

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF
FRESNO, CALIFORNIA, ESTABLISHING A POLICY FOR
THE PRESERVATION AND USE OF THE TOWER
THEATRE PROPERTY AND AUTHORIZING THE
PURCHASE OF THE TOWER THEATRE PROPERTY

WHEREAS, the City Council has reviewed the staff report and all exhibits thereto and the Council hereby incorporates by reference the analysis in said staff report as set forth herein and in support of the findings below; and

WHEREAS, the Tower Theatre, located on the northwest corner of North Wishon and East Olive Avenues in Fresno, was constructed in 1939; and

WHEREAS, the Theatre was originally conceived of as a motion picture cinema to be managed by the Fox West Coast Theatre Corporation, and then it was reimagined as a space to allow live performance during a thorough restoration in the 1990s; and

WHEREAS, the Theatre is built in the “Streamline Moderne” style and is the most dramatic example of that style in Fresno, with a total of six circular murals (“tondos”) in recessed niches inside the auditorium painted in fluorescent pigments, which are then illuminated with ultraviolet light sconces; the Tower Theatre was only the second theater in the nation to use ultraviolet light as an ornamental device; and

WHEREAS, in 1991, the dramatic theater rehabilitation was honored with a California Preservation Foundation Award for Outstanding Achievement in Restoration, and an Award of Honor from the San Joaquin Chapter, American Institute of Architects, and the Theatre is listed on the National Register of Historic Places, one of the most historically significant buildings in Fresno and the Central Valley; and

Date Adopted:
Date Approved:
Effective Date:
City Attorney Approval: _____

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WHEREAS, in addition to the historical significance of the exterior and interior of the building, the wide variety of public uses of the Theatre over its long history are extremely significant, and the City should ensure those uses are honored and continued as a valuable public resource; and

WHEREAS, pursuant to Government Code section 37361(a), the City may acquire property for the preservation or development of a historical landmark and for community recreational uses; and

WHEREAS, the Tower Theatre is a historical landmark included in the National Register of Historic Places since 1992 and an important community and cultural arts center; and

WHEREAS, the City Council finds that based on the staff report and exhibits thereto that a prior purchase and sale agreement between Tower Theatre and Adventure Church (“Adventure”) expired on March 31, 2021, without Adventure depositing the full purchase price for the property into escrow; and

WHEREAS, the same legal parcel that includes Tower Theatre also includes Sequoia Brewery and Me-N-Eds restaurants in separate buildings, plus other restaurant spaces, as well as 108 parking spaces (collectively, the “Tower Theatre Property”); and

WHEREAS, the City Council finds that the fair market value of the entire Tower Theatre Property in the current real estate market is at least \$6.5 million; and

WHEREAS, the acquisition of the Tower Theatre Property is exempt from the requirements of CEQA pursuant to CEQA Guidelines Section 15301 under a Class 1 Categorical Exemption, because no physical changes to the property or the buildings are proposed, and the change in ownership will involve the continued operation of the theatre

consistent with its ongoing existing uses with no expansion of those uses, as well as the continued maintenance of its historic features; and

WHEREAS, the City can purchase the Tower Theatre Property and ensure the historical character and features are preserved and maintained, and ensure the public has continued access to building and parking as they have had for many years; and

WHEREAS, the Tower Theatre will serve as the anchor use for the Tower commercial area, with a variety of uses including as a community and cultural arts center for Fresno residents, attracting patrons who will also dine in restaurants in the area and support the economic success of many other businesses in the Tower area, which will also serve to reduce blight and crime in the area; and

WHEREAS, parking in the vicinity of the Tower Theatre is very limited, and dedicating the Tower Theatre Property parking for public use is necessary for the continued economic viability and success of the area; and

WHEREAS, the City has identified funding to purchase, preserve, maintain, and operate the Tower Theatre Property as a cultural arts center, community center, and multi-use resource for the benefit of the public; and

WHEREAS, there is a substantial risk that if the Tower Theatre is sold to another buyer that the public will not have full access to use Tower Theatre and enjoy its historic and cultural significance based on the information provided in the staff report and exhibits thereto; and

WHEREAS, the City Council hereby finds based on the staff report and exhibits thereto that all payments being made by the City herein to purchase the Tower Theatre Property are reasonable and supported by ample consideration and for a public purpose

of historical preservation and public use and enjoyment of the property and for public parking rights; and

WHEREAS, the City Council finds based on the staff report and exhibits thereto that Sequoia Brewery has a right of first refusal under their existing lease and that Sequoia is offering to waive their rights to a trial in that case next year or at a later date for the City's purchase of the Tower Theatre Property, and agreeing not to dispute the City's public parking rights, which is ample consideration for certain credits and payment of legal fees as provided in the purchase and sale agreement and staff report in this matter; and

WHEREAS, the City Council hereby finds based on the staff report and exhibits thereto that all purchase and sale terms, credits, costs and legal fees concerning Sequoia Brewery herein are reasonable and supported by ample consideration and for a public purpose of historical preservation and public use and enjoyment of the Tower Theatre Property and in exchange for parking rights; and

WHEREAS, the City Council desires to formalize its rationale and support for purchasing the Tower Theatre Property, and set forth the policies that will govern its use.

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

1. The City Council hereby approves the two purchase and sale agreements provided concurrently herewith, approves all terms and conditions of the same and authorizes the purchase of the Tower Theatre Property for \$6.5 million as well as credits for repairs and payment and credits of legal fees to Sequoia Brewery in exchange for their agreement to this purchase by the City of Tower Theatre now and given their right of first refusal in their lease, which shall result in Sequoia Brewery buying their portion of the

property for \$1.2 million, minus credits and legal fees, and with financing of the same provided by the City for a net purchase of \$950,000. The City shall also consider sale of the other separate restaurant building to offset a portion of the purchase cost.

2. The City shall commit in perpetuity to preserve and maintain the Tower Theatre and especially its historic features.

3. The City shall commit in perpetuity to operate the Tower Theatre for the benefit of the public for a variety of uses, including community and cultural arts center uses, such that all other institutions and individuals may rent portions of the Tower Theatre Property for events and enjoy the Tower Theatre as many people and organizations have over its long history. Uses may consist of theatrical performances, film showings, meetings, cultural arts programming, ceremonies, including religious uses, without regard to the content of the expression or perspective of those using the Tower Theatre.

4. The Tower Theatre parking lot, being essential to the economic viability of the Tower commercial area, shall be dedicated for public parking, which may include paid parking, with specific designated use only at certain times of events taking place in the Tower Theatre, as may be necessary for the success of an event, and restaurant parking rights as provided by the City.

5. The City Manager is authorized to issue additional regulations not inconsistent with this resolution for the use and operation of the Tower Theatre and parking.

6. The City Council authorizes the City Manager to entered into a joint defense and indemnity agreement with Tower Theatre and Sequoia Brewery for potential litigation by Adventure to contest the City's purchase of the Tower Theatre Property.

7. The City Manager, with approval of the City Attorney, is hereby directed and authorized to take all necessary further actions to implement and effectuate the intent of this resolution and related agreements approved by Council, including approval of additional agreements (including, but not limited to, purchase and sale agreements, indemnity agreements, leases, lease assignments, lease modifications, parking agreements, waste disposal agreements, property management agreements, temporary use agreements, licenses, and rights of entry), changes to agreements, permits, and entitlements. The City Attorney is directed and authorized to prosecute and defend all legal actions necessary to implement and effectuate the intent of this resolution and related agreements approved by Council and the City Manager.

8. This resolution shall be effective upon final approval.

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STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, TODD STERMER, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____ 2022.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2022
Mayor Approval/No Return: _____, 2022
Mayor Veto: _____, 2022
Council Override Vote: _____, 2022

TODD STERMER, CMC
City Clerk

By: _____
Deputy Date

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____
Doug Sloan Date