ORDINANCE NO. 2010-01

AN ORDINANCE REORGANIZING CHAPTER 1 OF TITLE 3, AMENDING SECTION 3-1.01 AND ADDING ARTICLE 2 TO CHAPTER 1 OF TITLE 3 OF THE MUNICIPAL CODE OF THE CITY OF AVENAL, PERTAINING TO LICENSING AND OPERATIONS REQUIREMENTS FOR TOWING SERVICE PROVIDERS.

THE BOARD OF SUPERVISORS OF THE COUNTY OF KINGS ORDAINS AS FOLLOWS:

Section 1. Section 3-1.01 through 3-1.199 of the Municipal Code of the City of Avenal shall be within "Article 1. General Provisions" of Chapter 1 of Title 3 of the Municipal Code.

Section 2. Subsection (d) of section 3-1.01 of the Municipal Code of the City of Avenal is hereby amended to read as follows:

(d) Sale. As used in this chapter, "sale" shall include the transfer in any manner or by any means whatsoever, of title to property for a consideration; the serving, supplying, or furnishing for a consideration of any property or service; and a transaction whereby the possession of property is transferred and the seller retains the title as security for the payment of the price shall be likewise be deemed a sale. The foregoing definitions shall not be deemed to exclude any transaction which is or which, in effect, results in a sale within the contemplation of law.

Section 3. Article 2 of Chapter 1 of Title 3 of the Municipal Code of the City of Avenal is hereby added to read as follows:

TITLE 3. FINANCE

CHAPTER 1. BUSINESS LICENSING

ARTICLE 2. TOW SERVICE PROVIDERS

SECTION 3-01.200. TITLE:

This Article shall be known as and may be cited as the "Tow Service Provider Licensing Ordinance" of the City of Avenal.

SECTION 3-01.205. PURPOSE:

The purpose of this Article is to ensure the safety and welfare of the motor vehicles impounded within the boundaries of the City of Avenal, and to ensure that such vehicles will be closely accessible, and to preserve and enhance the viability of business operations within the City of Avenal.

SECTION 3-01.210. DEFINITIONS:

For purposes of this Chapter, the following words and phrases are defined as follows:

(a) "Tow service" and "tow services" mean the moving by a person of a motor vehicle from one place to another under power from other than such motor vehicle.

(b) "Tow service provider" means any person who provides any tow service.

(c) "This Code" and "this Code" refers to the Municipal Code of the City of Avenal.

SECTION 3-01.215. SCOPE OF CHAPTER:

To the extent that the provisions of this Article do not conflict with other applicable provisions outside of this Article, but within this Chapter, both shall be controlling. If any matter covered within this Article conflicts with any provision(s) outside this Article, but within this Chapter, the provision(s) this Article shall be controlling.

SECTION 3-01.220. LICENSE REQUIREMENT:

(a) All persons who operate a business that provides any towing service whatsoever within the boundaries of the City of Avenal must possess a valid business license issued pursuant to Chapter 1 of Title 3 of the Municipal Code of the City of Avenal, unless otherwise exempt.

(b) Notwithstanding any other provision in this Chapter, no tow service business license shall be issued to any person who has not demonstrated that such person has a motor vehicle storage yard within the City of Avenal, unless such person signs a tow service business license that expressly indicates: "The undersigned licensee acknowledges that he/she is <u>not</u> licensed or authorized to tow impounded motor vehicles."

(c) All persons with a valid tow service business license must carry such license in their possession at all times when providing tow services within the City of Avenal.

(d) This section shall not apply to a person in any calendar month in which such person provides tow service within the City of Avenal no more than once.

SECTION 3-01.225. PERIOD OF LICENSE:

All business licenses issued to persons regulated under this Article shall be effective for at least one year and shall expire the year after they were issued, on the last day of the same calendar month.

SECTION 3-01.230. STORAGE AND RELEASE OF IMPOUNDED VEHICLES:

(a) All persons who, within the boundaries of the City of Avenal, provide tow service in connection with the impoundment of a motor vehicle by a peace officer must satisfy all of the following:

(1) have a permanently fixed business structure (i.e. place of business) and a motor vehicle storage yard within the boundaries of the City of Avenal;

(2) present to the impounding peace officer, proof of such person's current tow service business license issued by the City of Avenal;

(3) present to the impounding peace officer, proof of such person's towing certification by California Highway Patrol (CHP); and

(4) have on file in the office of the license collector proof of such person's current towing certification by California Highway Patrol;

(b) All persons who, within the boundaries of the City of Avenal and at the request of a peace officer, provide tow service in connection with the impoundment of a motor vehicle must store such motor vehicle within the boundaries of the City of Avenal, except when such vehicle(s) must be immediately taken to a laboratory, or similar facility, for forensic testing and analysis by a law enforcement agency or such agency's contractor.

(c) Any tow services provider who has stored an impounded motor vehicle must release such impounded motor vehicle only when presented with a signed CHP-180 Vehicle Report form (or any superseding form), as amended from time to time, and proper identification of a person authorized to retrieve the impounded motor vehicle.

(d) When a motor vehicle has been impounded under California Vehicle Code section 22651(p), the tow services provider must not release such motor vehicle unless all applicable vehicle release fees have been paid to the City of Avenal. The tow services provider must, prior to release of the motor vehicle, require that the registered or licensed owner of the motor vehicle has presented to the tow service provider a written receipt from the City of Avenal evidencing full payment of all relevant vehicle release fees.

SECTION 3-01.235. VIOLATION:

Except where otherwise indicated, any person who willfully violates or causes, permits or assists in the violation of any of the provisions of this Article shall be guilty of a misdemeanor and each and every day such violation continues constitutes a separate

offense.

Section 4. NO LIABILITY. The provisions of this ordinance shall not in any way be construed as imposing any duty of care, liability or responsibility for damage to person or property upon the City of Avenal, or any official, employee or agent thereof.

Section 5. PENDING ACTIONS. Nothing in this ordinance or in the codes hereby adopted shall be construed to affect any suit or proceeding pending or impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance or code repealed by this ordinance, nor shall any just or legal right or remedy of any character be lost, impaired or affected by this ordinance.

Section 6. SEVERABILITY. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this ordinance, or its application to any other person or circumstance. The City Council of the City of Avenal hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 7. CONSTRUCTION. The City Council intends this ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this ordinance shall be construed in light of that intent. To the extent the provisions of the Avenal Municipal Code as amended by this ordinance are substantially the same as provisions in the Avenal Municipal Code existing prior to the effectiveness of this ordinance, then those amended provisions shall be construed as continuations of the earlier provisions and not as new enactments.

Section 8. EFFECTIVE DATE. The foregoing ordinance shall take effect thirty (30) days from the date of the passage hereof. Prior to the expiration of fifteen (15)

days from the passage hereof a certified copy of this ordinance shall be posted in the office of the City Clerk pursuant to Government Code section 36933(c)(1) and a summary shall be published once in the AVENAL CHIMES, a newspaper printed and published in the City of Avenal, State of California, together with the names of the Council members voting for and against the same.

THE FOREGOING ORDINANCE was passed and adopted by the City Council of the City of Avenal, State of California, on MARCH 25 2010 at a regular meeting of said Council duly and regularly convened on said day by the following vote:

AYES: CRAIGHEAD, OVALLE, JEPSEN, CASIDA, CURTY.
NOES: NONE.
ABSTAIN: NONE.
ABSENT: NONE.

HARLIN G. CASIDA
Mayor, City of Avenal

ATTEST: _____
PAMELA BONILLA
City Clerk, City of Avenal

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