ORDINANCE NO. 2010-06

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AVENAL ADDING SECTION 9.16 TO THE AVENAL ZONING ORDINANCE TO COMPLY WITH STATE LAW REGARDING REASONABLE ACCOMODATION

THE CITY COUNCIL OF THE CITY OF AVENAL DOES ORDAIN AS FOLLOWS:

Section 1: Title 9, Section 9.16 of the Avenal Municipal Code is hereby amended to add the following language:

Chapter 9.16

Reasonable Accommodation

9.16.01 Purpose. It is the policy of the City of Avenal to comply with the Federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act to provide reasonable accommodation in the application of its zoning or building laws, policies or procedures for persons with disabilities seeking fair access to housing. The purpose of this chapter is to establish the process for making a request for reasonable accommodation. For purposes of this chapter, the term "disabled" or "disability" shall have the same meaning as that term is defined in the Federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act.

9.16.02 Application. (a) Any person who requests reasonable accommodation, because of a disability, in the application of a zoning or building law, policy or procedure, which may act as a barrier to fair housing opportunities, may do so by filing a completed application with the director of community development ("director"). The director shall promulgate application forms for this purpose.

(b) If the project for which the request is being made also requires some other approval, permit or entitlement, the applicant shall file the request together with the application for such approval, permit or entitlement.

9.16.03 Required information. The applicant shall provide the following information:

(a) Applicant's name, address, and telephone number;

(b) Address of the property for which the request is being made;

(c) The current actual use of the property;

(d) A description of the accommodation requested including reference to the Zoning Ordinance, policy or procedure from which modification is being requested;

(e) The basis for the claim that the applicant is considered disabled under the Federal Fair Housing Amendments Act of 1988 or the California Fair Employment Housing Act; and

(f) A detailed explanation of why the accommodation is reasonable and why the accommodation is necessary to afford the applicant an equal opportunity to use and enjoy a specific dwelling in the city.

9.16.04 Notice of request for accommodation. Written notice of a request for reasonable accommodation shall be given as follows:

(a) In the event that there is no approval sought other than the request for reasonable accommodation, the notice shall be mailed to the owners of record of all properties which are immediately adjacent to the property which is the subject of the request.

(b) In the event that the request is being made in conjunction with some other approval, permit or entitlement, the notice shall be transmitted along with the notice of the other proceeding.

9.16.05 Procedure. (a) The director shall review each application for reasonable accommodation and, within five days of receipt thereof, determine whether the application is complete. If the application is determined to be incomplete, the director shall promptly give the applicant written notice of the additional information necessary to complete the application.

(b) Within 30 days of receipt of an application that has been determined to be complete, the director shall complete a review of the application and, pursuant to the standards provided in section 9.16.06, either approve, approve subject to conditions or deny the request. However, in the event that the applicant also seeks an approval, permit or other entitlement that is reviewed by the Planning Commission, then the Planning Commission shall review the application for reasonable accommodation.

(c) The director shall give the applicant written notice of the director's decision. Notice of the director's decision shall also be given in the same manner as provided in section 9.75.02.A.3.

(d) Within ten days of the date the notice is mailed, any person may make a request for a director's hearing of the decision.

(e) If no request for hearing is received, the decision shall become final.

9.16.06 Grounds for accommodation. In making a determination about the reasonableness of a requested accommodation, the following factors shall be considered:

(a) Whether the accommodation is reasonable considering the nature of the applicant's disability, the surrounding land uses, and the rule, standard, policy, or practice from which relief is sought;

(b) Whether the accommodation is necessary to afford the applicant equal opportunity to enjoy and use a specific dwelling in the city;

(c) Whether the accommodation will have only incidental economic or monetary benefits to the applicant, and whether the primary purpose of the accommodation is to assist with real estate speculation or excess profit making;

(d) Whether the accommodation will create a substantial adverse impact on surrounding land uses, or a public nuisance, that cannot be reasonably mitigated;

(e) Whether the accommodation is reasonably feasible considering the physical attributes of the property and structures;

(f) Whether there are alternative accommodations which may provide an equivalent level of benefit to the applicant, while minimizing adverse impacts on surrounding land uses and lessening the financial and/or administrative burden on the city;

(g) Whether the requested accommodation would impose an undue financial or administrative burden on the city; and

(h) Whether the requested accommodation would constitute a fundamental alteration of the zoning or building laws, policies or procedures of the city.

9.16.07 Director's hearing. Within 30 days of receipt of a request, the director shall conduct an informal hearing on the request for reasonable accommodation at which all reasonable evidence and credible testimony shall be considered.

9.16.08 Notice of director's decision following a hearing. (a) Within five days after the hearing, the director shall issue a written decision approving, including any reasonable conditions, or denying the application.

(b) The notice of director's decision shall contain the director's factual findings, conclusions, and reasons for the decision.

(c) Notice of the director's decision shall be given in the same manner as provided in section 9.75.02.A.3.

9.16.09 Expiration of grants of reasonable accommodation. Any modification granted for an individual with a disability shall be a personal accommodation for the individual applicant and shall not run with the land, unless the director determines that it would be impractical to require the property to be returned to its previous condition once the disabled person no longer occupies the property. Prior to the issuance of a building permit or any other applicable permit for such modification, the permittee shall execute a notarized statement that permits the city to inspect the affected property at least annually to verify compliance with this chapter and with any applicable conditions of approval. Prior to any transfer of interest in the property, the permittee shall notify the transferee of the existence of the accommodation, the personal status of the accommodation and the requirements that the tranferee must apply for a new accommodation as necessary. Except as otherwise provided by the director, as set forth herein, once such transfer takes effect the accommodation shall have no further validity.

9.16.10 Appeal. The decision of the director or the planning and transportation commission shall be subject to appeal pursuant to the procedures set forth in chapter 9.75.02.B of the Ordinance.

9.16.11 Fee. There shall be no fee for an application under this chapter.

Section 2: This Ordinance shall take effect thirty (30) days after passage. Prior to the expiration of fifteen (15) days from the passage thereof, this Ordinance shall be published once in a local paper of general circulation and delivered within Avenal, Kings County, California, together with the names of the members of the City Council voting for and against this matter.

PASSED AND ADOPTED at a regular meeting of the Avenal City Council on the 9th day of ~~November~~ December, 2010, by the following roll call vote:

AYES: Gravelle, Preciado, Ovalle, Casida, Curty.
NOES: None.
ABSENT: None.
ABSTAIN: None.

Approved:
Harlin Casida, **MAYOR**

ATTEST:

Pamela Bonilla, **CITY CLERK**

Exhibit A

RESOLUTION NO. 2010-11

A RESOLUTION OF THE AVENAL PLANNING COMMISSION RECOMMENDING TO THE CITY COUNCIL THAT SECTION 9.16 BE ADDED TO THE AVENAL ZONING ORDINANCE

WHEREAS, on September 8, 2005, the City Council of the City of Avenal approved Ordinance 2005-08 adopting the City of Avenal Zoning Ordinance; and

WHEREAS, on September 27, 2007, the City Council of the City of Avenal approved Ordinance 2007-02 adopting a Zone Text Change; and

WHEREAS, since the last Text Change the City has identified the need to amend the Ordinance to provide for "Reasonable Accommodation" as outlined in State law; and

WHEREAS, Section 9.76.04 of the Avenal Zoning Ordinance allows the Planning Commission, following a public hearing on the issue, to recommend amendments and changes to Zoning Ordinance by a Resolution containing its recommendation and findings; and

WHEREAS, on November 1, 2010, this Commission held a duly noticed public hearing to receive testimony from any interested person; and

WHEREAS, the Avenal Planning Commission believes that these changes are vital to protect the health, safety and welfare of its citizens.

NOW, THEREFORE, BE IT RESOLVED, that after a thorough review and full consideration of all evidence and testimony the Avenal Planning Commission finds that:

1. Any Ordinance passed by the City Council amending the Avenal Zoning Ordinance as recommended herein is categorically exempt from environmental review pursuant to California Environmental Quality Act Guidelines Section 15061(b)(3).

2. The notice of a public hearing regarding its consideration of this Resolution, and its intent to recommend amendment of the Avenal Zoning Ordinance, was properly given at least ten (10) days prior to the date of the public hearing in a manner consistent with Section 9.76.04(1) of the Avenal Zoning Ordinance.

BE IT FURTHER RESOLVES THAT:

1. After a thorough review and full consideration of all evidence and testimony

the Avenal Zoning Ordinance be amended as set forth in Exhibit A and incorporated herein by reference.

2. The Commission directs the Planning Director and/or his agent, in accordance with Section 9.76.05 of the Avenal Zoning Ordinance, to transmit to the Avenal City Council; (1) a copy of this resolution, (2) any reports and/or documentary evidence received and considered by the Planning Commission during the public hearing relating to this Resolution.

PASSED AND ADOPTED at a regular meeting of the Avenal Planning Commission held on November 1, 2010 on a motion by Commissioner Tillotson and seconded by Commissioner Preciado, by the following vote:

AYES:	Commissioners Horton, Preciado, Tillotson, Beil
NOES:	None
ABSTAIN:	None
ABSENT:	Commissioner Elliott

Mike Beil, CHAIRPERSON

ATTEST:

Steven Sopp, SECRETARY

EXHIBIT A

ZONE TEXT CHANGE:

Chapter 9.16

Reasonable Accommodation

Chapter 9.16

Reasonable Accommodation

9.16.01 Purpose. It is the policy of the City of Avenal to comply with the Federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act to provide reasonable accommodation in the application of its zoning or building laws, policies or procedures for persons with disabilities seeking fair access to housing. The purpose of this chapter is to establish the process for making a request for reasonable accommodation. For purposes of this chapter, the term "disabled" or "disability" shall have the same meaning as that term is defined in the Federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act.

9.16.02 Application. (a) Any person who requests reasonable accommodation, because of a disability, in the application of a zoning or building law, policy or procedure, which may act as a barrier to fair housing opportunities, may do so by filing a completed application with the director of community development ("director"). The director shall promulgate application forms for this purpose.

(b) If the project for which the request is being made also requires some other approval, permit or entitlement, the applicant shall file the request together with the application for such approval, permit or entitlement.

9.16.03 Required information. The applicant shall provide the following information:

(a) Applicant's name, address, and telephone number;

(b) Address of the property for which the request is being made;

(c) The current actual use of the property;

(d) A description of the accommodation requested including reference to the Zoning Ordinance, policy or procedure from which modification is being requested;

(e) The basis for the claim that the applicant is considered disabled under the Federal Fair Housing Amendments Act of 1988 or the California Fair Employment Housing Act; and

(f) A detailed explanation of why the accommodation is reasonable and why the accommodation is necessary to afford the applicant an equal opportunity to use and enjoy a specific dwelling in the city.

9.16.04 Notice of request for accommodation. Written notice of a request for reasonable accommodation shall be given as follows:

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(b) In the event that the request is being made in conjunction with some other approval, permit or entitlement, the notice shall be transmitted along with the notice of the other proceeding.

9.16.05 Procedure. (a) The director shall review each application for reasonable accommodation and, within five days of receipt thereof, determine whether the application is complete. If the application is determined to be incomplete, the director shall promptly give the applicant written notice of the additional information necessary to complete the application.

(b) Within 30 days of receipt of an application that has been determined to be complete, the director shall complete a review of the application and, pursuant to the standards provided in section 9.16.06, either approve, approve subject to conditions or deny the request. However, in the event that the applicant also seeks an approval, permit or other entitlement that is reviewed by the Planning Commission, then the Planning Commission shall review the application for reasonable accommodation.

(c) The director shall give the applicant written notice of the director's decision. Notice of the director's decision shall also be given in the same manner as provided in section 9.75.02.A.3.

(d) Within ten days of the date the notice is mailed, any person may

make a request for a director's hearing of the decision.

(e) If no request for hearing is received, the decision shall become final.

9.16.06 Grounds for accommodation. In making a determination about the reasonableness of a requested accommodation, the following factors shall be considered:

(a) Whether the accommodation is reasonable considering the nature of the applicant's disability, the surrounding land uses, and the rule, standard, policy, or practice from which relief is sought;

(b) Whether the accommodation is necessary to afford the applicant equal opportunity to enjoy and use a specific dwelling in the city;

(c) Whether the accommodation will have only incidental economic or monetary benefits to the applicant, and whether the primary purpose of the accommodation is to assist with real estate speculation or excess profit making;

(d) Whether the accommodation will create a substantial adverse impact on surrounding land uses, or a public nuisance, that cannot be reasonably mitigated;

(e) Whether the accommodation is reasonably feasible considering the physical attributes of the property and structures;

(f) Whether there are alternative accommodations which may provide an equivalent level of benefit to the applicant, while minimizing adverse impacts on surrounding land uses and lessening the financial and/or administrative burden on the city;

(g) Whether the requested accommodation would impose an undue financial or administrative burden on the city; and

(h) Whether the requested accommodation would constitute a fundamental alteration of the zoning or building laws, policies or procedures of the city.

9.16.07 Director's hearing. Within 30 days of receipt of a request, the director shall conduct an informal hearing on the request for reasonable accommodation at which all reasonable evidence and credible testimony shall be considered.

9.16.08 Notice of director's decision following a hearing. (a) Within five days

after the hearing, the director shall issue a written decision approving, including any reasonable conditions, or denying the application.

(b) The notice of director's decision shall contain the director's factual findings, conclusions, and reasons for the decision.

(c) Notice of the director's decision shall be given in the same manner as provided in section 9.75.02.A.3.

9.16.09 Expiration of grants of reasonable accommodation. Any modification granted for an individual with a disability shall be a personal accommodation for the individual applicant and shall not run with the land, unless the director determines that it would be impractical to require the property to be returned to its previous condition once the disabled person no longer occupies the property. Prior to the issuance of a building permit or any other applicable permit for such modification, the permittee shall execute a notarized statement that permits the city to inspect the affected property at least annually to verify compliance with this chapter and with any applicable conditions of approval. Prior to any transfer of interest in the property, the permittee shall notify the transferee of the existence of the accommodation, the personal status of the accommodation and the requirements that the tranferee must apply for a new accommodation as necessary. Except as otherwise provided by the director, as set forth herein, once such transfer takes effect the accommodation shall have no further validity.

9.16.10 Appeal. The decision of the director or the planning and transportation commission shall be subject to appeal pursuant to the procedures set forth in chapter 9.75.02.B of the Ordinance.

9.16.11 Fee. There shall be no fee for an application under this chapter.

ORDINANCE NO. 2010-06

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AVENAL ADDING SECTION 9.16 TO THE AVENAL ZONING ORDINANCE TO COMPLY WITH STATE LAW REGARDING REASONABLE ACCOMODATION

THE CITY COUNCIL OF THE CITY OF AVENAL DOES ORDAIN AS FOLLOWS:

Section 1: Title 9, Section 9.16 of the Avenal Municipal Code is hereby amended to add the following language:

Chapter 9.16

Reasonable Accommodation

9.16.01 Purpose. It is the policy of the City of Avenal to comply with the Federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act to provide reasonable accommodation in the application of its zoning or building laws, policies or procedures for persons with disabilities seeking fair access to housing. The purpose of this chapter is to establish the process for making a request for reasonable accommodation. For purposes of this chapter, the term "disabled" or "disability" shall have the same meaning as that term is defined in the Federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act.

9.16.02 Application. (a) Any person who requests reasonable accommodation, because of a disability, in the application of a zoning or building law, policy or procedure, which may act as a barrier to fair housing opportunities, may do so by filing a completed application with the director of community development ("director"). The director shall promulgate application forms for this purpose.

(b) If the project for which the request is being made also requires some other approval, permit or entitlement, the applicant shall file the request together with the application for such approval, permit or entitlement.

9.16.03 Required information. The applicant shall provide the following information:

(a) Applicant's name, address, and telephone number;

(b) Address of the property for which the request is being made;

(c) The current actual use of the property;

(d) A description of the accommodation requested including reference to the Zoning Ordinance, policy or procedure from which modification is being requested;

(e) The basis for the claim that the applicant is considered disabled under the Federal Fair Housing Amendments Act of 1988 or the California Fair Employment Housing Act; and

(f) A detailed explanation of why the accommodation is reasonable and why the accommodation is necessary to afford the applicant an equal opportunity to use and enjoy a specific dwelling in the city.

9.16.04 Notice of request for accommodation. Written notice of a request for reasonable accommodation shall be given as follows:

(a) In the event that there is no approval sought other than the request for reasonable accommodation, the notice shall be mailed to the owners of record of all properties which are immediately adjacent to the property which is the subject of the request.

(b) In the event that the request is being made in conjunction with some other approval, permit or entitlement, the notice shall be transmitted along with the notice of the other proceeding.

9.16.05 Procedure. (a) The director shall review each application for reasonable accommodation and, within five days of receipt thereof, determine whether the application is complete. If the application is determined to be incomplete, the director shall promptly give the applicant written notice of the additional information necessary to complete the application.

(b) Within 30 days of receipt of an application that has been determined to be complete, the director shall complete a review of the application and, pursuant to the standards provided in section 9.16.06, either approve, approve subject to conditions or deny the request. However, in the event that the applicant also seeks an approval, permit or other entitlement that is reviewed by the Planning Commission, then the Planning Commission shall review the application for reasonable accommodation.

(c) The director shall give the applicant written notice of the director's decision. Notice of the director's decision shall also be given in the same manner as provided in section 9.75.02.A.3.

(d) Within ten days of the date the notice is mailed, any person may make a request for a director's hearing of the decision.

(e) If no request for hearing is received, the decision shall become final.

9.16.06 Grounds for accommodation. In making a determination about the reasonableness of a requested accommodation, the following factors shall be considered:

(a) Whether the accommodation is reasonable considering the nature of the applicant's disability, the surrounding land uses, and the rule, standard, policy, or practice from which relief is sought;

(b) Whether the accommodation is necessary to afford the applicant equal opportunity to enjoy and use a specific dwelling in the city;

(c) Whether the accommodation will have only incidental economic or monetary benefits to the applicant, and whether the primary purpose of the accommodation is to assist with real estate speculation or excess profit making;

(d) Whether the accommodation will create a substantial adverse impact on surrounding land uses, or a public nuisance, that cannot be reasonably mitigated;

(e) Whether the accommodation is reasonably feasible considering the physical attributes of the property and structures;

(f) Whether there are alternative accommodations which may provide an equivalent level of benefit to the applicant, while minimizing adverse impacts on surrounding land uses and lessening the financial and/or administrative burden on the city;

(g) Whether the requested accommodation would impose an undue financial or administrative burden on the city; and

(h) Whether the requested accommodation would constitute a fundamental alteration of the zoning or building laws, policies or procedures of the city.

9.16.07 Director's hearing. Within 30 days of receipt of a request, the director shall conduct an informal hearing on the request for reasonable accommodation at which all reasonable evidence and credible testimony shall be considered.

9.16.08 Notice of director's decision following a hearing. (a) Within five days after the hearing, the director shall issue a written decision approving, including any reasonable conditions, or denying the application.

(b) The notice of director's decision shall contain the director's factual findings, conclusions, and reasons for the decision.

(c) Notice of the director's decision shall be given in the same manner as provided in section 9.75.02.A.3.

9.16.09 Expiration of grants of reasonable accommodation. Any modification granted for an individual with a disability shall be a personal accommodation for the individual applicant and shall not run with the land, unless the director determines that it would be impractical to require the property to be returned to its previous condition once the disabled person no longer occupies the property. Prior to the issuance of a building permit or any other applicable permit for such modification, the permittee shall execute a notarized statement that permits the city to inspect the affected property at least annually to verify compliance with this chapter and with any applicable conditions of approval. Prior to any transfer of interest in the property, the permittee shall notify the transferee of the existence of the accommodation, the personal status of the accommodation and the requirements that the tranferee must apply for a new accommodation as necessary. Except as otherwise provided by the director, as set forth herein, once such transfer takes effect the accommodation shall have no further validity.

9.16.10 Appeal. The decision of the director or the planning and transportation commission shall be subject to appeal pursuant to the procedures set forth in chapter 9.75.02.B of the Ordinance.

9.16.11 Fee. There shall be no fee for an application under this chapter.

Section 2: This Ordinance shall take effect thirty (30) days after passage. Prior to the expiration of fifteen (15) days from the passage thereof, this Ordinance shall be published once in a local paper of general circulation and delivered within Avenal, Kings County, California, together with the names of the members of the City Council voting for and against this matter.

PASSED AND ADOPTED at a regular meeting of the Avenal City Council on the 9th day of ~~November~~ December, 2010, by the following roll call vote:

AYES: Gravelle, Preciado, Ovalle, Casida, Curty.
NOES: None.
ABSENT: None.
ABSTAIN: None.

Approved:
Harlin Casida, **MAYOR**

ATTEST:

Pamela Bonilla, **CITY CLERK**

Exhibit A

RESOLUTION NO. 2010-11

A RESOLUTION OF THE AVENAL PLANNING COMMISSION RECOMMENDING TO THE CITY COUNCIL THAT SECTION 9.16 BE ADDED TO THE AVENAL ZONING ORDINANCE

WHEREAS, on September 8, 2005, the City Council of the City of Avenal approved Ordinance 2005-08 adopting the City of Avenal Zoning Ordinance; and

WHEREAS, on September 27, 2007, the City Council of the City of Avenal approved Ordinance 2007-02 adopting a Zone Text Change; and

WHEREAS, since the last Text Change the City has identified the need to amend the Ordinance to provide for "Reasonable Accommodation" as outlined in State law; and

WHEREAS, Section 9.76.04 of the Avenal Zoning Ordinance allows the Planning Commission, following a public hearing on the issue, to recommend amendments and changes to Zoning Ordinance by a Resolution containing its recommendation and findings; and

WHEREAS, on November 1, 2010, this Commission held a duly noticed public hearing to receive testimony from any interested person; and

WHEREAS, the Avenal Planning Commission believes that these changes are vital to protect the health, safety and welfare of its citizens.

NOW, THEREFORE, BE IT RESOLVED, that after a thorough review and full consideration of all evidence and testimony the Avenal Planning Commission finds that:

1. Any Ordinance passed by the City Council amending the Avenal Zoning Ordinance as recommended herein is categorically exempt from environmental review pursuant to California Environmental Quality Act Guidelines Section 15061(b)(3).

2. The notice of a public hearing regarding its consideration of this Resolution, and its intent to recommend amendment of the Avenal Zoning Ordinance, was properly given at least ten (10) days prior to the date of the public hearing in a manner consistent with Section 9.76.04(1) of the Avenal Zoning Ordinance.

BE IT FURTHER RESOLVES THAT:

1. After a thorough review and full consideration of all evidence and testimony

the Avenal Zoning Ordinance be amended as set forth in Exhibit A and incorporated herein by reference.

2. The Commission directs the Planning Director and/or his agent, in accordance with Section 9.76.05 of the Avenal Zoning Ordinance, to transmit to the Avenal City Council; (1) a copy of this resolution, (2) any reports and/or documentary evidence received and considered by the Planning Commission during the public hearing relating to this Resolution.

PASSED AND ADOPTED at a regular meeting of the Avenal Planning Commission held on November 1, 2010 on a motion by Commissioner Tillotson and seconded by Commissioner Preciado, by the following vote:

AYES:	Commissioners Horton, Preciado, Tillotson, Beil
NOES:	None
ABSTAIN:	None
ABSENT:	Commissioner Elliott

Mike Beil, CHAIRPERSON

ATTEST:

Steven Sopp, SECRETARY

EXHIBIT A

ZONE TEXT CHANGE:

Chapter 9.16

Reasonable Accommodation

Chapter 9.16

Reasonable Accommodation

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