



Legislation Details (With Text)

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Title: Actions Pertaining to the Acquisition of property at 1247 North Wishon (APN 451-265-02) and 777 East Olive Avenue (APN 451-265-03)
1. Adopt a finding of Categorical Exemption pursuant to Section 15301/Class 1 (Existing Facilities) of the California Environmental Quality Act (CEQA) guidelines for the project.
2. Approve a Resolution Establishing a Policy for the Preservation and Use of the Tower Theatre Property and Authorizing Purchase of the Tower Theatre Property.
3. Approve a Joint Litigation, Defense, and Indemnity Agreement by and between the City of Fresno, the Tower Theatre Entities and Sequoia Brewery
4. Approve a Purchase and Sale Agreement and Joint Escrow Instructions by and between City of Fresno, Tower Theater Productions, Fidelity National Title Insurance Company, and Tower Theatre Productions for the Performing Arts for real property at 1247 North Wishon (APN 451-265-02) and 777 East Olive Avenue (APN 451-265-03) for \$6,500,000.
5. Approve a Purchase and Sale Agreement and Joint Escrow Instructions by and between City of Fresno and J&A Mash & Barrell, LLC., and Fidelity National Title Insurance Company for a portion of the real property at 777 East Olive Avenue (APN 451-265-03) for \$1,200,000.

Sponsors: Esmeralda Z. Soria, Miguel Angel Arias

Indexes:

Code sections:

Attachments: 1. tower resolution 042122 update 4-15-2022, 2. DEFENSE AND INDEMNITY AGREEMENT - TT edits (002) (002) (002) (002), 3. PSA Tower CLEAN, 4. PSA Sequoia 4.17.22 - City CLEAN, 5. 0323_001, 6. 22CECG00415, 7. 0322_001, 8. Signed purchase offer (1-7-2021) (2)_Redacted, 9. F083104, 10. File Summary, 11. Supplement_FileID22-613_TowerTheater_PublicComments_Redacted, 12. Supplement_File ID 22-613_TowerTheater_UpdatedPurchaseAndSaleAgmt_Tower, 13. Supplement_File ID 22-613_TowerTheater_UpdatedPurchaseAndSaleAgmt_Sequoia, 14. Supplement_PublicCommentSubmittedtoClerk, 15. Supplement_District 3_PublicCommentIntoRecord_Reduced_1of2, 16. Supplement_District 3_PublicCommentIntoRecord_Reduced_2of2

Date	Ver.	Action By	Action	Result
4/21/2022	1	City Council	ADOPTED	Pass

REPORT TO THE CITY COUNCIL

FROM: Douglas T. Sloan, City Attorney
BY: Talia Kolluri-Barbick, Assistant City Attorney

SUBJECT

Actions Pertaining to the Acquisition of property at 1247 North Wishon (APN 451-265-02) and 777 East Olive Avenue (APN 451-265-03)

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Facilities) of the California Environmental Quality Act (CEQA) guidelines for the project.

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RECOMMENDATION

Approve

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EXECUTIVE SUMMARY

The City proposes to purchase the entire Tower Theatre property, which includes the Tower Theatre itself, Sequoia Brewery, Me-N-Eds, other restaurant spaces, and 108 parking spaces, for a total price of \$6.5 million through a City Council resolution for historic preservation and public use. (Attachment 1). Concurrent with the City's acquisition of the entire property, Sequoia Brewery will purchase its portion of the property for \$1.2 million (deducted from the \$6.5 million), less credits for improvements to the Brewery Property as well as legal fees, for a net purchase price of \$950,000, financed by the City. Based on the total \$6.5 million purchase price for the entire property (which is one legal parcel), the City is buying the Tower Theatre, parking lot and Me-N-Eds portion of the parcel and Sequoia Brewery is buying its portion of the property for \$1.2 million, after a lot split process that will be handled by city staff during escrow and minus some specified credits, costs and fees, for a net purchase price of \$950,000 (financed by the City as explained below) and a payment by the City of \$125,000 for legal fees to Sequoia Brewery in consideration for allowing this sale to close at this time, rather than after their pending lawsuit is completed next year or later. This means the City's estimated net total purchase costs are \$5,675,00, excluding additional routine escrow closing costs. There is a 45 day escrow (unless extended by agreement of the parties). The City will further agree to indemnify and defend the Tower Theatre Entities and Sequoia Brewery in the event of litigation related to the transaction. (See Attachment 2) This acquisition is undertaken for the express purpose of preserving the historic character and historic uses of the Tower Theatre, a property currently listed on the National Register of Historic Places, to ensure continued access and enjoyment of this important historic resource by all members of the public, including among many uses, religious services, and to ensure continued public access to parking on the site in support of maintaining the Tower District as a vibrant commercial mixed use corridor. Two purchase and sale agreements (one involving the Tower Theatre owner and another involving Sequoia Brewery) have been

prepared. (See Attachments 3 & 4). The initial purchase would be paid for with a combination of General Fund and Measure P revenue, and operations could be financed with a combination of lease revenue, fee revenue, and potentially Measure P for community centers and cultural arts.

BACKGROUND

The Tower Theatre, constructed in 1939 as a motion picture cinema managed by the Fox West Coast Theatre Corporation, is currently listed on the National Register of Historic Places and was formally placed on the listing following a Certified Historic Rehabilitation. (See Attachment 5) The Certified Historic Rehabilitation also included modifications to the facility to allow the adaptive reuse of the facility to allow live performance. The Theatre's rehabilitation was awarded California Preservation Foundation Award for Outstanding Achievement in Restoration, and an Award of Honor from the San Joaquin Chapter, American Institute of Architects, in 1991. Since its restoration, the Theatre has been consistently used for both live performance and motion picture screening.

The historic nature of the Theatre includes both interior and exterior features. Specifically, 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.

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. The City seeks to acquire the Tower Theatre in order to preserve this important historical resource and to ensure that it remains accessible and available to the public for community recreational uses and as a cultural arts center. In addition, ensuring that the parking spaces on the entire property remain open and accessible to the public is essential to facilitating the viability of local businesses in the area, and maintaining the Tower District as a commercial mixed used corridor.

A prior purchase and sale agreement between the current owners of the Tower Theatre ("Owners") and Adventure Church ("Adventure") expired on March 31, 2021, without Adventure depositing the full purchase price for the property in escrow. It is important to note that, under the expired purchase and sale agreement, including at Section 26.2 of the same, the Tower Theatre and all of its historic features and operations are not fully preserved and there is no covenant in the expired purchase agreement that Adventure will preserve Tower Theatre and allow all members of the community access to use and enjoy it.

Adventure disputes that its prior purchase and sale agreement has expired. Adventure has sued Owners in superior court claiming that its purchase and sale agreement is not expired, and a copy of that lawsuit including the expired purchase and sale agreement between the Tower Entities and Adventure, is attached (*Adventure Church, Inc. v. Tower Theatre Productions for the Performing Arts, et al*). Owners and City dispute the allegations in this lawsuit. (See Attachment 6)

The current real estate market value of the entire property, encompassing the Tower Theatre, Sequoia Brewery, Me-N-Eds, additional restaurant spaces, and 108 parking spaces, is at least \$6.5 million. This determination is based on the broker listing of the entire property for \$6.5 million in the attached listing document. (See Attachment 7) Additionally, Tower Theatre received a prior offer to buy a portion of the property including Tower Theatre and Sequoia Brewery for \$6 million from a private buyer. (See Attachment 8) The Me-N-Eds portion of the property is estimated at \$1 million. Therefore, the prior offer supports a valuation of \$7 million, which is more than the City's purchase price of \$6.5 million for the entire property. The City's purchase price also takes into account all of the lease revenues from the property that are being assigned to the City, excluding Sequoia Brewery, which is purchasing its portion of the property.

Concurrent with the purchase of the entire property, Sequoia Brewery will purchase their portion of the property for \$1.2 million, with the inclusion of credits for improvements to the Sequoia Brewery property, and payment of legal fees, the net purchase price of the Brewery property will be \$950,000, with financing provided by the City. Specifically, the City will provide a mortgage for said sale to Sequoia Brewery at a rate of 3.5% annual interest with standard terms and with a deed of trust recorded to secure said loan on the Property for a 30 year term. From the \$1.2 million purchase price, Sequoia Brewery will receive a \$50,000 repair credit for all needed repairs to their building in exchange for an "As Is" sale of the portion of the property to Sequoia Brewery, a credit of \$325,000 for attorneys' fees, including from that amount \$200,000 reducing the above \$1.2 million purchase price and of that amount \$125,000 paid to Sequoia Brewery at the close of escrow in consideration for their attorneys' fees and court costs, for a total net purchase price and mortgage of \$950,000. The consideration that the City is receiving for these terms of this agreement is explained below.

Sequoia Brewery is owned by J&A Mash & Barrel, LLC. There is pending litigation in superior court filed by J&A Mash & Barrel, LLC., against the Owner and Adventure concerning Sequoia Brewery's right of first refusal in their lease. The Court of Appeal in a January 2022 opinion upheld Sequoia's right of first refusal in their lease to buy their portion of the property and that Court of Appeal opinion is attached to this staff report. (See Attachment 9) Their case is set for trial in

superior court next year concerning Sequoia Brewery's purchase rights and legal fees. As part of their purchase agreement with the City, Sequoia Brewery is allowing the sale of the entire property to proceed forward now, including the sale to the City of Tower Theatre, rather than waiting for trial and that is consideration for the City paying their legal fees now rather than awaiting the outcome of their court case next year or later. Sequoia Brewery is also cooperating with the City in shared parking rights that the City will own after the close of escrow. Public parking rights on the property are an important aspect of the City's purchase of the property.

The City is further agreeing to indemnify and defend the Tower Theatre Entities and Sequoia Brewery in the event of litigation against the parties related to this transaction by Adventure.

Finally, upon close of escrow, Laurence Abbate will receive a one (1) year continued management contract (non-employment contract) for Tower Theatre so performances continue as planned in exchange for the payment by the City to Mr. Abbate of \$8,000/month. Said agreement can be terminated with 60 days notice by Laurence Abbate.

Concurrent with this acquisition, the City will adopt through the attached resolution (Attachment 1) a policy establishing the preservation of this historic resource and its historic uses for the benefit of all members of the public so that it may continue as a community and cultural arts resource, and so that its historic character, both in interior and exterior features, is preserved and community access rights are ensured.

ENVIRONMENTAL FINDINGS

This approval 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 improvements 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 that use, as well as the continued maintenance of its historic features. None of the exceptions to Categorical Exemptions set forth in CEQA Guidelines Section 15300.2 apply to this approval. Therefore, this approval is exempt pursuant to CEQA Guidelines Section 15301.

FISCAL IMPACT

The acquisition will be funded by a combination of General Fund and Measure P funds.

Attachments:

- Attachment 1 - Resolution Establishing a Policy for the Preservation and Uses of the Tower Theatre Property and Authorizing Purchase of the Tower Theatre Property.
- Attachment 2 - Joint Litigation, Defense, and Indemnity Agreement by and between the City of Fresno, the Tower Theatre Entities and Sequoia Brewery
- Attachment 3 - Purchase and Sale Agreement and Joint Escrow Instructions by and between City of Fresno, Tower Theater Productions, Fidelity National Title Insurance Company, and Tower Theatre Productions for the Performing Arts for real property at 1247 North Wishon (APN 451-265-02) and 777 East Olive Avenue (APN 451-265-03) for \$6,500,000.
- Attachment 4 - Purchase and Sale Agreement and Joint Escrow Instructions by and between City of Fresno and J&A Mash & Barrell, LLC., and Fidelity National Title Insurance Company for a portion of the real property at 777 East Olive Avenue (APN 451-265-03) for \$1,200,000.
- Attachment 5 - National Register of Historic Places - Approved Registration Document.
- Attachment 6 - Complaint for Breach of Contract (*Adventure Church, Inc. v. Tower Theatre Productions for the Performing Arts, et al.*)
- Attachment 7 - Broker listing for \$6.5 million.
- Attachment 8 - Prior offer to purchase by private buyer and credit approval letter (redacted).
- Attachment 9 - *J&A Mash & Barrel, LLC. v. Superior Court, et al.*, Court of Appeal Case No. F083104.