BEFORE THE CITY COUNCIL OF THE CITY OF AVENAL

IN THE MATTER OF: **Resolution Calling City Election for Voter Approval of Commercial Cannabis Business Tax; and Specifications of the Election Order.**	**RESOLUTION 2022- 41**

WHEREAS, approval of an excise tax on cannabis business ensures that the City of Avenal ("**City**") has more local funding for vital City services which cannot be taken by the State, ensuring our tax dollars are spent locally for the benefit of residents of Avenal;

WHEREAS, when a City seeks voter approval of a new local excise tax, Article XIIIC § 2(b) of the California Constitution requires the election to be consolidated with the general municipal election for City Council members, except in cases in which a City Council has unanimously declared that there is a fiscal emergency;

WHEREAS, in recent years the City has experienced insufficient growth in sales tax revenues and other State revenues while the scope and cost of providing essential City services has increased along with inflation;

WHEREAS, projected deficits in the General Fund and other operating funds threatens a reduction in staffing and services in all departments including public safety personnel and other essential City services potentially placing Avenal residents at risk in emergency situations;

WHEREAS, the City's expenditure trends, and reduction of federal funding of public safety positions, point to a potential deficit in the General Fund and/or other operating funds in the upcoming fiscal years which will limit the City's ability to meet public safety standards, fund recreational programs and facilities, maintain and improve parks, repair and improve streets, and provide other general and essential services;

WHEREAS, the City Council received information during the budget review process for the last couple of years which demonstrated that the City will be operating at a significant General Fund and/or other operating fund deficits commencing in fiscal year 2022 and said deficit is estimated to continue in current and subsequent fiscal years even with significant cuts to expenditures;

WHEREAS, on November 8, 2016, the voters of California adopted Proposition 64 which legalized under State law the use of cannabis for adult-use and established maximum cultivation allowance of six (6) plants for personal use. The "Control, Regulate

and Tax Adult Use of Marijuana Act," approved by the State's voters, allows for local control of land uses regarding adult-use cannabis, and reasonable regulation of personal cultivation of up to six (6) plants within a residence;

WHEREAS, at a public meeting held on June 23, 2022 the City Council considered calling a municipal election to submit to the voters for approval, a proposed commercial cannabis business tax as authorized by California Government Code § 37100.5;

WHEREAS, the statutory deadline to authorize submittal of said commercial cannabis business tax measure to the County of Kings's elections office is scheduled to expire on or about August 11, 2022 for the November 8, 2022 regular election date and the County's administrative deadline for submittal of relevant documentation is August 11, 2022;

WHEREAS, the new business tax would be imposed on commercial cannabis businesses. The tax rate would be $25 per square foot of commercial cannabis business area or fifteen percent (15%) of annual gross receipts per fiscal year) of the sales price of the property, whichever is greater. The business tax revenue would be collected by city clerk, or other city official charged by the City Manager with the administration of the provisions of Chapter 5C of the Avenal Municipal Code. Collection of all or any portion of the tax could be temporarily suspended by a unanimous vote of the City Council. The tax would require approval of at least a majority of voters voting on the measure and approval of this resolution by at least two-thirds vote of all members of the City Council;

WHEREAS, based upon all of the information presented to the City Council as of the date of this resolution, both written and oral, including the staff reports, minutes and other relevant materials, the commercial cannabis business tax does not constitute a project under CEQA Guidelines 15060(c)(2), 15061(b)(3) and 15378(b)(2) and (4) and therefore review under CEQA is not required; and

WHEREAS, on **June 23, 2022,** the City Council held a public meeting to consider placing a commercial cannabis business tax ordinance before the voters of the City of Avenal at an election to be held on **November 8, 2022**.

UPON MOTION OF COUNCIL MEMBER **Gravelle**, SECONDED BY COUNCIL MEMBER **Hernandez**, THE FOLLOWING WAS PASSED, APPROVED, AND ADOPTED BY THE CITY COUNCIL AT AN OFFICIAL MEETING HELD **June 23, 2022**, BY THE FOLLOWING VOTE:

AYES: **Gravelle, Hernandez, Ramirez, Preciado**
NOES: **None**
ABSTAIN: **None**
ABSENT: **Verdugo**

ATTEST: Maria Ortiz
Maria A. Ortiz, City Clerk

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NOW THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL:

FOUND the foregoing recitals to be true and ORDERED that an election be held within the City of Avenal on the **8th day of November, 2022,** for the purpose of submitting to all voters within the City a ballot measure with the following specifications:

1. Pursuant to the California Constitution, Article XIIIC, § 2(b), Government Code § 53724 and Elections Code § 9222, the City Council of the City of Avenal hereby calls and orders an election at which it shall submit to the qualified voters of the City, a measure relating to the adoption of a commercial cannabis business tax. This measure shall be designated by an alphabetical letter by the Kings County elections official or other qualified official, and the City Manager shall in writing request one or more alphabetical letter designations.

2. The ordinance imposing a commercial cannabis business tax to be approved and adopted by the voters is set forth in **EXHIBIT A** attached hereto and incorporated by this reference. The City Council hereby approves said ordinance, the form thereof, and its submission to the voters of the City at an election to be held on **November 8, 2022**, as required by state law, subject to the approval of a majority of the voters voting on the measure at the election called by the adoption of the instant resolution. The ordinance enacts a commercial cannabis business tax at the rate of $25 per square foot of commercial cannabis business area or fifteen percent (15%) of annual gross receipts per fiscal year, whichever is greater.

3. In accordance with Elections Code § 12111 and Government Code § 6061, the City Clerk is hereby authorized and directed to cause notice of the measure to be published once in a newspaper of general circulation, printed, published and/or circulated in the City of Avenal and hereby designated for that purpose by the City Council of the City of Avenal. The City Clerk may enlist the assistance of the County of Kings elections office to prepare and publish the required notice.

4. Pursuant to the requirements of the laws of the State of California relating to cities within said State, the following proposed measure ballot label shall be added to the ballot for the **November 8, 2022**, election and thereby submitted to the voters of the City:

Shall Ordinance 2022-05 be adopted authorizing a commercial cannabis business tax in the City of Avenal on commercial cannabis businesses up to $25 per square foot (annually adjusted by CPI) or at 15% of gross receipts, to maintain essential public safety and general City services including, but not limited to, police, drug addiction and gang prevention, park maintenance, street maintenance for Avenal residents, generating undetermined revenue, potentially up to $400,000 to $600,000 annually until repealed?	Yes ☐	No ☐

5. The full text of the ballot label appearing in the preceding section shall be printed in the sample and final ballots but the full text of Ordinance No. 2022-05 shall not be printed in the sample and final ballots and voter information guide. In compliance with Elections Code § 9223, the City Clerk shall promptly print, certify and post in the Office of the City Clerk and on the City's website, a copy of Ordinance No. 2022-05 and the ballot label appearing in the preceding section, and shall provide a copy of them to any City voter upon request and free of charge.

6. The official ballot to be used at said election shall conform to the laws of the State of California with relation thereto.

7. The City Council hereby requests and consents to the County of Kings elections official's consolidation of this election with other elections, if any, which may be held in whole or in part of the territory of the City, as provided in Elections Code §§ 10400 *et seq.*, on **November 8, 2022**, for the ease and convenience of the registered voters and to take advantage of any cost savings possible by such consolidation.

8. The City Clerk may enlist the assistance of the County of Kings elections official in regard to the said consolidated general municipal election, as the City Clerk deems reasonably necessary or convenient.

9. The City will reimburse the County of Kings for the actual cost incurred by the county elections official in conducting the municipal election upon receipt of an invoice stating the amount due as determined by the elections official in accordance with all applicable laws. The City Manager is authorized to sign an appropriate written agreement between the City and the County of Kings for that purpose, following review and approval as to form by the City Attorney.

10. The election shall be held and conducted as provided by law for holding municipal elections.

11. The notice of the time and place of holding the election is given and the City Clerk is directed to give further or additional notice of the election in the time, form and manner as required by law. The City Clerk may enlist the assistance of the County of Kings elections office in regard to the same.

12. The City Clerk is hereby directed to submit to the City Attorney a certified copy of the measure pursuant to Elections Code § 9280. The City Attorney is hereby authorized and directed to prepare an impartial analysis of the ballot measure showing the effect of the measure on the existing law and operation of the measure, said analysis to be submitted by the City Attorney to the County of Kings elections office, or other appropriate office, for printing by the date set by the County of Kings elections official for the filing of arguments for and against the measure. The analysis shall not exceed five hundred (500) words in length and shall otherwise comply in all respects with the applicable provisions of the Elections Code.

13. In accordance with the provisions of the Elections Code §§ 9290 *et seq.*, the Mayor or Mayor Pro Tempore or their designee from the City's staff is authorized and directed to submit an argument in support of the measure and a response to any argument in opposition to the measure.

14. The City Clerk in conjunction with the County of Kings election official shall fix and determine a date for submission of arguments for or against said measure, and said date shall be posted in the Office of the City Clerk.

15. The election on the measure set forth in sections 2 and 4 of this resolution shall be held and conducted, the votes canvassed and the returns made, and the results ascertained and determined as provided for herein. In all particulars not prescribed in this resolution, the election shall be held as prescribed in the Elections Code of the State of California, including but not limited to Elections Code § 10262(a) pursuant to Elections Code § 10101 to the extent applicable. The Board of Supervisors of the County of Kings or other appropriate county official is authorized to canvas the returns of that election with respect to the votes cast in the City of Avenal and certify the results to the City Council. At the next regular meeting of the City Council occurring after the returns of the election have been canvassed and the certification of the results to the City Council, the City Council shall cause to be entered in its minutes a statement of the results of the election.

16. The City Manager is hereby authorized and directed to expend the funds necessary and convenient to pay for the City's cost of placing the measure on the election ballot.

17. The City Clerk is hereby ordered to certify to the adoption of this resolution and to file copies hereof, so certified, with the Clerk of the Board of Supervisors of the

County of Kings and with the elections official of the County of Kings, and to enter it into the book of original resolutions.

18. Authorized the Mayor, City Manager, City Clerk and the respective city and county election officials to carry out the terms and conditions of this resolution and to take all steps reasonably necessary, proper and/or convenient and/or incidental thereto, including the signing of any updated version of this resolution which is reasonably necessary to conform to the requirements of the County of Kings and applicable laws.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Avenal held on the **23 day of June, 2022**, by the following vote:

AYES: **Gravelle, Hernandez, Ramirez, Preciado**
NOES: **None**
ABSTAIN: **None**
ABSENT: **Verdugo**

APPROVED: _____
Alvaro Preciado, Mayor

ATTEST: _____
Maria A. Ortiz, City Clerk

CLERKS CERTIFICATE

City of Avenal }
County of Kings }
State of California }

I, Maria A. Ortiz, City Clerk of the City of Avenal, hereby certify that this is a full, true and correct copy of **Resolution No. 2022- 41** duly passed by the City Council of the City of Avenal at a regular meeting thereof held on the **23rd day of June, 2022**, by the vote as set forth therein.

DATED: 6/23/22

ATTEST: _____
Maria A. Ortiz, City Clerk