ORDINANCE NO. 2014-02

AN ORDINANCE OF THE CITY OF AVENAL ENACTING RESTRICTIONS ON MEDICAL MARIJUANA DISPENSARIES, MOBILE DISPENSARIES, COOPERATIVES, COLLECTIVES AND CULTIVATION.

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

Section 1. PURPOSE. The provisions of this ordinance are intended in order to promote the public health, safety, comfort and general welfare, to provide a plan for sound and orderly development, and to ensure social and economic stability within the various zones established by the Avenal Zoning Ordinance.

Section 2. CODE REPEAL. The definition of "Medical Marijuana Dispensary" within section 9.03.02 of the Avenal Municipal Code is hereby repealed.

Section 3. CODE AMENDMENT. The following definitions are added, in alphabetical order, to the existing definitions within section 9.03.02 of Chapter 9.03 of Title 9 of the Avenal Municipal Code:

> Development application. An application for any permit or approval to be issued by any City of Avenal officer, employee, department or other office, including subdivisions, land-use permits, variances, building permits or any other entitlement for use.
>
> Medical marijuana dispensary. A facility where marijuana is made available for medical purposes in accordance with California Health and Safety Code section 11362.5 (Proposition 215).
>
> Mobile marijuana dispensary. Any clinic, cooperative, club, business or group which transports or delivers, or arranges the transportation or delivery, of medical marijuana to a person.

Section 4. CODE ADOPTION. Section 9.75.08 is hereby added to Chapter 9.75 of Title 9 the Avenal Municipal Code to read in its entirety as follows:

9.75.08 – Medical Marijuana Dispensaries Prohibited.
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.

Section 5. CODE AMENDMENT. Section 9.78.08 of Chapter 9.78 of Title 9 of the Avenal Municipal Code is hereby amended to read in its entirety as follows:

9.78.07 MISDEMEANOR.

A. Any person, firm, or corporation that fails to comply with the Notice of Violation described in section 9.78.06 shall be guilty of a misdemeanor and upon conviction thereof be fined not more than five hundred dollars ($500) or imprisoned for not more than six (6) months in the county jail, or both. Each day the violation of this ~~Chapter~~Title 9 continues shall be considered a separate offense.

B. The owner or tenant of any building, structure, premises or part thereof, and any architect, builder, contractor, agent or other person who commits, participates in, assists or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided.

C. Notwithstanding any other provision of this code, violation of any provision pertaining to medical marijuana within Title 9 of the Avenal Municipal Code by any qualified patient or any of their primary caregivers, while acting in such capacities, shall not be punishable as a misdemeanor.

Section 6. CODE AMENDMENT. Table 9-1 in Title 9 of the Avenal Municipal Code is hereby amended to read in its entirety as shown in **EXHIBIT 1**, attached hereto.

Section 7. CODE ADOPTION. Chapter 9.69 of Title 9 is hereby added to the Avenal Municipal Code to read in its entirety as follows:

Chapter 9.69
MOBILE MARIJUANA DISPENSARIES

9.69.01 – Definitions.
9.69.02 – Mobile Marijuana Dispensaries Prohibited.
9.69.03 – Marijuana Delivery Prohibited.
9.69.04 – Excluded Operations.
9.69.05 – Public Nuisance Declared.
9.69.06 – Violations.

9.69.01 – Definitions.

Notwithstanding any other provision in this code, the following words and phrases shall, for the purposes of this Chapter, have the meanings respectively ascribed to them by this section, as follows:

A. "Mobile marijuana dispensary" means any clinic, cooperative, club, business or group which transports or delivers, or arranges the transportation or delivery, of medical marijuana to a person.

B. "Person" means any person, firm, corporation, association, club, society or other organization. The term "person" shall include any owner, manager, proprietor, employee, volunteer or salesperson.

C. "Operation" means any effort to locate, operate, own, lease, supply or allow to be operated a mobile marijuana dispensary, or to aid, abet or assist in the operation of a mobile marijuana dispensary.

9.69.02 – Mobile Marijuana Dispensaries Prohibited.
Mobile marijuana dispensaries are prohibited within the City of Avenal. No person shall locate, operate, own, suffer, allow to be operated or aide, abet or assist in the operation of any mobile marijuana dispensary within the City.

9.69.03 – Marijuana Delivery Prohibited.
A. No Person shall deliver marijuana to any location within the City from a mobile marijuana dispensary, regardless of where the mobile marijuana dispensary is located, or engage in any operation for this purpose.

B. No Person shall deliver any marijuana-infused product such as tinctures, baked goods or other consumable products, to any location within the City from a mobile marijuana dispensary, regardless of where the mobile marijuana dispensary is located, or engage in any operation for this purpose.

9.69.04 – Public Nuisance Declared.
Operation of any mobile marijuana dispensary within the City in violation of the provisions of this Chapter is hereby declared a public nuisance and may be abated pursuant to all available remedies.

9.69.05 – Violations.
Violations of this Chapter may be enforced by any applicable law. Notwithstanding any other provision of the Code, a violation of this Chapter is not subject to criminal penalties.

Section 8. 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 9. 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 10. 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 11. 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 12. 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

EXHIBIT 1

Table 9-1
Permitted and Conditional Uses
Nonresidential Zones

	Intensive Ag.	Exclusive Ag.	Community Comm.	Highway Comm.	Downtown Commercial	Service Comm.	Light Mfg.	Heavy Mfg.	Public Facilities	Open Space, Parks & Rec.
MASTER LIST ZONE DISTRICT	A-I	A-E	C-C	H-C	D-C	S-C	M-1	M-2	P-F	O
AGRICULTURAL USES										
Animal Auction Yard	C							P		
Beekeeping	P	P								C
Domestic Crops for use of the Resident/Occupant	P	P								
Farmers Market			P	P	P	P				P
Field, Truck or Orchard Crops	P	P							P	
Fish Hatcheries	P	P								P
Grain Elevators/Silos	C	C				C	P	P		
Greenhouses (Commercial Growers)	P	P				C	P			
Horse Stables/Ranch (3 or more horses)	P	P							P	
Horticulture Specialties, excluding medical marijuana	P	P				C			P	
Limited Raising of Small Animals, Livestock and fowl on a domestic, noncommercial scale (2 cows, 4 sheep, goats, no pigs permitted on ½ acre or less)	P	P								
Medical Marijuana Cultivation										
Pens, Coops, and Barns	P	P								
Raising of Livestock and Fowl, except stockyards (commercial)	C	P								
Riding Academies/Stables	P	C							P	
Stockyards, Hog Farms, Dairies										
Agricultural Industries and Services when incidental and secondary to the primary use of the premises for Agriculture.	C						P			

P Permitted
C Conditional
T Temporary
1 In conjunction w/primary permitted use

Exhibit 1

	Intensive Ag.	Exclusive Ag.	Community Comm.	Highway Comm.	Downtown Commercial	Service Comm.	Light Mfg.	Heavy Mfg.	Public Facilities	Open Space, Parks & Rec.
Medical equipment/Supplies (oxygen, prosthetics, walkers, etc)			P		P	C				
Opticians – Dispensing			C		P		P			
Real Estate			P		P	C	P			
Research and Development			C		P	C	P			
Residential Alcohol/substance abuse treatment facility					C					
Temporary onsite real estate offices for tract sales/construction trailers							P	PT		
PARCEL DELIVERY SERVICES/ PARCEL DISTRIBUTION (UPS, Federal Express, etc.)						P	P			
- Mobile marijuana dispensary										
PHOTOCOPY SERVICES/ DESKTOP PUBLISHING										
- With printing press					P	P	P			
- Without printing press					P	P	P			
- Commercial Photographers studio			P		P	P	P			
- Photography Labs (developing printing-no retail on site)					P	P	P			
- Photography Labs (developing printing with retail on site)			P		P	P	P			
- Retail drop off and pick up			P		P	P	P			
PLANNED UNIT DEVELOPMENTS										
PRIVATE POSTAL SERVICE (Mail boxes, mailing service, also see Parcel delivery Services)			P		P	P				

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 13. 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 27, 2014 at a regular meeting of said Council duly and regularly convened on said day by the following vote:

AYES: OVALLE, GRAVELLE, MALDONADO.
NOES: NONE.
ABSTAIN: NONE
ABSENT: PRECIADO, CASIDA.

MARTIN MALDONADO, COUNCILMAN
CITY OF AVENAL

ATTEST:
MARIA ORTIZ, City Clerk
CITY OF AVENAL