



# CITY *of* CLOVIS

## AGENDA • CITY COUNCIL MEETING

Council Chamber, 1033 Fifth Street, Clovis, CA 93612 (559) 324-2060  
[www.cityofclovis.com](http://www.cityofclovis.com)

January 17, 2023

6:00 PM

Council Chamber

In compliance with the Americans with Disabilities Act, if you need special assistance to access the City Council Chamber to participate at this meeting, please contact the City Clerk or General Services Director at (559) 324-2060 (TTY – 711). Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the Council Chamber.

The Clovis City Council meetings are open to the public at the physical address listed above. There are numerous ways to participate in the City Council meetings: you are able to attend in person; you may submit written comments as described below; you may participate by calling in by phone (see “Verbal Comments” below); and you may view the meeting which is webcast and accessed at [www.cityofclovis.com/agendas](http://www.cityofclovis.com/agendas).

### **Written Comments**

- Members of the public are encouraged to submit written comments at: [www.cityofclovis.com/agendas](http://www.cityofclovis.com/agendas) at least two (2) hours before the meeting (4:00 p.m.). You will be prompted to provide:

- Council Meeting Date
- Item Number
- Name
- Email
- Comment



- Please submit a separate form for each item you are commenting on.
- A copy of your written comment will be provided to the City Council noting the item number. If you wish to make a verbal comment, please see instructions below.
- Please be aware that any written comments received that do not specify a particular agenda item will be marked for the general public comment portion of the agenda.
- If a written comment is received after 4:00 p.m. on the day of the meeting, efforts will be made to provide the comment to the City Council during the meeting. However, staff cannot guarantee that written comments received after 4:00 p.m. will be provided to City Council during the meeting. All written comments received prior to the end of the meeting will be made part of the record of proceedings.

## **Verbal Comments**

- If you wish to speak to the Council on an item by telephone, you should contact the City Clerk at (559) 324-2060 no later than 4:00 p.m. the day of the meeting.
- You will be asked to provide your name, phone number, and your email. You will be emailed instructions to log into Webex to participate in the meeting. Staff recommends participants log into the Webex at 5:30 p.m. the day of the meeting to perform an audio and mic check.
- All callers will be placed on mute, and at the appropriate time for your comment your microphone will be unmuted.
- In order for everyone to be heard, please limit your comments to 5 minutes or less, or 10 minutes per topic

## **Webex Participation**

- Reasonable efforts will be made to allow written and verbal comment from a participant communicating with the host of the virtual meeting. To do so, a participant will need to chat with the host and request to make a written or verbal comment. The host will make reasonable efforts to make written and verbal comments available to the City Council. Due to the new untested format of these meetings, the City cannot guarantee that these written and verbal comments initiated via chat will occur. Participants wanting to make a verbal comment via call will need to ensure that they accessed the WebEx meeting with audio and microphone transmission capabilities.

## **CALL TO ORDER**

### **FLAG SALUTE - Councilmember Basgall**

## **ROLL CALL**

**PUBLIC COMMENTS** - This is an opportunity for the members of the public to address the City Council on any matter within the City Council's jurisdiction that is not listed on the Agenda. In order for everyone to be heard, please limit your comments to 5 minutes or less, or 10 minutes per topic. Anyone wishing to be placed on the Agenda for a specific topic should contact the City Manager's office and submit correspondence at least 10 days before the desired date of appearance.

**ORDINANCES AND RESOLUTIONS** - With respect to the approval of resolutions and ordinances, the reading of the title shall be deemed a motion to waive a reading of the complete resolution or ordinance and unless there is a request by a Councilmember that the resolution or ordinance be read in full, further reading of the resolution or ordinance shall be deemed waived by unanimous consent of the Council.

**CONSENT CALENDAR** - Items considered routine in nature are to be placed upon the Consent Calendar. They will all be considered and voted upon in one vote as one item unless a Councilmember requests individual consideration. A Councilmember's vote in favor of the Consent Calendar is considered and recorded as a separate affirmative vote in favor of each action listed. Motions in favor of adoption of the Consent Calendar are deemed to include a motion to

waive the reading of any ordinance or resolution on the Consent Calendar. For adoption of ordinances, only those that have received a unanimous vote upon introduction are considered Consent items.

- [1.](#) Administration - Approval - Minutes from the January 9, 2023, Council Meeting.
- [2.](#) Finance – Receive and File – Annual Special Tax Accountability Report for the City's Community Facilities District No. 2020-1.
- [3.](#) General Services – Approval – Final Acceptance for Public Safety Water Damage Repairs.
- [4.](#) Planning and Development Services – Approval – Final Acceptance for CIP 21-10, Fowler Ave Street Improvements.
- [5.](#) Public Utilities – Approval – Waive Formal Bidding Requirements and Authorize the Purchase of a Caterpillar Excavator from Quinn Company Using Sourcewell Cooperative Purchasing Contract for \$133,472.88.

**PUBLIC HEARINGS** - A public hearing is an open consideration within a regular or special meeting of the City Council, for which special notice has been given and may be required. When a public hearing is continued, noticing of the adjourned item is required as per Government Code 54955.1.

- [6.](#) Consider Approval - Res. 23-\_\_\_\_, 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 with modification

**ADMINISTRATIVE ITEMS** - Administrative Items are matters on the regular City Council Agenda other than Public Hearings.

- [7.](#) Consider – Update and request for direction regarding a potential amendment to parking standards for hotels and related uses.

**Staff:** Dave Merchen, City Planner

**Recommendation:** Consider update and provide direction to staff.

- [8.](#) Receive and File – Fire Department Update.

**Staff:** John Binaski, Fire Chief

**Recommendation:** Receive and File

- [9.](#) Consider Approval - Res. 23-\_\_\_\_, Approving the Director of Emergency Services' Request for the City Council to Declare a Local Emergency Due to the Impacts of Severe Winter Storms and Flooding.

**Staff:** Chad Fitzgerald, Life Safety Enforcement Manager

**Recommendation:** Approve

## **CITY MANAGER COMMENTS**

## **COUNCIL COMMENTS**

**CLOSED SESSION** - A “closed door” (not public) City Council meeting, allowed by State law, for consideration of pending legal matters and certain matters related to personnel and real estate transactions.

10. 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

## **ADJOURNMENT**

## **FUTURE MEETINGS**

Regular City Council Meetings are held at 6:00 P.M. in the Council Chamber. The following are future meeting dates:

- Feb. 6, 2023 (Mon.) (Joint Meeting with Planning Commission)
- Feb. 13, 2023 (Mon.)
- Feb. 21, 2023 (Tue.)

**CLOVIS CITY COUNCIL MEETING**

**January 9, 2023**

**6:00 P.M.**

**Council Chamber**

Meeting called to order by Mayor Ashbeck at 6:00 p.m.

Flag Salute led by Councilmember Pearce

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

**PRESENTATION – 6:03**

**6:03 – ITEM 1 - PRESENTATION OF PROCLAMATION DECLARING JANUARY AS NATIONAL SLAVERY AND HUMAN TRAFFICKING PREVENTION MONTH.**

**PUBLIC COMMENTS – 6:14**

**CONSENT CALENDAR – 6:19**

Councilmember Bessinger abstained from voting on Item 5 due to owning property within 1000 feet of the project site.

Motion by Councilmember Mouanoutoua, seconded by Councilmember Pearce, that the items on the Consent Calendar, with the exception of Item 5, be approved. Motion carried by unanimous vote.

- 2. Administration - Approved - Minutes from the December 19, 2022, Council Meeting.
- 3. Administration - Approved – Award the Request for Proposals and approve the purchase of the three-year VMWare Subscription to Saitech, Inc. for the amount of \$59,788.
- 4. Planning and Development Services – Approved – Bid Award for CIP 21-13 Alley Improvements; and Authorize the City Manager to Execute the Contract on behalf of the City.

**6:19 – ITEM 5 - PUBLIC UTILITIES – APPROVED – FINAL ACCEPTANCE FOR CIP 22-03, DRY CREEK PLAYGROUND RESURFACING. (COUNCILMEMBER BESSINGER HAS A CONFLICT OF INTEREST ON THIS ITEM)**

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

**PUBLIC HEARINGS – 6:21**

**6:21 – ITEM 6 - CONTINUED - RES. 23-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. (CONTINUED FROM THE DECEMBER 19, 2022 MEETING.)

Motion to continue this item to the January 17, 2023, City Council meeting by Councilmember Pearce, seconded by Councilmember Mouanoutoua. Motion carried by unanimous vote.

**ADMINISTRATIVE ITEMS – 6:23**

6:23 – ITEM 7 - APPROVED – 2023 STREET CLOSURE REQUESTS; AND APPROVED – **RES. 23-01**, DECLARING CERTAIN EVENTS AS OLD TOWN SPECIAL EVENTS AND SETTING PRECISE BOUNDARIES FOR THOSE OLD TOWN SPECIAL EVENTS.

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

6:51 – ITEM 8 - RECEIVED AND FILED – CITY ATTORNEY UPDATE.

**CITY MANAGER COMMENTS – 7:49**

**COUNCIL COMMENTS – 7:50**

**CLOSED SESSION – 8:00**

ITEM 7 - GOVERNMENT CODE SECTION 54956.9(D)(1) CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION CASE NAME: DESIREE MARTINEZ V. CITY OF CLOVIS, ET AL., CASE NO. F082914

Mayor Ashbeck adjourned the meeting of the Council to January 17, 2023

Meeting adjourned: **8:25 p.m.**

\_\_\_\_\_  
Mayor

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



# CITY *of* CLOVIS

## REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Finance Department

DATE: January 17, 2023

SUBJECT: Finance – Receive and File – Annual Special Tax Accountability Report for the City’s Community Facilities District No. 2020-1.

ATTACHMENTS: 1. Fiscal Year 2021-22 Special Tax Accountability Report

### **CONFLICT OF INTEREST**

Councilmembers should consider recusal if a campaign contribution exceeding \$250 has been received from the project proponent (developer, applicant, agent, and/or participants) since January 1, 2023 (Government Code 84308).

### **RECOMMENDATION**

Staff recommends that the City Council receive and file the annual fiscal year 2021-22 Special Tax Accountability Report on the City’s Community Facilities District No. 2020-1 (CFD 2020-1) required by the Local Agency Special Tax and Bond Accountability Act enacted by Senate Bill 165.

### **EXECUTIVE SUMMARY**

The Local Agency Special Tax and Bond Accountability Act, enacted by Senate Bill 165 and codified in the California Government Code requires a local agency to submit an annual report to its governing body on any local special tax or local bond measure subject to voter approval. The CFD 2020-1 falls within these reporting requirements and the required annual report, which was prepared by the City’s consultant Francisco and Associates, is attached.

### **BACKGROUND**

In April 2020, the Council approved the formation of the CFD 2020-1. The CFD 2020-1 was formed by the City to finance all costs associated with the maintenance and operation of certain temporary public sewer facilities and the eventual replacement of those temporary facilities with permanent public sewer facilities within the territory of the City known as Dry Creek Preserve. The special tax has been levied on property within the CFD 2020-1, commencing with fiscal year 2020-21.

The Local Agency Special Tax and Bond Accountability Act, enacted by Senate Bill 165 and codified in the California Government Code requires a local agency to submit an annual report

to its governing body on any local special tax or local bond measure subject to voter approval. The City's CFD 2020-1 is subject to these annual reporting requirements. The special tax accountability report must contain the purpose of the special tax, the funds collected and expended for the most recent fiscal year, and the status of any improvements, projects, or services required or authorized to be funded by the special tax. The attached annual special tax accountability report prepared by Francisco and Associates intends to comply with Section 50075.3 of the California Government Code.

**FISCAL IMPACT**

None.

**REASON FOR RECOMMENDATION**

Senate Bill 165 requires a local agency to submit an annual report to its governing body on any local special tax subject to voter approval. This annual status report is for information only and no Council action is required.

**ACTIONS FOLLOWING APPROVAL**

Staff will file the report.

Prepared by: Jay Schengel, Finance Director

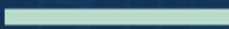
Reviewed by: City Manager *AA*





# Community Facilities District No. 2020-1 (Dry Creek Preserve Sewer Facilities and Services)

## Fiscal Year 2021-22 Special Tax Accountability Report



December 22, 2022

Prepared by



Where Innovative Strategies  
Fund Tomorrow's Communities

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**City of Clovis**  
**Community Facilities District No. 2020-1 (Dry Creek Preserve Sewer Facilities and Services)**

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**Introduction:**

California Senate Bill (SB) 165 added Sections 50075.1, 50075.3 and 50075.5 to Article 1.5 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code, relating to local agency finance. SB 165 added provisions to the California Government Code directing the annual filing of a Special Tax Accountability Report by any local government agency for any local special tax subject to voter approval. Pursuant to SB 165, the Special Tax Accountability Report must contain the purpose of the special tax, the funds collected and expended for the most recent fiscal year, and the status of any improvements, projects, or services required or authorized to be funded by the special tax.

The Fiscal Year 2021-22 Special Tax Accountability Report was prepared for the City's Community Facilities District No. 2020-1.

**City of Clovis**  
**Community Facilities District No. 2020-1**  
**(Dry Creek Preserve Sewer Facilities and Services)**

**Purpose:**

A Resolution of Formation to create the City of Clovis Community Facilities District No. 2020-1 (the “CFD”) was approved on April 13, 2020, by the City Council (the “Council”) of the City of Clovis (the “City”). The CFD was formed by the City to finance all costs associated with the maintenance and operation of certain temporary public sewer facilities and the eventual replacement of those temporary facilities with permanent public sewer facilities within the territory of the City known as Dry Creek Preserve. The special tax has been levied on property within the CFD, commencing with fiscal year (FY) 2020-21. The City did not assume maintenance of any temporary public sewer facilities or construct any permanent facilities during FY 2021-22. Revenues generated for the CFD in FY 2021-22 paid for expenditures associated with the annual administration and reporting, and accumulation of reserves.

**Fiscal Year 2021-22 Revenues and Expenses:**

| Description                                 | FY 2021-22<br>Total |
|---|---------------------|
| <b>REVENUES<sup>1</sup></b>                 |                     |
| Beginning Balance                           | \$27,333            |
| Developer paid fees                         | \$0                 |
| Special Taxes                               | \$57,517            |
| <b>TOTAL REVENUES</b>                       | <b>\$84,850</b>     |
| <b>EXPENDITURES</b>                         |                     |
| Maintenance and Repairs                     | \$0                 |
| CFD Administration                          | \$5,700             |
| Fund Balance Accumulation                   | \$51,817            |
| <b>TOTAL EXPENDITURES</b>                   | <b>\$57,517</b>     |
| <b>FUND BALANCE INFORMATION<sup>2</sup></b> |                     |
| Ending Fund Balance as of June 30, 2022     | <b>\$79,150</b>     |

<sup>1</sup> Special taxes are equal to the amount collected in FY 2021-22.

<sup>2</sup> Fund Balance is used for an operating reserve and allowed to accumulate for construction and replacement of the authorized improvements.



# CITY of CLOVIS

## REPORT TO THE CITY COUNCIL

TO: Mayor and City Council  
 FROM: General Services  
 DATE: January 17, 2023  
 SUBJECT: General Services – Approval – Final Acceptance for Public Safety Water Damage Repairs.

ATTACHMENTS: None

### CONFLICT OF INTEREST

Councilmembers should consider recusal if a campaign contribution exceeding \$250 has been received from the project proponent (developer, applicant, agent, and/or participants) since January 1, 2023 (Government Code 84308).

### RECOMMENDATION

For the City Council to accept the work performed as complete and authorize the recording of the Notice of Completion for this project.

### EXECUTIVE SUMMARY

This project consisted of removal and replacement of water damage materials within the bathroom and surrounding areas of Investigations portion of the Public Safety Facility (south end).

### BACKGROUND

Bids were received on February 28, 2022, and the project was awarded by the City Council to the low bidder, BMY Construction Group, Inc., on April 4, 2022. The project was completed in accordance with the construction documents and the contractor has submitted a request for acceptance of the project.

### FISCAL IMPACT

|    |                            |                     |
|----|----------------------------|---------------------|
| 1. | Award                      | \$360,600.00        |
| 2. | Contract Change Orders     | <u>\$35,785.99</u>  |
|    | <b>Final Contract Cost</b> | <b>\$396,385.99</b> |

The funding for the repairs will be covered by the insurance carrier of the contractor that caused the water damage.

**REASON FOR RECOMMENDATION**

The Facilities Maintenance Section of the General Services Department, the Architect of Record, and the Engineering Inspector agree that the work performed by the contractor is in accordance with the project plans and specifications and has been deemed acceptable. The contractor, BMY Construction Group, Inc., has requested final acceptance from the City Council.

**ACTIONS FOLLOWING APPROVAL**

1. The Notice of Completion will be recorded; and
2. All retention funds will be released pursuant to Federal requirements and the Prompt Payment of Funds Withheld to Subcontractors clause of the Local Assistance Procedures Manual.

Prepared by: Stephen Frankian, Facilities Maintenance & Purchasing Manager

Reviewed by: City Manager *AA*



# CITY *of* CLOVIS

## REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Planning and Development Services

DATE: January 17, 2023

SUBJECT: Planning and Development Services – Approval – Final Acceptance for CIP 21-10, Fowler Ave Street Improvements.

ATTACHMENTS: 1. Vicinity Map

### **CONFLICT OF INTEREST**

Councilmembers should consider recusal if a campaign contribution exceeding \$250 has been received from the project proponent (developer, applicant, agent, and/or participants) since January 1, 2023 (Government Code 84308).

### **RECOMMENDATION**

For the City Council to accept the work performed as complete and authorize the recording of the notice of completion for this project.

### **EXECUTIVE SUMMARY**

This project consisted of street improvements on Fowler Avenue from Alluvial to Nees Avenue, approximately ± 0.5 miles. The work performed included grinding, asphalt paving, ADA concrete improvements, adjusting of existing facilities to finish grade, traffic signal modifications and the application of new traffic markings and signage to current MUTCD standards.

### **BACKGROUND**

Bids were received on June 21, 2022, and the project was awarded by the City Council to the low bidder, Bush Engineering, Inc., on July 18, 2022. The project was completed in accordance with the construction documents and the contractor has submitted a request for acceptance of the project.

**FISCAL IMPACT**

|   |                                  |
|---|----------------------------------|
| 1. Award  | \$1,076,920.00                   |
| 2. Cost increases/decreases resulting from differences between estimated quantities used for award and actual quantities installed. | (\$ 30,215.06)                   |
| 3. Contract Change Orders   | \$2,216.78                       |
| <br><b>Final Contract Cost</b>  | <br><u><u>\$1,048,921.72</u></u> |

This project was approved in the Community Investment Program 2022-23 fiscal year budget and was funded by Surface Transportation Block Grant (STBG) funding.

**REASON FOR RECOMMENDATION**

The Public Utilities Department, the City Engineer, the Engineering Inspector, and the Project Engineer agree that the work performed by the contractor is in accordance with the project plans and specifications and has been deemed acceptable. The contractor, Bush Engineering, Inc., has requested final acceptance from the City Council.

**ACTIONS FOLLOWING APPROVAL**

1. The Notice of Completion will be recorded; and
2. All retention funds will be released pursuant to Federal requirements and the Prompt Payment of Funds Withheld to Subcontractors clause of the Local Assistance Procedures Manual.

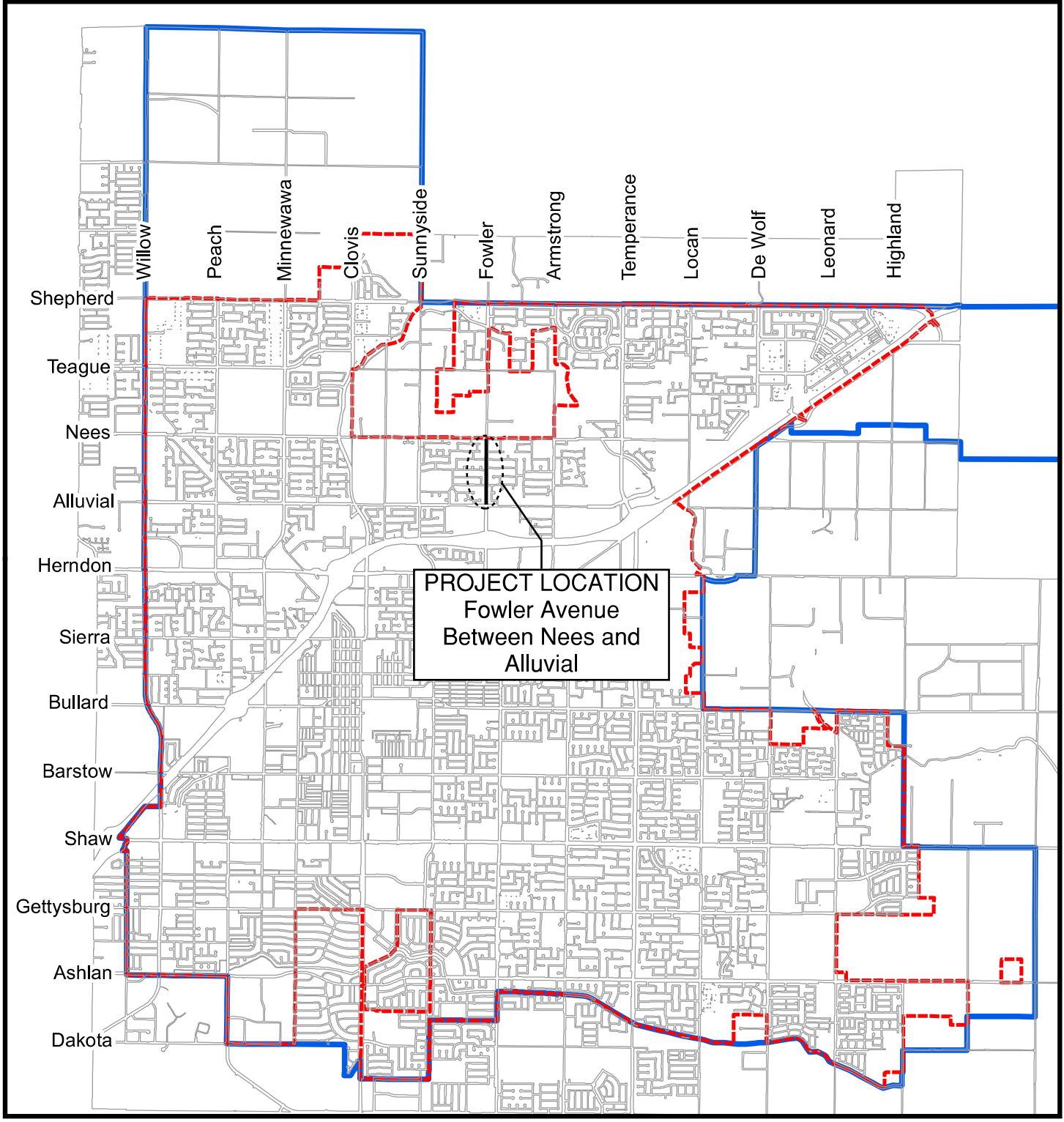
Prepared by: Tatiana Partain, Management Analyst

Reviewed by: City Manager *AT*



# VICINITY MAP

## CIP 21-10 Fowler Avenue Street Improvements



**PROJECT LOCATION**  
 Fowler Avenue  
 Between Nees and  
 Alluvial



# ATTACHMENT 1





# CITY *of* CLOVIS

## REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Public Utilities Department

DATE: January 17, 2023

SUBJECT: Public Utilities – Approval – Waive Formal Bidding Requirements and Authorize the Purchase of a Caterpillar Excavator from Quinn Company Using Sourcewell Cooperative Purchasing Contract for \$133,472.88.

ATTACHMENTS: None.

### **CONFLICT OF INTEREST**

Councilmembers should consider recusal if a campaign contribution exceeding \$250 has been received from the project proponent (developer, applicant, agent, and/or participants) since January 1, 2023 (Government Code 84308).

### **RECOMMENDATION**

For the City Council to waive the City's formal bidding requirements and authorize purchasing a Caterpillar Excavator from Quinn Company using Sourcewell, a cooperative purchasing contract, for a total cost of \$133,472.88, including tax and freight.

### **EXECUTIVE SUMMARY**

There are funds in this fiscal year's Fleet Renewal budget to purchase a Caterpillar 306 Mini Excavator for the Public Utilities Department Water Division. The existing equipment is scheduled to be replaced due to its age. Quinn Company's competitively bid price on Sourcewell is \$133,472.88, including tax and freight, and the new excavator meets current emissions requirements.

Sourcewell, formerly the National Joint Powers Alliance (NJPA) contract, is a nationwide public procurement service that makes the governmental procurement process more efficient. All contracts available to participating members have been awarded by virtue of a public competitive procurement process compliant with state statutes.

Staff requests waiving formal bidding procedures and recommends the use of Sourcewell, a public multi-agency cooperating purchasing contract, as authorized by Clovis Municipal Code Section 2.7.06(a) and Section IV.C. of the City's Purchasing Manual.

**BACKGROUND**

The recommended equipment is available through Sourcewell, which is a cooperative purchasing contract. Cooperative purchasing is “procurement conducted by, or on behalf of, one or more Public Procurement Units” as defined by the American Bar Association Model Procurement Code for State and Local Governments.

The Fleet Fund includes a vehicle and equipment replacement program, wherein the different divisions within City departments budget for and contribute a set amount of money annually for the future scheduled replacement of a vehicle or piece of equipment. This allows each department and the divisions within the departments to financially plan for the large capital expense of purchasing new vehicles and equipment that need to be replaced due to age, wear and tear, or to meet regulatory requirements. Depending on the condition and need of the vehicle or equipment being replaced, it will be removed from front-line operation and may be kept as a back-up, or it will be auctioned off in the City’s vehicle and equipment surplus program.

**FISCAL IMPACT**

Funds were included in the 2022-2023 Fleet Capital Acquisition budget, often referred to as the Fleet Renewal or Fleet Replacement budget. The Utilities Water Division in the Public Utilities Department has accumulated the necessary funds for replacement of the equipment.

**REASON FOR RECOMMENDATION**

Sufficient replacement funds have been collected. The existing excavator has been in service for almost 15 years and is scheduled for replacement. The existing excavator only meets Tier 3 emissions standards, whereas the new excavator will meet Final Tier 4 standards. Staff has evaluated the available equipment and determined that it meets the needs of the Public Utilities Department Utilities Water Division. The proposed method of purchasing the equipment is cost-effective and sufficient funds are available.

**ACTIONS FOLLOWING APPROVAL**

A purchase order will be prepared for the City Manager’s approval and sent to the vendor.

Prepared by: Paul Armendariz, Assistant Public Utilities Director

Reviewed by: City Manager *AH*



# CITY *of* CLOVIS

## REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Planning and Development Services

DATE: January 17, 2023

SUBJECT: Consider Approval - Res. 23-\_\_\_\_, 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 with modification

ATTACHMENTS:

1. Draft Resolution
2. CUP2022-005, Conditions of Approval
3. Appeal Submittal
4. Applicant's Response to Appeal
5. Sunrise Pavilion Planned Commercial Center (P-C-C) Use Schedule
6. October 24, 2022 Correspondence with ABC
7. December 16, 2022 Letter from Clovis Police Department
8. January 3, 2023 Applicant's Revision Proposal
9. January 9, 2023 Letter from Clovis Police Department

### CONFLICT OF INTEREST

Councilmembers should consider recusal if a campaign contribution exceeding \$250 has been received from the project proponent (developer, applicant, agent, and/or participants) since January 1, 2023 (Government Code 84308).

### RECOMMENDATION

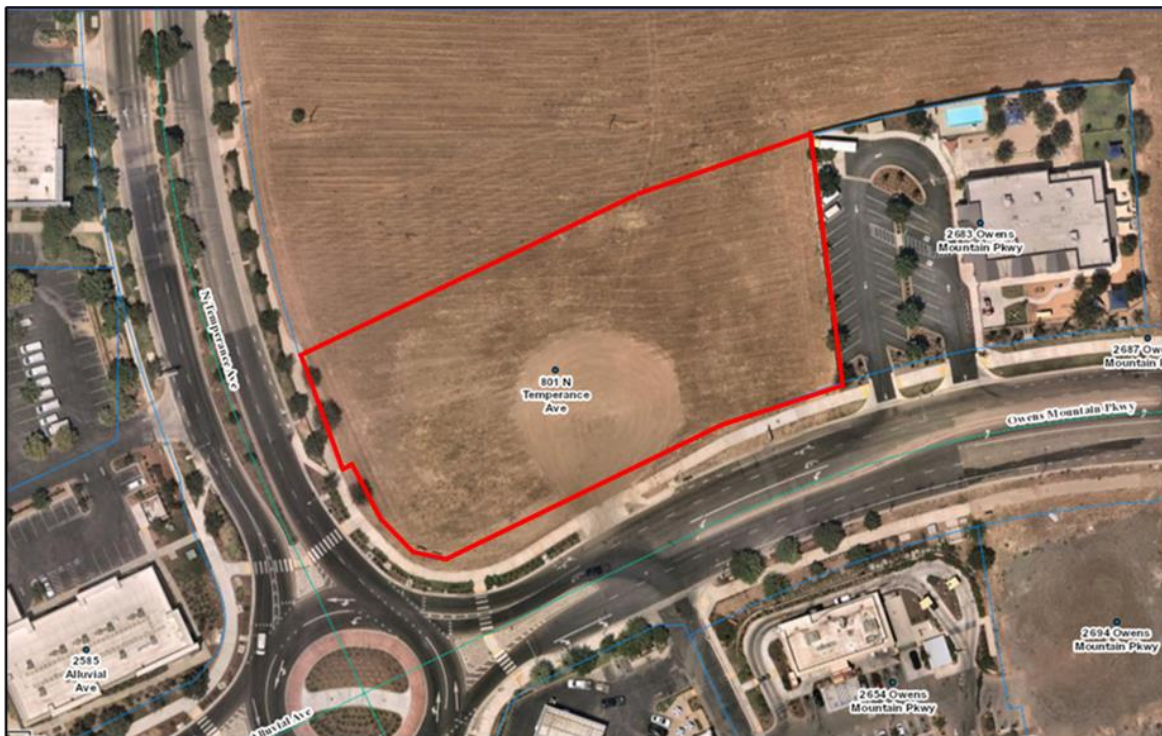
Staff recommends that the City Council Deny the appeal and uphold the Planning Commission's approval of CUP2022-005 with the addition of a condition of approval prohibiting the sale of alcohol.

**EXECUTIVE SUMMARY**

The appellant is requesting that the City Council overturn the Planning Commission’s approval of Conditional Use Permit (CUP) 2022-005. The CUP approval was for a new convenience store with fuel sales, the sale of liquor and alcoholic beverages for off-site consumption, and 24-hour operations on property located at the northeast corner of North Temperance and Owens Mountain Parkway, in the existing Sunrise Pavilion Planned Commercial Center (P-C-C). On November 10, 2022, staff received an appeal of the Planning Commission’s approval of CUP2022-005 (**Attachment 3**).

After the Planning Commission approved the project in October of 2022, staff received new information from the Fresno Division of the Alcoholic Beverage Control (ABC) indicating that the Census Tract for the subject property is already overconcentrated with liquor licenses. This information contradicted information previously provided by ABC showing that the area was not overconcentrated. In light of the new information, the Police Department now opposes the sale of alcohol as part of the project. Modified conditions of approval prohibiting the sale of alcohol have been incorporated into staff’s recommendations. With the modified conditions, staff’s findings remain consistent with the initial conditional use permit approval and therefore, staff recommends that the City Council make a finding to deny the appeal.

**FIGURE 1 – Project Location**



**□ = Project Boundary**

## BACKGROUND

On October 27, 2022, the Planning Commission approved three conditional use permits associated with the proposed development at the northeast corner of North Temperance and Owens Mountain Parkway (subject site). The proposed development includes two buildings, one on the eastern part of the site (“East Building”) and one on the western part of the site (“West Building”) (see figure 2). A brief description of each of the three use permits and how they relate to the overall development of the subject site is provided as follows:

- CUP2022-004 approved a drive-through use/service window for a quick service restaurant (QSR) inside the East Building. The appeal does not affect this part of the overall project.
- CUP2022-005 approved a 24-hour convenience store with fuel sale, the sale of liquor and alcoholic beverages for off-site consumption, and a QSR drive-through use inside the West Building. This is the approval that is being appealed by Mr. Beal.
- CUP2022-007 was a request to amend the previously adopted use schedule in the Sunrise Pavilion Planned Commercial Center (P-C-C) to include 24-hour uses. This was necessary to accommodate the 24-hour convenience store proposed within the West Building with CUP2022-005. The appeal does not affect this part of the overall project.

**FIGURE 2 – Proposed Site Plan**



### **The Conditional Use Permit Process**

The conditional use permit process enables the Planning Commission to make a finding that the proposed development is in compliance with the intent and purpose of Chapter 9.64.050 of the City's Municipal Code. The chapter provides the following list of six findings required for the approval of a CUP. The proposed development must be consistent with the findings:

1. 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;
2. The proposed use is consistent with the General Plan and any applicable specific plan;
3. 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;
4. The subject parcel is physically suitable in size and shape for the type and density/intensity of use being proposed;
5. 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; and
6. The proposed project has been reviewed in compliance with the provisions of the California Environmental Quality Act (CEQA) and there would be no potential significant negative effects upon environmental quality and natural resources that would not be properly mitigated and monitored, unless findings are made in compliance with CEQA.

The CUP process also provides the opportunity for the applicant or any aggrieved person to appeal the Planning Commission's determination or decision to City Council. During the appeal hearing, the City Council may consider any issue(s) associated with the appeal in addition to the specific grounds for the appeal. As the review authority of this appeal, City Council must consider the same six findings as did the Planning Commission, and if the Planning Commission's approval is to be upheld the City Council must adopt the six findings as outlined above. Moreover, when reviewing the appeal, the City Council may:

1. By resolution, affirm, affirm in part, or reverse the action, the determination, or decision that is the subject of the appeal;
2. Adopt additional conditions of approval deemed reasonable and necessary, and may even address issues or concerns that go beyond the subject of the appeal; or

3. Disapprove the permit or approval granted by the previous review authority, even though the appellant only requested a modification or elimination of one or more conditions of approval.

## PROPOSAL AND ANALYSIS

### CUP2022-005 Project Approval

#### Project Site

The project site is an approximately 1.9-acre vacant parcel that is located at the northeast corner of North Temperance Avenue and Owens Mountain Parkway, and within the Sunrise Pavilion Commercial Center. This area is generally surrounded by commercial uses and office spaces. The Sunrise Pavilion Commercial Center is partially developed, with the majority of development on the south side of Owens Mountain Parkway, including businesses such as the Chevron fuel station and Jonny Quick convenience market, Starbucks, McDonald's, and Riley's.

As described in the Background section of this report, the project applicant requested, and the Planning Commission approved, three conditional use permits to facilitate the development of the subject site. However, only one of these approvals, CUP2022-005, was appealed. CUP2022-005 authorizes the following uses for the West Building on the site:

- Fuel station with convenience market
- Drive-through use for co-tenant space
- Alcohol sales for off-site consumption
- 24-hour operations

The West Building consists of a 4,500 square foot convenience store with a 1,500 square foot designated food service-QSR co-tenant space and ancillary drive-through. The convenience store proposed to operate in conjunction with fuel sales (including a fuel canopy) and the sale of liquor and alcoholic beverages for off-site consumption.

#### 24-Hour Operations

The Sunrise Pavilion Commercial Center is a planned commercial center with unique development standards and uses allowed. In the case of Sunrise Pavilion, a specific use schedule was established when the City Council approved the rezoning to P-C-C in 2002 (**Attachment 5**). Under this use schedule, general retail and restaurants are permitted by-right, while drive-up windows and convenience stores require the approval of a conditional use permit. Prior to the approval of CUP2022-007, the use schedule did not allow for 24-hour uses. For this reason, the approval of CUP2022-007 was necessary to modify the existing use schedule to add 24-hour uses. City ordinance allows the modifications of P-C-C use schedules through the conditional use permit process. The Planning Commission approved CUP2022-007 modifying the P-C-C use schedule to include 24-hour operations through conditional use permit approval.

#### Project Operations

The service station component of the project includes the sale of vehicle fuel. The convenience market will sell typical merchandise as well as sandwiches and alcohol. Alcohol sales will not



exceed 25% of the retail area of the building. The service station and convenience market are proposing business hours to be 24 hours, seven days a week. The quick service restaurant is proposing business hours to be within normal business hours. There are no residential properties adjacent to the proposed site or other uses in close proximity that would be negatively impacted by 24-hour operations. No objections to the 24-hour use had been identified prior to the appeal.

Drive Through Use and Standards

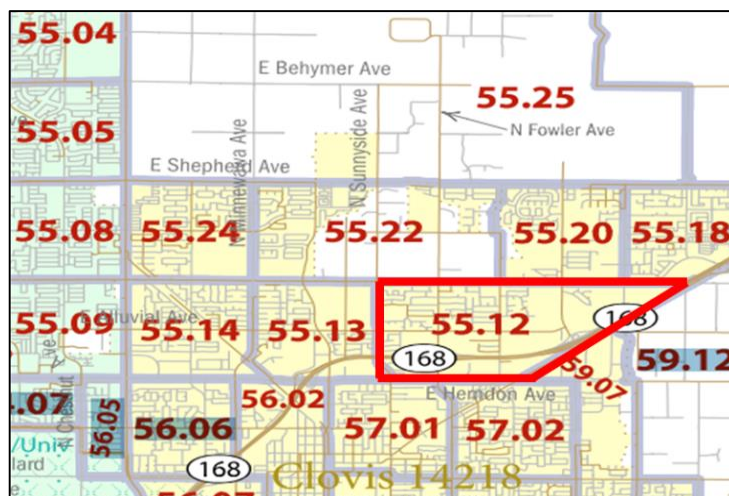
The approved 4,500 square foot convenience store was designed to include a 1,500 square foot co-tenant space with ancillary drive-through service. Similar to the QSR and retail space, the user for the co-tenant space is unknown and project operations are not yet identified for the drive-through location. The conditions of approval also specify that any future tenant identified by the City as a high-volume drive-through user may trigger additional review and requirements for vehicle stacking above the typical standard.

Alcohol Sales (Type 21)

As a part of the conditional use permit request, the applicant is seeking approval of alcohol sales for off-site consumption. The associated ABC license is a Type 21 which allows for the sale of beer, wine, and distilled spirits. Although this request for alcohol sales is included as part of CUP2022-005 as a matter of land use operation, based on a previous delegation by the City Council in 2000 and reaffirmed in 2011, the Clovis Police Department (CPD) has full authority for decisions related to obtaining an ABC license. This request was routed to the City’s Police Department and the Fresno Division of the Alcoholic Beverage Control (ABC) for review.

The discussion provided in the staff report for the Planning Commission meeting 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 6**). 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.

**FIGURE 3  
Census Tract 55.12**



The new information regarding oversaturation was provided to the Police Department. Upon their review, on December 16, 2022, the Police Department provided comments stating that they would be opposed to any new businesses selling liquor for off-site consumption within this Census Tract (**Attachment 7**).

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 20 or 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. 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 the conditions of approval be modified to prohibit the sale of alcohol in conjunction with the project.

### **Planning Commission Meeting**

CUP2022-005 was brought before the Planning Commission for consideration at its October 27, 2022, meeting. The Planning Commission had no major comments or concerns related to the conditional use permit request. The applicant spoke in support of the project and provided background regarding the proposal. The appellant, Mr. Beal, was present at the hearing and spoke against the project. His concerns include the sale of alcohol and the 24-hour operation proposed for this project which is located across the street from his business. Mr. Beal is the owner and operator of the Chevron fuel station/Jonny Quick convenience market. He expressed concern with the proximity of another entity that sells alcohol. Additionally, he believes the 24-hour operation is inconsistent with the character of the area. Due to these reasons, Mr. Beal believes the project will have adverse effects on his establishment's success. Other than the applicant and Mr. Beal, no other testimony was presented regarding the project. The Planning Commission ultimately approved the CUP2022-005 by a vote of 5-0.

Below are recommended findings for CUP2022-005. These findings were provided in the staff report to the Planning Commission, modified to reflect the new information from ABC regarding the overconcentration of liquor licenses.

#### Finding 1:

*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.*

Each component of the subject Project is allowed within the P-C-C Zone Districts with an approved conditional use permit. The Project will be in compliance with applicable provisions, development standards and subject to the conditions of approval. This Project will undergo site plan review (SPR) to further ensure that the site layout and development standards are met. During the SPR review, the height, setbacks, parking standards, and aesthetics will be reviewed to ensure that applicable standards are met.

Finding 2:

*The proposed use is consistent with the General Plan and any applicable Specific Plan.*

This Project is consistent with the 2014 Clovis General Plan. The underlying General Plan land use designation of MU-BC (Mixed-use Business Campus) would remain unchanged, and the proposed use is acceptable within the underlying General Plan land use designation, according to the 2014 Clovis General Plan.

Finding 3:

*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.*

The Project proposed three conditional use permits to allow the development of a small retail center. This Project is compatible with the existing uses and will complement the area in which it is situated. The Project complements the uses within the R-T Park and P-C-C Zone Districts and will not be out of the ordinary as it relates to the character of the surrounding area. Further, the Project will maintain the general circulation pattern by retaining primary ingress/egress from Owens Mountain Parkway and Temperance Avenue. Based on the existing overconcentration of liquor licenses within the subject property's Census Tract, the Police Department has stated that the allowance for an additional liquor license could cause concern for the public and the quality of life within the City. For this reason, the conditions of approval prohibit the sale of alcohol as part of the project.

Finding 4:

*The subject parcel is physically suitable in size and shape for the type and density/intensity of use being proposed.*

The subject parcel is physically suitable in size and shape for the proposed project. The Project will be required to comply with all conditions from Public Utilities and Engineering, which will further ensure the site is suitable for the proposed uses.

Finding 5:

*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.*

The Project will comply with all applicable public health standards. Details and final approval will occur during engineering review if approved. This review will ensure utility services are sufficient to accommodate the Project and impose conditions for upgrades as needed. There are no concerns related to public utilities and services.

### Finding 6:

*The proposed project has been reviewed in compliance with the provisions of the California Environmental Quality Act (CEQA) and there would be no potential significant negative effects upon environmental quality and natural resources that would not be properly mitigated and monitored, unless findings are made in compliance with CEQA.*

The City has determined that this Project is exempt from CEQA pursuant to CEQA Guidelines Section 15332 (Class 32 – Infill Development Projects) for the development and operation of CUP2022-005.

The Class 32 categorical exemption exempts Projects that satisfy the following criteria: (a) the Project is consistent with the applicable land use designation, General Plan policies, and zoning; (b) is located within city limits on a project site of no more than five acres substantially surrounded with urban uses; (c) is located on a site with no value as habitat for endangered, rare, or threatened species; (d) would not result in significant effects relating to traffic, noise, air quality, and water quality; and (e) is located on a site that can be adequately served by all utilities. The exceptions identified in Section 15300.2 identify further review of an exemption by the project's potential to result in a cumulative impact, significant effect, proximity to a scenic highway, location on or within the vicinity of a hazardous waste site, and/or the potential to negatively impact a historical resource. Based on staff's review, these exceptions would not be triggered by the proposed Project. The project is determined to be categorically exempt.

### **The Appeal**

According to his appeal letter (**Attachment 3**), the appellant opposes the Project approval under the premise that the 24-hour operation and an additional Type 21 liquor license are not suitable for the center. In the appeal letter, the appellant indicates that the Project would "change the character of the area". The appeal highlights two concerns, the first being that two Type 21 liquor licenses would be across the street from each other. The second concern is that the 24-hour operation is not consistent with the Johnny Quik (appellant's business), Chevron, Starbucks, Mcdonald's, and Riley's hours across the street. According to the appellant, the change in character of the area could be detrimental to his business.

### **Staff's Response to the Appeal**

The appellant expressed concerns with having two Type 21 liquor licenses located across from each other. The Type 21 License allows for the sale of beer, wine, and distilled spirits to be purchased and consumed off-site. There are City or State standards requiring separation between Type 21 liquor licenses, and it is not uncommon for establishments selling alcohol to be located in close proximity to one another. Key factors are saturation levels and crime level of the area where licenses are proposed. As outlined above, the most recent information received from ABC shows the subject property's Census Tract to be overconcentrated with existing liquor licenses. For this reason, the Police Department opposes the sale of alcohol from the site and does not intend to approve the issuance of a new liquor license. Staff is recommending that the conditions of approval be modified to prohibit the sale of alcohol in conjunction with the project.

With regard to the hours of operation, staff is unable to support the appellant's statement that the 24-hour operation will change the character of the area. The P-C-C encourages innovative design resulting in an environment superior to conventional commercial development. This zoning district allows all uses customarily associated with commercial centers if designated as part of the approved development plan. The P-C-C use schedule can be amended through the CUP process. Since the use schedule was amended and approved through CUP2022-007 by the Planning Commission, 24-hour operating uses are allowed within the P-C-C Zone District with an approved CUP.

In this situation, the existing similar uses such as Mr. Beal's business operate from 4:30 am to 12 am from Monday through Thursday, from 4:30 am to 1 am on Friday, from 5 am to 1 am on Saturday, and 6 am to 12 am on Sunday. Although these hours are not considered 24-hour, the difference is an average of 4.5 hours for closing hours. The difference in hours of operations is not significant that it would render a substantial deviation from existing characteristics of the area. Additionally, the 24-hour operation may be beneficial in service to the nearby hospital staff, California Health Science University students and faculty, City Fire Station 5, and visitors to the area.

#### **Applicant's Response to the Appeal**

The applicant was provided with notice of the appeal and a copy of the appeal letter. Though not required by the Municipal Code, the applicant provided a response to the appeal which elaborates on why the Planning Commission's approval should be upheld (**Attachment 4**).

#### **Activity Since the Appeal Hearing was Continued on December 19, 2022**

The appeal was originally scheduled for consideration by the Council at its December 19, 2022 meeting. Because of the new information received from ABC and the resulting change in the Police Department's position, the item was continued to January 9, 2023 and then continued again to January 17, 2023. These continuances allowed the applicant to meet with Planning and Police Department staff to discuss the overconcentration of ABC licenses and to propose changes to the project which might reduce the Police Department's concerns. The key change proposed by the applicant was to change from a Type 21 license (allowing distilled spirits) to a Type 20 license (beer and wine only) (refer to **Attachment 8**). The Police Department agreed to evaluate the information discussed during the meeting and provide updated comments.

On January 9, 2023, the Police Department completed its review and provided updated comments regarding the project (**Attachment 9**). The Police Department continues to oppose an additional liquor license in the subject Census Tract due to oversaturation.

#### **FISCAL IMPACT**

None.

#### **REASON FOR RECOMMENDATION**

In consideration of the information provided in this report, staff continues to support the Planning Commission's approval of CUP2022-005. Staff has determined that the justification provided for the request to remove the 24-hour operation is not sufficient. Staff has determined that due to the new information provided by ABC in regard to the off-site liquor license, the conditions of

approval should be modified to prohibit the sale of alcohol. Therefore, Planning Staff recommends that the City Council uphold the Planning Commission's decision to deny the appeal of CUP2022-005 with modified conditions prohibiting the sale of alcohol.

**ACTIONS FOLLOWING APPROVAL**

None.

Prepared by: Marissa Jensen, Assistant Planner

Reviewed by: City Manager *JH*

**RESOLUTION 23-\_\_\_\_**

**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 a 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 January 17, 2023, 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 January 17, 2023, 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 January 17, 2023, by the following vote, to wit.

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

DATED: January 17, 2023

\_\_\_\_\_  
Mayor

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

**CONDITIONS OF APPROVAL**  
**CUP2022-005**  
**PLANNING DIVISION CONDITIONS**  
**(Marissa Jensen, Division Representative – (559) 324-2338)**

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.*
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. This Conditional Use Permit is not transferable to another location.
4. This Conditional Use Permit does not permit or otherwise allow for the operation of the site and/or uses other than explicitly described in the accompanying staff report from the October 27, 2022 Planning Commission.
5. A separate Site Plan Review (SPR) and approval shall be required prior to the construction of any structures and/or prior to any site modifications.
6. The site and its exterior shall remain maintained and free from debris and trash. This includes no outdoor stacking of empty crates, boxes, and/or pallets along the exterior of the structures.
7. The applicant shall operate in a manner that complies with the Clovis Municipal Code so that it does not generate noise, odor, or vibration that adversely affects any adjacent properties.
8. There shall be no use of exterior music and/or outdoor speaker systems.
9. Unless otherwise permitted through an appropriate entitlement, there shall be no outdoor displays and/or sales of merchandise, including the use of vending machines (i.e., propane exchange cages, vending machines, ice machines, etc.).
10. All signs for this use shall comply with the Clovis Sign Ordinance and the Sunrise Pavilion PCC and require separate sign permits. Temporary signs shall be per Code and the use of mascots and sign waivers shall be prohibited.
11. The applicant shall consult with the City of Clovis Building Division on any building code requirements. All conditions of this Conditional Use Permit shall be addressed prior to operation of the facility.

12. Any future request to expand and/or modify the use shall be subject to an amendment to the CUP.
13. An abandonment or cessation of this use for a period exceeding 90 days shall cause this approval to be scheduled for revocation.
14. Fuel delivery shall pull completely onto the site during deliveries and shall not block any pedestrian and/or vehicular circulation.
15. All parking of employees shall occur on-site.
16. The use shall provide for 5.0 vehicle parking spaces per 1,000 square feet of gross floor area.
17. The use shall comply with the standards for drive-through uses under Section 9.40.090 of the Clovis Municipal Code, including but not limited to the following standards:
  - Each drive-through aisle shall maintain a minimum 12-foot width and a minimum 10 foot interior radius at curves;
  - Each drive-through aisle shall be appropriately screened with a minimum 3-foot-high decorative masonry wall (a combination of landscape and walls may be used, subject to approval by the Planning Division); and
  - Each drive-through aisle shall provide enough space to accommodate at least five (5) vehicles and at least eight (8) waiting vehicles between the menu board and the drive-up window.
18. As a minimum standard, all drive-through aisles shall provide sufficient space before the menu board to accommodate at least 5 waiting vehicles and at least 8 waiting vehicles between the menu board and the drive-up window. For any drive-through use identified by the City as being a high-volume drive-through, additional queueing capacity will be required based on the specific characteristics of the proposed use and the location and configuration of the drive-through lane(s).
19. Architecture shall be compatible with the existing PCC buildings and the R-T requirements.
20. CUP2022-005 may be reviewed one year after the facility use begins for compliance with the conditions of approval. Clovis Planning staff may conduct a review of the use in regard to conditions of approval and present findings of this review to the City Planner.
21. This conditional use permit is approved per the conceptual site plan attached as Exhibit 6 of the October 27, 2022 Planning Commission staff report. Any major modifications will require an amendment to this conditional use permit.

**FIRE DEPARTMENT CONDITIONS**  
**(Rick Fultz, Department Representative – (559) 324-2214)**

**Roads / Access**

22. Fire Apparatus Access Roads (26'): Fire apparatus access roads shall have an unobstructed width of not less than twenty-six feet (26') to all buildings and an unobstructed vertical clearance of not less than fourteen feet (14').
23. All Weather Access: The applicant shall provide all weather access to the site during all phases of construction to the satisfaction of the approved Clovis Fire Department Standard #1.3.

**Fire Hydrants**

24. Commercial Fire Hydrant: The applicant shall install 1 4 ½" x 4 ½" x 2 ½" approved Commercial Type hydrant(s) and "Blue Dot" hydrant locators, paint fire hydrant(s) yellow with blue top and caps, and paint the curb red as specified by the adopted Clovis Fire Department Standard #1.4. Plans shall be submitted to the Clovis Fire Department for review and approval prior to installation. The hydrant(s) shall be charged and in operation prior to any framing or combustible material being brought onto the site.
25. Looped Water Main: The applicant shall install approved looped water main capable of the necessary flow of water for adequate fire protection and approved by the Clovis Fire Department
26. Vehicle Impact Protection: The applicant must install protection posts that meet the City of Clovis specifications according to Clovis Fire Department Standard #1.7.

**Fire Protection Systems**

27. Fire Sprinkler – 2,500 Square Feet: The applicant shall install an automatic fire sprinkler system in buildings exceeding 2,500 square feet in gross floor area, as per NFPA 13. When buildings have eaves or overhangs exceeding a distance of four feet (4') from the wall or support, the gross roof area shall be used to determine the need for automatic fire sprinklers, including covered walkways, patios, and porches. A Fire Department permit is required for an automatic fire sprinkler installation.
28. Underground Fire Service Line Installation: Installation shall be per Clovis Fire Standard #2.1.
29. Prior to installation, the applicant shall submit fire sprinkler underground water supply plans for review and approval and issuance of a permit by the Clovis Fire Department. Prior to final acceptance, the underground fire service line shall be inspected, pressure tested and flushed in the presence of a Clovis Fire Department inspector. A permit is required to be on-site for all inspections requests.

30. FDC Location: The Fire Department Connection to the automatic fire sprinkler system shall be shown on the site utility plan. Installation shall be per Clovis Fire Standard #2.1.
31. This will be reviewed and approved by the Clovis Fire Department before installation.
32. Monitored Sprinklers: All valves controlling the water supply for automatic sprinkler systems and water flow switches on all sprinkler systems shall be electronically monitored for integrity.
33. Fire Extinguishers: The applicant shall install approved fire extinguishers, 2A-10BC minimum rating, one (1) per each 3000 square feet, with a maximum travel of seventy-five feet (75') from any point in the building. These should be located and approved by the Clovis Fire Department prior to building occupancy.

### **Building Information**

34. Address Numbers: Address numbers shall be installed on every building as per adopted Clovis Fire Department Standard #1.8. Large commercial, industrial buildings may require additional building addressing on the back side of the building as approved by Clovis Fire Department.
35. Building numbers shall:
- Be a minimum of twelve inches (12") tall.
  - Be a minimum of one and one-half inches (1½") principal stroke width.
  - Be located above any eaves or walkway coverings, if possible.
  - Face the street in which it is addressed, if possible.
  - Buildings with multiple units shall be identified with unit numbers at both front and rear entrances.
  - Buildings with multiple address numbers shall also have the address numbers on the rear door. (Rear door numbers are not required to be illuminated if reflectorized.)
  - Unit numbers and rear door building numbers shall be at least four inches (4") in height.
36. Review for compliance with fire and life safety requirements for the building interior and its intended use are reviewed by both the Fire Department and the Building Departments. When a submittal for building plan review is made as required by the California Building Code by the architect or engineer of record for the building further comments will be given.
37. Provide a copy of the approved stamped site plan from the Planning Division. Site Plan shall include all fire department notes to verify compliance with requirements. Site plans included with this plan submittal are subject to the conditions on the Planning Division approved set.

38. Requirements for hydrants and access will be addressed when the buildings are submitted for site plan review.

**ENGINEERING / PUBLIC UTILITIES**

**(Sean Smith, Engineering Representative – (559) 324-2363)  
(Paul Armendariz, Public Utilities Representative – (559) 324-2649)**

39. The applicant shall apply to the City for a Site Plan Review. The applicant shall be advised that modifications to the access of North Temperance Avenue and Owens Mountain Parkway may be required as part of the Site Plan Review.

**COUNTY OF FRESNO HEALTH DEPARTMENT**

**(Kevin Tsuda, County of Fresno Health Representative – (559) 600-3271)**

40. The applicant shall refer to the attached Fresno County Health Department correspondence. If the list is not attached, please contact the agency for the list of requirements.

**FRESNO METROPOLITAN FLOOD CONTROL DISTRICT**

**(Robert Villalobos, FMFCD Department Representative – (559) 456-3292)**

41. The applicant shall refer to the attached Fresno Metropolitan Flood Control District correspondence. If the list is not attached, please contact the District for the list of requirements.

**SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT**

**(Patrick Chimienti, SJVAPCD Department Representative – (559) 230-6139)**

42. The applicant shall refer to the attached San Joaquin Valley Air Pollution Control District correspondence. If the list is not attached, please contact the District for the list of requirements.

**FRESNO IRRIGATION DISTRICT**

**(Chris Lundeen, FID Representative – (559) 233-7161)**

43. The applicant shall refer to the attached FID requirements. If the list is not attached, please contact the District for the list of requirements.

**CALIFORNIA DEPARTMENT OF TRANSPORTATION**

**(Christopher Xiong, Caltrans Representative – (559) 908-7064)**

44. The applicant shall refer to the attached Cal Trans requirements. If the list is not attached, please contact the District for the list of requirements.

# Beal Developments LLC

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1175 Shaw Ave., #104, PMB 372 Clovis, CA | (559) 288-0211 | [bealdevelopments@aol.com](mailto:bealdevelopments@aol.com)

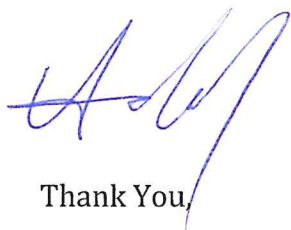
11/08/2022

To: Planning Department

Re: Appeal Planning Commission Approval Cup 2022:005 on 10/27/2022

Allows the sale of distilled liquor (requires a type 21 license) There would be two Type 21 licenses across from each other.

I appeal the 24 hour of operations, this would change the character of the area. At Johnny Quik Food Store we operate 5:00 AM – 12:00 AM Sunday – Thursday 5:00 AM – 1:00 AM Fri & Sat.



Thank You,

George Beal

(559)288-0211

Bealdevelopments@aol.com

Owner

Beal Developments LLC

1175 Shaw Ave #104, PMB 372

Clovis, CA 93612



**Developers, Builders, & Advisors**

Po Box 1095, Clovis, CA 93613

SUBJECT: CUP2022-005/007

Dear Planning staff and Members of the Clovis City Council,

Please accept this summary for justification of the continued approval of Conditional Use Permit(s) CUP2022-005/007, which were approved by the Clovis Planning Commission with unanimous 5-0 votes. As you are aware, Mr. George Beal filed a formal appeal on November 8, 2022. In the appeal, Mr. Beal cites two specific areas of concern: the Commission's approval of an ABC license and secondly, the allowance of a 24-hour use for the proposed Convenience store. In Mr. Beal's notice, the appeal letter does not expand on the specific reasons for his opposition to his concerns. In response, we ask that you please consider the following specific reasons why we processed the use permit and why staff, Clovis PD, and the Planning Commission supported the proposed Project and its operation:

#### AVAILABLE LICENSES

Under the most current Census Tract (55.12), the area allows for a total of four (4) off-sale beer, wine, and spirits licenses. There is currently one (1) utilized by George Beal's Johnny Quick across the street to the south.

The approved convenience store would provide for the second Type 21 as permitted by the local Alcoholic Beverage Control and as reviewed by the Clovis Police Department.

#### 24-HOUR OPERATION-

Although the Commission approved the convenience store to operate on a 24-hour basis, ABC regulations prohibit the sale of alcohol between the hours of 2 am and 6 am. Therefore, the 24- hour approval does not include the sale of alcohol between those hours, yet provides for the continuous operation of the store to fill a need to the immediate and surrounding areas as follows:

- Graduate Level Students

The neighboring accredited California Health Science University (CHSU) provides a graduate level education that can be demanding and requires late night studies and prepping for tests, finals and research. The proposed 24-hour use will provide a much-needed service in food and snack convenience as well as fuel service to an area that is devoid of such opportunities. Additionally, the area is poised to provide additional student housing to the north that would benefit from having food, gas and conveniences on a 24-hour basis.

The 24-hour use would provide for a variety of hot and fresh foods not typical of area convenience stores. Additionally, the proposed 24-hour use will include an online meal and convenience component that benefits students, neighboring housing, and Clovis Community Hospital staff and



visitors needing food, snacks, and fuel in a centralized location with access to the 168 Freeway at hours not typical of other areas of Clovis.

- Clovis Community Hospital

Hospital staff and its visitors could be served by the 24-hour use in that currently there are no immediate 24-hour food and fuel services in the area. Additionally, the hospital's cafeteria closes daily at 9 pm, leaving staff and visitors with no options for a meal during those long night schedules or waiting on family. Subsequently, the 24-hour fuel service provides a safe, well-lit environment for healthcare workers in need of fuel service in that the 24-hour use will have 2-3 attendants at the store, providing an extra measure of safety while fueling.

- Research and Technology

As the Research and Technology Park increases with pending development, the urban market and its food and fuel services operating on a 24-hour basis, it creates a safe, well-lit environment to get those late- night conveniences or food options.

- Clovis Police Department

As provided in staff's report to the Commission, staff distributed the 24-hour request and request for a ABC Type-21 license to various internal and external agencies. Staff's discussion with the Police Department confirmed that there are no concerns with the project proposal. Additionally, police representatives did not have concerns with the request for a Type 21 license and oversaturation within the designated census tract. Subsequent to approval, we are preparing for formal submittal of the Site Plan Review (SPR) process. During staff's SPR review, the opportunity to address lighting, security systems and clear areas free of "dark zones" will surely be addressed and conditioned.

In conclusion, in response to the submitted appeal, we hope we have provided staff and the Council with a comfort level to uphold the Commission's approval of CUP2022-005/007 to allow for the 24-hour use and submittal of a Type 21 license to the local ABC office.

Sincerely,



Orlando Ramirez  
Bottom Line Developers  
6781 N Palm, Suite #100  
Fresno, CA 93704

[Type here]

# SUNRISE PAVILION

## Use Plan Legend

The uses permitted in the proposed Sunrise Pavilion Center are intended to support and compliment the tenants of the Research and Technology Business Park specifically benefiting the employees of the park, visitors to the park and the general public traveling on Highway 168.

### Permitted Uses

The following uses may be permitted within the individual buildings of the site:

|                                    |                               |
|------------------------------------|-------------------------------|
| Bakeries and Bagels                | Hardware & Garden Supplies    |
| Banks and financial services       | Health & Fitness Facility     |
| Barbers and Beauty Salons/Supplies | Jewelry/Accessories           |
| Bookstores                         | Laundry & Dry Cleaning        |
| Business Support Services          | Music Stores                  |
| Candy/Vitamins                     | Office Supply/Furniture Sales |
| Cards/Gifts                        | Personal Services             |
| Child Day Care Center              | Pharmacy and general drug     |
| Coffee Houses                      | Photo processing/sales        |
| Computer & Software stores         | Professional Office           |
| Copy Service                       | Pub/Bar                       |
| Corporate Office                   | Restaurants                   |
| Delicatessens                      | Retail Apparel/shoes          |
| Education/Vocational Uses          | Soft Goods retail             |
| Electronic retail store            | Specialty Food Market         |
| Entertainment facilities/Theater   | Technical or Trade School     |
| Fast Food Restaurants              | Telecommunications retail     |
| Florist and floral supplies        | Toys/Hobbies/Pets             |
| Food Uses (Not to exceed 15,000sf) | Variety stores                |
| Furnishings                        | Video sales and rentals       |
| General Office/Medical Office      |                               |
| General retail or services         |                               |

The following uses may be permitted subject to **Conditional Use Permit approved by the Planning Commission:**

Automobile fuel sales  
 Automobile parts stores  
 Car washes  
 Cellular Telephone Towers  
 Convenience stores  
 Drive-up window use  
 Hotels and Motels  
 Restaurants with on-site alcohol sales  
 24-hour uses (proposed and approved with  
 CUP2022-007)

**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](mailto:MarissaJ@ci.clovis.ca.us)>  
**Sent:** Monday, October 24, 2022 11:00 AM  
**To:** ABC Fresno <[Fresno@abc.ca.gov](mailto: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.

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)

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# 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

City Manager 559.324.2060 • Community Services 559.324.2095 • Engineering 559.324.2350  
Finance 559.324.2130 • Fire 559.324.2200 • General Services 559.324.2060 • Personnel/Risk Management 559.324.2725  
Planning & Development Services 559.324.2340 • Police 559.324.2400 • Public Utilities 559.324.2600 • TTY-711

[www.cityofclovis.com](http://www.cityofclovis.com)



**Developers, Builders, & Advisors**

6781 N Palm, Suite # 100, Fresno, CA 93704

SUBJECT: CUP2022-005/007 ABC Licensing Over- Concentration

Chief Curt Fleming and PDS Director Renee Mathis

Please accept this summary for justification and support of the proposed Type 20 (formerly Type 21) License for the subject property located at the NEC of Temperance and Owens Mtn. Parkway. The intent of this notice is for Clovis Police Dept consideration and approval of a Public Convenience and Needs (PCN) letter for the proposed Project. As you are aware, ongoing misinformation from the local Alcoholic Beverage Control (ABC) Agency placed all involved in a very difficult position.

Please note that it was the good work of Assistant Planner Marissa Jensen that revealed this census tract error. Her diligence in doing comprehensive research and questioning inconsistencies has gained our respect in doing her job well. As part of Melissa's staff report preparation, she revealed a huge discrepancy by ABC that detrimentally affected us and our investment; however, once Marissa confirmed ABC's incorrect website information, we appreciate Marissa immediately contacting us.

Please be advised that on December 30, 2022, I had the opportunity to discuss ABC's discrepancy in great detail with Susan Medrano, ABC District Manager (559-225-3351). The discussion centered around our specific proposal and assignments for the 55.12 Census Tract.

Based on my discussions with Ms. Medrano, please accept the following in considering our license issuance request:

### REDISTRICTING

In the fall of 2021, the State's Sacramento ABC office required a total review of Census Tract operations. The statewide review required regional and local review of over 14,000 census tracts in was inclusive of the following:

- Re-districting and shifting of boundaries for review;
- Removing and adding ABC licenses within the newly create boundaries;
- Recreating certain boundaries and adjusting.

The State managed to complete its review but also required local agency review and adjustment of the remaining 4,000 plus tracts to be completed at the local level. Unfortunately, the Fresno Office fell behind and was not able to complete its findings until the Fall of 2021. Although the revisions were completed by the end of the 2021 year, administratively the Fresno office inadvertently forgot to update the website inclusive of its maps, number of licenses issued, and number allowed per tract. Subsequently, as applicants reached out to ABC and the use of the ABC website, they were provided with incorrect information. In all transparency, ABC has admitted to this error and the incorrect information provided. This is what leads us to our current situation.

### AVAILABLE LICENSES

Under the revised Census Tract (55.12), the tract area allows for a total of four (4) off-sale beer, wine, and spirits licenses. There are currently two (2) convenience stores (Johnny Quick and Shop N Go) utilizing Type 21 Licenses within the tract. Shop N Go is located at the SEC of Fowler and Nees, and Johnny Quick is located at the SEC of Temperance and Owens Mtn. Although four (4) is the maximum permitted in Tract 55.12, ABC and the City issued four (4) additional Type 20 and 21 licenses respectively, to major retailers. Using the revised ABC website, the following retailers are approved by ABC and were also issued licenses within Census Tract 55.12 which is bound by Herndon on the south, Nees on the North, Sunnyside on the west, and Tollhouse on the east:

- Savemart- 1835 Herndon
- Walgreens- 1815 Herndon
- CVS- 1405 Herndon
- ALDI- 1725 Herndon

Ms. Medrano has explained that the ALDI use has deactivated its Type 20 license which currently leaves five (5) total licenses in the Census Tract. Additionally, a closer review of the ABC License Report for Tract 55.12 reveals two unique additional licenses in the area. Licenses are shown for FAMILY DOLLAR AND DOLLAR GENERAL, which were reported to planning and PD staff. It has been confirmed that this is a glitch in the system. When applicants search Census Tract information by number, the Report automatically includes any other ABC license within a statewide 55.12 tract, even if located in another City in California. The two “ghost licenses” are located in California City, CA which utilizes the same Census tract number system as Fresno County. These two non-area licenses should automatically be removed from the total count within Census Tract 55.12.

### CHANGE IN LICENSE REQUEST

The initial ABC application sought to receive approval of a Type 21 general off-sale license. Subsequent to Commission approval, our potential clients have requested to downgrade the license to a Type 20, off-sale beer and wine. We anticipate that this will assist in the decision-

making process to get an approved PCN letter from the Clovis Police Department. Additionally, as required, there will be no alcohol sales allowed between the hours of 2 am and 6 am daily.

In summary, Ms. Medrano has expressed that ABC's research of the census tract and the proposed convenience store location is determined a low crime area and that with Clovis Police support of a PCN letter, her office could also support the addition of the requested Type 20 license. Lastly, four of the existing licenses are held by large retailers that are clustered on Herndon Avenue between Armstrong and Sunnyside more than 1.4 -2 miles away from the Project site. Adding the additional license request would not be detrimental to the area and we feel there is merit in approving a PCN letter that would provide a Type 20 license opportunity that can serve a segment of the growing eastern Clovis community. We anticipate that we have provided staff and Council with a comfort level to uphold the Commission's approval of CUP2022-005/007 to allow for a 24-hour use and submittal of the Type 20 license to the local ABC office.

Sincerely,



Orlando Ramirez  
Bottom Line Developers  
6781 N Palm, Suite #100  
Fresno, CA 93704





# 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

January 9, 2023

To: Rene Mathis

From: James Ellenberger, Police Sergeant

Regarding: In response to the proposed liquor license, type 21 liquor license, the Clovis Police Department is opposed (CUP2022-005/007).

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 and Adli's, here is the information I have.

I followed up with ABC and they are still under the belief that Aldi's is closing or is planning to close. In addition, they also believe Aldi's will be deactivating their liquor license or it could expire February 2023. I contacted the store manager, Brian Ford, and he advised that they are not closing and currently hiring. He was aware of the expiration date for their ABC license but did not believe they would allow it to expire. He encouraged me to reach out to the District Manager for additional information.

Since speaking with Mr. Ford, I have been leaving messages for a District Manager to contact and I have not been contacted.

In our last meeting, Jay Virk/Orlando Ramirez talked about changing their license to a Type 20, this area would still be oversaturated with a Type 20.

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

City Manager 559.324.2060 • Community Services 559.324.2095 • Engineering 559.324.2350  
Finance 559.324.2130 • Fire 559.324.2200 • General Services 559.324.2060 • Personnel/Risk Management 559.324.2725  
Planning & Development Services 559.324.2340 • Police 559.324.2400 • Public Utilities 559.324.2600 • TTY-711

[www.cityofclovis.com](http://www.cityofclovis.com)

The liquor/alcohol license is not a public necessity or a convenience. Allowing for additional liquor/alcohol 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



# CITY *of* CLOVIS

## REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Planning and Development Services

DATE: January 17, 2023

SUBJECT: Consider – Update and request for direction regarding a potential amendment to parking standards for hotels and related uses.

**Staff:** Dave Merchen, City Planner

**Recommendation:** Consider update and provide direction to staff.

ATTACHMENTS: None.

### CONFLICT OF INTEREST

Councilmembers should consider recusal if a campaign contribution exceeding \$250 has been received from the project proponent (developer, applicant, agent, and/or participants) since January 1, 2023 (Government Code 84308).

### RECOMMENDATION

Staff recommends that the Council review the status update regarding hotel parking standards and provide direction regarding a potential amendment to parking standards for hotels and related uses.

### EXECUTIVE SUMMARY

At its October 17, 2022, meeting, the City Council reviewed the City's existing parking requirements for hotels and discussed the possibility of adjusting the existing standards. The consensus amongst Council members was for staff to further evaluate the applicable parking requirements and to provide empirical data regarding actual parking demands to the extent possible. Staff completed a 13-day survey of parking usage at 10 existing hotel sites in late October and early November of 2022. However, the corresponding occupancy data during this period has been more difficult to obtain than initially expected and was available for only 4 of 10 hotel sites at the time this report was prepared. Without occupancy data, staff is cautious about drawing conclusions regarding actual parking demands. This report provides an update on the work conducted thus far and staff is requesting that the Council provide direction regarding continuing efforts.

## BACKGROUND

The Clovis Development Code requires 1.2 parking spaces for each guest room, plus required parking spaces for accessory uses. For example, a hotel with 100 guest rooms would require 120 parking spaces. This standard accommodates guest and employee vehicles. If a hotel includes a restaurant that is open to the general public, the parking requirement for that use is calculated separately. The City's Development Code was updated in October 2014; however, the parking requirement for hotels did not change from the prior Development Code. Prospective hotel developers have sometimes observed that the Clovis standard of 1.2 stalls per room is higher than typical. An informal review of the standards in other cities suggests that 1 parking stall per room is not uncommon, though a range of standards exist.

### Parking Space Utilization Survey

Following the Council's direction at its October 17, 2022, meeting, staff performed a survey of existing hotel sites in the community to obtain empirical data regarding actual parking demands. A total of 10 hotels were included in the survey, all of which were approved with a parking ratio of 1.2 stalls per room. Counts were completed over 13 days between October 25 and November 6, which allowed counts on two separate weekends. The average utilization over the 13-day period was less than 60% at each hotel, and the average utilization for Friday and Saturday nights was 70% or lower. Eight of ten hotels experienced single peak nights where at least 75% of their parking spaces were utilized, and two hotels had peak utilization nights of 97% and 100% respectively.

### Parking Space Utilization Per Occupied Room

The parking survey described above provided data showing the number of cars parked at each hotel site during each day of the survey. However, it was also necessary to know the number of rooms that were occupied at each hotel site to determine the ratio between occupied rooms and cars parked at the site. Staff was unable to get detailed occupancy data through the Visitors Bureau. Initial efforts to obtain occupancy information from hotel operators was also unsuccessful. For the last few weeks, staff from the City's Economic Development team have been working on a one-on-one basis to obtain the necessary information from hotel owners. At the time this report was completed, information from 4 of the 10 sites had been obtained. The associated data from those 4 sites is included as follows:

| Hotel Site | Overall Avg Occupancy | Fri-Sat Avg Occupancy | Overall Avg Cars Per Room | Fri-Sat Avg Cars Per Room | Max (Peak) Cars Per Room |
|------------|-----------------------|-----------------------|---------------------------|---------------------------|--------------------------|
| Hotel 1    | 79%                   | 89%                   | 0.50                      | 0.57                      | 0.75                     |
| Hotel 5    | 73%                   | 81%                   | 0.63                      | 0.71                      | 0.8                      |
| Hotel 8    | 67%                   | 84%                   | 0.89                      | 0.97                      | 1.3                      |
| Hotel 10   | 72%                   | 81%                   | 0.65                      | 0.62                      | 0.89                     |

The above information shows that average parking demand at each of the 4 hotels is less than 1 vehicle per occupied room and that 1 hotel had a peak night of 1.3 cars per room. Staff is cautious about drawing conclusions from just 4 hotel sites, particularly because of the range of results that are shown.

## Hotel Conditional Use Permits – Customized Parking Ratios

Hotel projects generally require the approval of a conditional use permit, which allows flexibility for modification of development standards, including parking requirements, with supporting justification. When a prospective hotel developer is interested in utilizing a reduced parking standard, staff typically asks for supporting data demonstrating that hotels of a similar type and with similar amenities have functioned while using an alternate standard. Shared parking with adjacent properties and/or uses may also be proposed.

### Alternatives For Next Steps

The Council may wish to consider any of the alternatives outlined below, or otherwise provide direction to staff on this matter.

1. Direct staff to continue working with individual hotel sites to obtain occupancy data and bring the matter back to the Council when the additional information regarding parking demand at existing hotel sites in Clovis is available.
2. Direct staff to prepare an ordinance amendment for consideration by the Planning Commission and City Council.
3. Direct staff to discontinue work on the matter and allow one or more private sector parties to make an application for a code amendment if so desired.

### **FISCAL IMPACT**

None.

### **REASON FOR RECOMMENDATION**

The consensus amongst Councilmembers at the October 17, 2022, Council meeting was for staff to further evaluate the applicable parking requirements for hotels and to provide empirical data regarding actual parking demands to the extent possible. The occupancy data for hotels in Clovis is incomplete, leaving actual parking demand unclear. Staff is requesting Council direction regarding continued work on this matter.

### **ACTIONS FOLLOWING APPROVAL**

As determined by Council direction.

Prepared by: Dave Merchen, City Planner

Reviewed by: City Manager *JH*



# CITY *of* CLOVIS

## REPORT TO THE CITY COUNCIL

TO: Mayor and City Council  
FROM: Administration Department  
DATE: January 17, 2023  
SUBJECT: Receive and File – Fire Department Update.

**Staff:** John Binaski, Fire Chief  
**Recommendation:** Receive and File

ATTACHMENTS: None

Fire Chief John Binaski will provide a verbal presentation on this item.

Please direct questions to the City Manager's office at 559-324-2060.



# CITY of CLOVIS

## REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Administration

DATE: January 17, 2023

SUBJECT: Consider Approval - Res. 23-\_\_\_\_, Approving the Director of Emergency Services' Request for the City Council to Declare a Local Emergency Due to the Impacts of Severe Winter Storms and Flooding.

**Staff:** Chad Fitzgerald, Life Safety Enforcement Manager  
**Recommendation:** Approve

ATTACHMENTS: 1. Resolution Declaring Local State of Emergency

### CONFLICT OF INTEREST

Councilmembers should consider recusal if a campaign contribution exceeding \$250 has been received from the project proponent (developer, applicant, agent, and/or participants) since January 1, 2023 (Government Code 84308).

### RECOMMENDATION

For the City Council to approve of a resolution approving the Director of Emergency Services' request to declare a local state of emergency related to ongoing excessive rainfall, associated flooding, falling debris, downed trees and roadway degradation caused by severe winter storms.

### EXECUTIVE SUMMARY

Due to the impacts of the severe winter storms and the effects on California, the Governor proclaimed a State of Emergency on January 4, 2023, with a start date of December 27, 2022. In Fresno County, the Office of Emergency Services declared a county-wide state of emergency effective January 9, 2023, having surveyed local municipalities and providing support to unincorporated areas impacted by flooding. Declaring a local state of emergency ensures timely delivery of reimbursement if made available and allows the City to take actions necessary to protect life and property more efficiently.

### BACKGROUND

Beginning December 27, 2022, an unusual series of storms began to push through California, bringing excessive rain, winds and localized flooding to numerous regions. Locally, Clovis has seen multiple areas of town flood, roadways degrade, and trees cause substantial property

damage, threats to public safety, and traffic hazards as a result of repeated storms coming through the region. The declaration of local emergency authorizes the Director of Emergency Services certain additional authorities beyond the role of City Manager, as described in Chapter 4.2 of the Clovis Municipal Code. These actions are accomplished by way of Orders and Declarations approved by the Director of Emergency Services as necessary to protect lives and property beyond normal operations. Orders could include actions for response, protection of property and sheltering. If Orders are issued, the Director of Emergency Services must bring the items back to City Council for confirmation. In addition, this declaration provides a means for cost recovery should the State of California release funding through the California Disaster Assistance Act (CDAA).

### **FISCAL IMPACT**

The declaration of emergency will not incur any costs for the City and may help the City receive disaster funding in the event that the City has to expend funds on dealing with flooding, debris removal, repair and recovery related to the storms.

### **REASON FOR RECOMMENDATION**

This declaration provides a means for effective protection of life/property and cost recovery should the State of California release funding through the California Disaster Assistance Act (CDAA).

### **ACTIONS FOLLOWING APPROVAL**

Staff will evaluate impacts and enact necessary protective measure in accordance with Government Code 8630 and CMC 4.2.06. to protect life/property while ensuring reimbursement at the highest possible level in the event State funds become available.

Prepared by: Chad Fitzgerald, Life/Safety Enforcement Manager

Reviewed by: City Manager *JH*



**RESOLUTION NO. 23-\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVIS PROCLAIMING THE EXISTENCE OR THREATENED EXISTENCE OF A LOCAL EMERGENCY (SEVERE WINTER STORMS AND FLOODING)**

**WHEREAS**, California Government Code section 8630 and Clovis Municipal Code section 4.2.06 empowers the City Council to proclaim a local emergency when the City of Clovis is affected or likely to be affected by the actual or threatened existence of conditions of disaster or of extreme peril to the safety of persons within the City; and

**WHEREAS**, as empowered by Clovis Municipal Code section 4.2.06, the City’s Director of Emergency Services has requested that the City Council proclaim the existence or threatened existence of a local emergency as a result of the flooding and repetitive storms beginning December 27, 2022, damaging private and public property; and

**WHEREAS**, conditions of disaster or of extreme peril to the safety of persons within the City have arisen within the City of Clovis caused by flooding and extreme rainfall, and the conditions warrant and necessitate proclaiming the existence or threatened existence of a local emergency.

**NOW, THEREFORE**, the City Council of the City of Clovis resolves as follows:

1. Proclaims that a local emergency now exists throughout the City.
2. During the existence of this local emergency, the powers, functions, and duties of the Director of Emergency Services and the Emergency Organization of the City shall be those prescribed by state law, ordinances and resolutions of the City, and by the City of Clovis Emergency Operations Plan.
3. The need for continuing this local emergency shall end once the severe winter storm events end, which is anticipated to be by the end of January 2023. In accordance with the requirement in Government Code Section 8630 that the local emergency be terminated at the earliest possible date that conditions warrant, this local emergency is hereby proclaimed to be terminated at 11:59 pm on January 31, 2023, unless extended before that time by the Emergency Services Director or City Council in accordance with Section 4.2.06 of the Clovis Municipal Code.

\* \* \* \* \*

The foregoing resolution was introduced and adopted at a special meeting of the City Council of the City of Clovis held on January 17, 2023, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Date: January 17, 2023

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Lynne Ashbeck, Mayor

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Karey Cha, City Clerk