ORDINANCE NO. 2011-09

AN INTERIM URGENCY ORDINANCE OF THE CITY OF AVENAL, ENACTING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT OR OPERATION OF MARIJUANA DISPENSARIES, PURSUANT TO GOVERNMENT CODE SECTION 65858.

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

SECTION 1. Findings.

The City Council finds and declares as follows:

(a) In 1996, the voters of the State of California approve Proposition 215 (codified as California Health and Safety Code section 11362.5, and titled "The Compassionate Use Act of 1996"). The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited specified circumstances.

(b) In 2004, the California Legislature enacted Senate Bill 420 (codified as Health and Safety Code §§ 11362.7 et seq.) to clarify the scope of Proposition 215, and to provide qualified patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified state criminal statutes.

(c) Health and Safety Code section 11362.83 expressly allows cities and counties to adopt and enforce ordinances that are consistent with the Medical Marijuana Program.

(d) The federal Controlled Substances Act, 21 U.S.C. § 801 et seq., classifies marijuana as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision. The federal Controlled Substances Act and its implementing regulations makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana. The federal Controlled Substances Act contains no exemption for the cultivation,

manufacture, distribution, dispensation, or possession of marijuana for medical purposes.

(e) Facilities which dispense marijuana have thus far proven to have serious harmful effects on the neighborhoods in which they are located, to owners of property in such neighborhoods and to citizens living, visiting, shopping, conducting business or otherwise present in the area, as reported by several other California counties and cities. Such effects are due to such factors as the illegal nature of the activity, the presence of large quantities of marijuana at the dispensaries, the presence of large amounts of cash, the presence of weapons and other related factors. Harmful effects at dispensaries and the surrounding areas have included an increase in burglaries, robberies, illegal sales of drugs, use or possession of marijuana by unauthorized persons, attacks on persons entering or leaving the premises, loitering, smoking marijuana in public places and driving while under the influence of marijuana.

(f) For the above reasons, staff of the City of Avenal is developing proposed regulations which the City Council can consider adopting, to regulate medical marijuana dispensaries so as to prevent the above harmful effects on the City of Avenal and its residents while staff studies the potential impact of medical marijuana dispensaries within City limits.

(g) In February 2009, the U.S. Attorney General stated that federal law enforcement officials would ease enforcement at California medical marijuana facilities. This statement, along with other factors, resulted in burgeoning interest in establishing medical marijuana dispensaries in the State of California and the region of Kings County including the City of Avenal. In response, numerous cities and counties around the state are enacting regulations. Among the counties adjacent to Kings County, many local governments have recently enacted ordinances either prohibiting or regulating medical marijuana dispensaries or establishing a moratorium on medical marijuana dispensaries. These regulations can be expected to have the effect of redirecting persons desirous of establishing such dispensaries, to consider doing so within the City of Avenal if no similar regulations are in effect. The City has received several inquires regarding the establishment of medical marijuana dispensaries.

(h) Proposition 215 and Senate Bill 420 do not preempt local zoning or nuisance regulations affecting medical marijuana-related land-uses; rather, Senate Bill 420 (Health and Safety Code Section 11362.83) expressly allows cities and counties to adopt and enforce ordinances that are consistent with state law. The scope of local regulatory power continues to be challenged by proponents of medical marijuana-related land-uses, and is presently being resolved by the appellate courts in cases such as *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153, *Qualified Patients Ass'n v. City of Anaheim* (2010) 187 Cal.App.4th 734, and *Traudt v. City of Dana Point*, 2011 WL 4508995.

(i) Under the current provisions of the Zoning Ordinance of the City of Avenal (**TABLE 9-1**), medical marijuana dispensaries are not identified as a permitted use, or a use permitted subject to a conditional use permit, in any zoning district in the City. Further, medical marijuana dispensaries are not found to be substantially similar to other permitted uses; permitted uses, site plan review; or conditional uses. The City interprets these provisions to mean that such uses are prohibited. However, the City recognizes that numerous other local governments have faced arguments that medical marijuana dispensaries are permitted uses under similar ordinances, or are encompassed within generic permitted uses, such as "miscellaneous retail" or "medical clinics."

(j) The City intends to consider and study possible means of regulating or prohibiting medical marijuana dispensaries, including zoning regulations and other regulations, and by this ordinance shall direct the immediate commencement of such consideration and study.

(k) If medical marijuana dispensaries are allowed to be established, developed, constructed, maintained, or operated in the City without appropriate regulations, such uses may be established in areas, or operated in a manner, that would conflict with the proposed regulations to be considered and studied by the City, and would therefore defeat the purpose of the proposal to study and adopt new regulations regarding medical marijuana dispensaries.

(l) The establishment, development, construction, maintenance, or operation of medical marijuana dispensaries, and the continued approval of land-use permits,

variances, building permits, or any other applicable entitlements authorizing their establishment, would result in a current and immediate threat to the public health, safety and welfare, because such uses threaten to cause the harmful "secondary effects" identified above within the City of Avenal, and because such uses may frustrate the accomplishment of the goals of the medical marijuana dispensary regulations that the City will consider and study. It is therefore necessary to adopt this ordinance to prohibit their establishment, development, construction, maintenance, or operation during the period of such consideration and study.

SECTION 2. Definitions. For the purpose of this ordinance, the following terms shall have the following meanings:

(a) "Development Application" shall mean an application for any permit or approval to be issued by any City of Avenal officer, department or other agency, including subdivisions, land-use permits, variances, building permits, or any other entitlement for use.

(b) "Collective" means an association or combination of Primary Caregivers and/or Qualified Patients jointly cultivating and/or storing marijuana for medical purposes as provided in Health & Safety Code section 11362.775.

(c) "Cooperative" means an association or combination of Primary Caregivers and/or Qualified Patients jointly cultivating and/or storing marijuana for medical purposes as provided in Health & Safety Code section 11362.775, and properly incorporated under the California Corporations or Food and Agriculture Code.

(d) "Medical Marijuana Dispensary" shall mean: a collective or cooperative maintaining a physical operating location within the city limits of the City of Avenal.

(e) "Marijuana" shall have the same meaning as that set forth in Health and Safety Code section 11018.

(f) "Person" shall include: Any natural person, association, corporation, cooperative, partnership, collective, limited liability company, or any other social or business entity.

SECTION 3. Prohibitions.

No Person shall cause or permit the establishment, development, construction, maintenance, operation, or enlargement of a Medical Marijuana Dispensary, within the

City of Avenal, nor shall any Development Application be accepted, filed, processed, issued or approved for such a Medical Marijuana Dispensary during the term of this moratorium ordinance. This interim ordinance shall in no way limit the right to possess or use marijuana for medicinal purposes as is presently authorized by the laws of the State of California as set forth in the Health and Safety Code.

SECTION 4. Report.

The City Manager or the same's designee is authorized and directed to prepare and issue, on behalf of the City Council, a written report describing the measures taken by the City to alleviate the conditions which have led to the adoption of this ordinance, at least ten (10) days prior to the expiration of this ordinance.

SECTION 5. **CEQA Review**. The City Council hereby finds that this ordinance is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15060(c)(2) [the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment] and 15061(b)(3) [there is no possibility the activity in question may have a significant effect on the environment]. In addition to the foregoing general exemptions, the City Council further finds that the ordinance is categorically exempt from review under CEQA under the Class 8 categorical exemption [regulatory activity to assure the protection of the environment]. The City Manager is hereby directed to ensure that a Notice of Exemption is filed pursuant to CEQA Guidelines section 15062 [14 C.C.R. § 15062].

SECTION 6. **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 7. 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 8. **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 9. 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 10. Urgency; Effective Date; Duration and Publication.

This ordinance is adopted by the City Council pursuant to the California Constitution, article XI, section 7 and Government Code section 65858 by a four-fifths (4/5) or greater vote, as an urgency measure to protect the public health, safety and welfare, and shall take effect immediately. The reasons for such urgency are set forth in Section 1 above. This ordinance shall expire and be of no further force or effect forty-five (45) days after its adoption, unless it is extended pursuant to Government Code section 65858. 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.

PASSED AND ADOPTED at a regular meeting of the Avenal City Council on the 13th day of October, 2011, 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**

NOTICE OF EXEMPTION [14 C.C.R. § 15062(c)(2)]

Exempt from filing fees pursuant to Government Code §§ 6103, 27383.

TO: ☐ Office of Planning and Research

For U.S. Mail
P.O Box 3044
Sacramento, CA 95812-0344

Street Address
1400 Tenth St.
Sacramento, CA 95814

☒ County Clerk/Recorder
County of Kings
Kings County Government Center
Hanford, California 93230

FROM: City of Avenal
919 Skyline Boulevard
Avenal, California 93204

Date Received For Filing

ORIGINAL FILED
DEC 19 2011
KEN BAIRD
KINGS COUNTY CLERK

PROJECT TITLE:
City of Avenal Ordinance No. 2011-10

PROJECT LOCATION - Specific:
This Ordinance is applicable to the city limits of the City of Avenal, California

PROJECT LOCATION - City
City of Avenal

PROJECT LOCATION - County:
Kings

DESCRIPTION OF PROJECT:
Ordinance No. 2011-10 – a moratorium for ten (10) months and fifteen (15) days prohibiting the establishment, development, construction, maintenance, operation, or enlargement of any Medical Marijuana Dispensary, within the the City of Avenal, nor shall any development or permit application be accepted, filed, processed, issued or approved for such a Medical Marijuana Dispensary during the term of this moratorium ordinance.

NAME OF PUBLIC AGENCY APPROVING PROJECT:
City of Avenal

NAME OF PERSON OR AGENCY CARRYING OUT PROJECT:
City of Avenal

EXEMPT STATUS: (*check one*)

☐ Ministerial (Section 21080(b)(1); 15268);
☐ Declared Emergency (Section 21080(b)(4); 15269(a));
☐ Emergency Project (Section 21080(b)(4); 15269(b)(c));
☒ Categorical Exemption. State section: 14 CCR 15307 and 15308
☒ Statutory Exemptions. State code: 15061(b) 15060(c)(2)

REASONS WHY PROJECT IS EXEMPT:
This action is exempt pursuant to CEQA Guidelines sections 15060(c)(2) [the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment] and 15061(b)(3) [there is no possibility the activity in question may have a significant effect on the environment]. In addition to the foregoing general exemptions, the ordinance is categorically exempt from review under CEQA under the Class 8 categorical exemption [regulatory activity to assure the protection of the environment].

The urgency ordinance prohibiting the establishment or operation of Medical Marijuana Dispensaries on an interim basis has no possibility of having a significant effect on the environment and is therefore exempt from CEQA under the general rule described above.

CONTACT PERSON:
Steven Sopp

TELEPHONE NUMBER:
559-386-5766

Signature
Title: Community Development Director, City of Avenal
Date: December 19, 2011