projects.

Sincerely,

Seth Ramirez  
Director of Development  
Bottom Line Group  
559-903-9418

**From:** ABC Fresno <Fresno@abc.ca.gov>  
**Sent:** Monday, October 24, 2022 12:38 PM  
**To:** Marissa Jensen  
**Subject:** [External] RE: Census Tract Information - 801 N. Temperance

Census Tract info as of today:

CT information for the location at Temperance and Owens Parkway drive (near temperance and 168

CT is 55.12

Not high crime. Not overconcentrated.

4 off-sales allowed 2 off sales existing.

Alcoholic Beverage Control - Fresno

1330-B East Shaw Ave

Fresno, CA 93710

559-225-6334

Fax: 559-225-8740



**FREE** Online  
ABC LEAD Training!

Recommended for ALL  
individuals that sell or  
serve alcoholic  
beverages

Visit our website to get  
started today!

---

**From:** Marissa Jensen <MarissaJ@ci.clovis.ca.us>  
**Sent:** Monday, October 24, 2022 11:00 AM  
**To:** ABC Fresno <Fresno@abc.ca.gov>  
**Subject:** Census Tract Information - 801 N. Temperance

**CAUTION: External Email.** Do not click on links or attachments unless you recognize the sender and know the content is safe.

Good morning,

I am looking to obtain information regarding the Census Tract of the Temperance/Alluvial area. I am working on entitlements for a project located at 801 N. Temperance Ave. for a gas station/convenience store & drive-throughs. If approved, they will be requesting a Type 21 license for the convenience store. I would like to know if the Census Tract Area is oversaturated and if possible get a map of census tract which shows other Type 21 licenses.

**Attachment 3**

Any additional information will also be appreciated. Please let me know if you have any questions.

Thank you very much!



**Marissa Jensen | Assistant Planner**

City of Clovis | Planning Division  
1033 Fifth Street, Clovis, CA 93612  
p. 559.324.2338 f. 559.324.2844  
[marissaj@cityofclovis.com](mailto:marissaj@cityofclovis.com)

This e-mail may contain confidential and privileged material for the sole use of the intended recipient. Any review, use, distribution or disclosure by others is strictly prohibited. If you are not the intended recipient (or authorized to receive for the recipient), please contact the sender by reply e-mail and delete all copies of this message.

Links contained in this email have been replaced. If you click on a link in the email above, the link will be analyzed for known threats. If a known threat is found, you will not be able to proceed to the destination. If suspicious content is detected, you will see a warning.



# CITY *of* CLOVIS

## POLICE DEPARTMENT

1233 FIFTH STREET • CLOVIS, CA 93612

RE: Proposed Gas Station/Convenience Store  
At the Northeast Corner of Temperance  
and Owens Mountain Parkway  
Clovis, CA

December 16, 2022

To Whom It May Concern:

In response to the proposed liquor license, type 21 liquor license, the Clovis Police Department is opposed.

The location being proposed is located within census tract 55.12, which is currently above saturation level for ABC licenses. This census tract allows for 4 off-sale locations, and we currently have 6. This census tract is oversaturated by 2 off-sale locations. In speaking with representatives from ABC, I have confirmed this information.

We are not opposed to the business, but other businesses have operated without a type 21 liquor license.

The Type 21 liquor license is not a public necessity or a convenience. Allowing for additional Type 21 licenses in this census tract could cause issues for concerns for the public and the quality of life within the City of Clovis.

Sincerely,

James Ellenberger  
Police Sergeant  
Clovis Police Department, Neighborhood Services  
1233 Fifth Street  
Clovis, CA 93612

**RESOLUTION NO. 11-135**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVIS DELEGATING  
AUTHORITY REGARDING ALCOHOLIC BEVERAGE LICENSING TO THE CLOVIS  
POLICE DEPARTMENT**

**WHEREAS**, two provisions of the California Business and Professions Code allow local governing bodies, or their designated subordinate officer or agency, to have a say in the issuance of Alcoholic Beverage Control ("ABC") licenses; and

**WHEREAS**, more particularly, Section 23800(e) allows the City to request ABC, and requires that ABC impose, reasonable conditions upon the transfer of a license and Section 23958.4 requires that ABC obtain from the City a letter of public convenience or necessity prior to the issuance of a license for an area determined to be over-concentrated; and

**WHEREAS**, in 2000, with the adoption of Resolution No. 00-131, the City Council delegated the City's authority over ABC licenses to the Police Department (**Exhibit A**);

**WHEREAS**, Resolution No. 00-131 expressly refers to Section 23800(e), which section incorporates by reference Section 23958.4; and

**WHEREAS**, in addition to the express Council delegated authority, it has been the practice of the City to allow the Police Chief to make final decisions regarding ABC matters; and

**WHEREAS**, in order to avoid any ambiguity that the Police Department has authority over both conditions on the transfer of a license (Section 23800(e)) and letters of public convenience or necessity (Section 23958.4), the City Council desires to adopt a new Resolution expressly referencing both sections.

**NOW THEREFORE, BE IT RESOLVED** by the City Council of the City of Clovis as follows:

1. The responsibility for submitting evidence and requesting special conditions on the transfer of a license under Business and Professions Code Section 23800(e) is delegated to the Clovis Police Department.

2. The responsibility for issuing letters of public convenience or necessity under Business and Professions Code Section 23958.4 is delegated to the Clovis Police Department.

\* \* \* \* \*

The foregoing Resolution was introduced and adopted at a regular meeting of the City Council of the City of Clovis held on December 12, 2011, by the following vote to wit:

AYES: Councilmembers Armstrong, Ashbeck, Magsig, Whalen, Mayor Flores

NOES: None

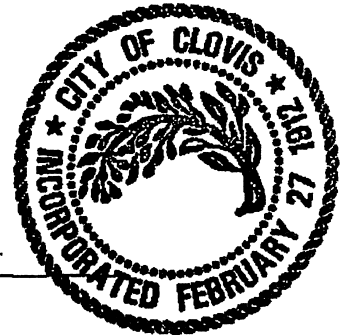
ABSENT: None

ABSTAIN: None

Dated: December 12, 2011

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
City Clerk



**RESOLUTION NO. 00- 131**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVIS  
DELEGATING AUTHORITY REGARDING ALCOHOLIC BEVERAGE  
LICENSING TO THE CLOVIS POLICE DEPARTMENT**

WHEREAS, California Business and Professions Code was amended in 1999 to allow local governing bodies to request special conditions in relation to alcoholic beverage licensing; and

WHEREAS, the same Code provides that a local governing body may designate a subordinate agency to submit evidence of problems to, and request special conditions from the Department of Alcoholic Beverage Control; and

WHEREAS, the Police Department works closely with businesses in this area to detect and prevent problems involving establishments with alcohol licenses.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Clovis that responsibility for submitting evidence and requesting special conditions under Business and Professions Code Section 23800(e) be delegated to the Clovis Police Department.

\* \* \* \* \*

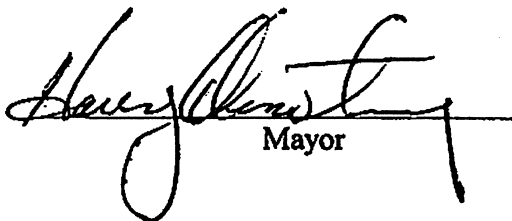
The foregoing resolution was introduced and adopted at a regular meeting of the City Council of the City of Clovis held on October 9, 2000, by the following vote to wit:

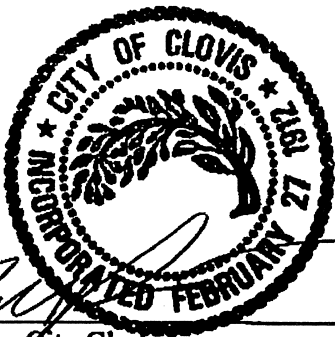

AYES: Councilmembers Flores, Waterston, Wynne, Mayor Armstrong

NOES: None

ABSENT: Councilmember Stearns

DATED: October 9, 2000

  
Mayor

  
  
City Clerk