ORDINANCE NO. 2014-04

AN ORDINANCE OF THE CITY OF AVENAL ENACTING RESTRICTIONS ON FORTUNE TELLING BUSINESSES.

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 of the general public and patrons of fortune telling establishments by ensuring that the services provided by those establishments are, to the greatest extent possible, free from fraud, corruption, vice, trickery and other criminal influences. This ordinance is also intended 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 ADOPTION. Chapter 9.26 of Title 9 is hereby added to the Avenal Municipal Code to read in its entirety as follows:

Chapter 9.26
FORTUNE TELLING BUSINESSES

9.26.01 - PURPOSE.
9.26-02 - LICENSE REQUIRED.
9.26.03 - APPLICATION FOR LICENSE.
9.26.04 - APPLICATION FEE.
9.26.05 - INVESTIGATION, RIGHT TO REFUSE, AND APPEAL.
9.26.06 - LAND USE PERMIT REQUIRED.
9.26.07 - ISSUE OF LICENSE.
9.26.08 - LICENSE NONTRANSFERABLE.
9.26.09 - EXPIRATION AND RENEWAL OF LICENSE.
9.26.10 - REVOCATION OR SUSPENSION.
9.26.11 - TAXES AND RECORDS.
9.26.12 - PENALTY.
9.26.13 - PROTECTED SPEECH.

9.26.01 – PURPOSE.

Purpose: The purpose of this chapter is to regulate the business of fortune telling to protect members of the public who are consumers of such services from, among other things, fraud.

9.26.02 - LICENSE REQUIRED.

No person may engage in fortune telling for compensation in the City of Avenal without a business license issued by the city pursuant to this chapter.

9.26.03 - APPLICATION FOR LICENSE.

Any person who desires a business license for fortune telling must file an application with the city manager on a form furnished by the city. The form must require the applicant to furnish, at a minimum, the following:

A. Full legal name of the applicant and all prior names;

B. Permanent home address of applicant for the past five (5) years;

C. Present or proposed address where applicant will engage in fortune telling business;

D. A brief description of the proposed business;

E. A statement, under penalty of perjury, as to whether the applicant has ever been convicted of violating section 332 of the California Penal Code or a crime involving moral turpitude, the nature of the offense and the penalty imposed.

F. Any other information which is reasonably necessary to confirm the identity of the applicant.

9.26.04 - APPLICATION FEE.

When an application is filed, the applicant shall pay the Conditional Use Permit application fee, as fixed and amended from time to time by resolution of the city council, for the cost of processing the application. The application fee is nonrefundable and is in addition to any/all other fees prescribed by this chapter or any other fee required by this code or any other statute or regulation.

9.26.05 - INVESTIGATION, RIGHT TO REFUSE, AND APPEAL.

A. Investigation: Upon receipt of an application, the city manager shall have an investigation made of the applicant's criminal and/or business record, which may include any civil judgments against the applicant. The city manager may refer the applicant to the chief of police for a report and recommendation. The city manager

must require a photograph, background check and fingerprinting of the applicant, and a Live Scan submittal to the California Department of Justice.

B. Right To Refuse: If the city manager finds and determines that the applicant has been convicted of a crime involving moral turpitude and/or Penal Code section 332, or is subject to a civil judgment for fraud or similar acts of deception the city manager must refuse to issue a license. Upon determining to refuse to issue a license, the city manager shall notify the applicant of his or her decision in writing, mailed to the applicant at the address provided by the applicant via first class mail, postage prepaid within forty five (45) days after the filing of the application. The decision of the city manager shall be final fourteen (14) days from the date the notice of denial is mailed unless the applicant files a timely appeal pursuant to Chapter 1-4 of the Avenal Municipal Code.

C. Appeal From Denial Of Permit To The City Council: The applicant may appeal the decision of the city manager to deny a fortune telling license pursuant to Chapter 1-4 of the Avenal Municipal Code. The decision of the city council shall be final. The city council shall notify the applicant of its decision in writing.

D. Conditional Approval: If the city manager finds that the applicant has not been convicted of a crime involving moral turpitude and the applicant's business record is satisfactory, the city manager shall notify the applicant of the city's intent to issue a license conditioned upon the applicant obtaining a land use permit pursuant to section 9.26.06 of this chapter within one hundred twenty (120) days after the date of conditional approval. If the applicant fails to apply for the appropriate land use permit within this timeframe, the conditional approval shall automatically expire.

E. Failure To Give Notice: If the city manager fails to act on an application for a fortune telling license within forty five (45) days after the filing of the application, the application will be deemed denied and may be appealed to the city council pursuant to subsection (C) of this section.

9.26.06: LAND USE PERMIT REQUIRED.

A. Application: If the city manager, pursuant to section 9.26.05 of this chapter, decides that a license may be issued to the applicant, the applicant must file with the planning commission an application for a land use permit for a particular location.

B. Consideration and Conditions Of Approval: In addition to any other provision of this code, the planning commission in considering an application for a land use permit for fortune telling shall have the discretion to:

1. Consider and fix and/or prescribe advertising and signs;

2. Consider and approve exterior appearance and elevations of the premises;

3. Limit the number of employees in fortune telling and/or prohibit persons convicted of a crime involving moral turpitude from engaging in fortune telling on the premises;

4. Limit the hours of operation which must at least prohibit operations between midnight and 6:00 A.M., and other business conducted on the premises.

C. Permanent Premises Required: The planning commission must not issue a conditional use permit for the operation of a fortune telling business from a trailer, vehicle or temporary structure.

D. Zoning Requirements: The planning commission must not consider or approve any application for a land use permit for the conduct of the business of fortune telling in any land use or zoning district other than the commercial districts. All fortune tellers are prohibited from engaging in any part of a fortune telling for pay within the private residence of any customer.

E. Appeal: Any party aggrieved by the decision of the planning commission whether or not to issue a land use permit may appeal said decision to the city council pursuant to the procedure prescribed by Chapters 9.75 of this code for conditional use permits.

9.26.07 - ISSUE OF LICENSE.

If the city manager notifies the applicant of his or her intent to issue a license pursuant to section 9.26.05 of this chapter and the planning commission approves a land use permit pursuant to section 9.26.06 of this chapter, then the city manager shall issue a license for fortune telling to the applicant subject to the existence of a valid land use permit and the terms and conditions of the land use permit and any other terms and conditions the city manager may impose if the city manager finds that it is necessary to do so in order to protect the general public from the threat of fraud or misrepresentation or public nuisance.

9.26.08 - LICENSE NONTRANSFERABLE.

A license for fortune telling in the City of Avenal may not be assigned or transferred.

9.26.09 - EXPIRATION AND RENEWAL OF LICENSE.

A. Expiration: A license for a fortune telling business shall expire one year from the date of issuance.

B. Renewal: The holder of a fortune telling license may file an application for renewal with the city manager on a form provided by the city and paying the license renewal fee which shall be set by resolution of the city council in an amount necessary to cover the costs to the city of processing the license renewal. In determining whether

or not the holder of a license shall have the license renewed, the city manager may deny renewal of the license if the city manager, in his or her discretion, finds that any of the conditions for revocation or suspension as described in section 9.26.10 of this chapter exist.

C. Appeal: The holder of the license may appeal the decision of the city manager to deny renewal of the license in the same manner described in subsection 9.26.05(C) of this chapter.

9.26.10 - REVOCATION OR SUSPENSION.

A. Grounds For Suspension Or Revocation: The city manager may suspend or revoke the fortune telling license for one or more of the following grounds:

1. Fraud, misrepresentation or false statement contained in the application;

2. Violation of an ordinance or regulation of the city, or the conditions of the conditional use permit;

3. Conviction of a crime involving moral turpitude;

4. Fraud, misrepresentation or false statement made in the course of engaging in the fortune telling business;

5. Conducting the fortune telling business in violation of a term or condition of the license, or in a manner that is in breach of the peace or a nuisance or endangers the health, safety, or general welfare of the public.

B. Duration Of Suspension: The city manager shall have the authority to determine the duration of any suspension he or she deems necessary and to impose new or additional terms and conditions upon the license when the suspension is terminated. The suspension or revocation will be effective five (5) days after personal service of the notice of suspension or revocation or eight (8) days after mailing a notice of suspension or revocation to the licensee, unless prior to the effective date of suspension the licensee requests or the city manager sets a duly noticed hearing to consider the suspension in which case the suspension may commence immediately following conclusion of said hearing.

C. Appeal: The licensee may appeal a decision by the city manager to suspend or revoke the license to the city council in the manner described in subsection 9.26.05(C) of this chapter.

9.26.11 - TAXES AND RECORDS; DISPLAYS.

A. The licensee must keep and maintain records and pay or have levied taxes in accordance with title 3 of the Avenal Municipal Code.

B. All fortune tellers must provide each and all customers with a written receipt containing the date, time and amount paid by the customer and the services purchased. All fortune tellers must maintain copies or duplicates of said receipts for five (5) years.

C. During normal business hours, all fortune tellers must display their City business license in a location of the physical premises where it can be read by any and all potential customers.

D. All fortune tellers must display a list of all services available and the corresponding actual rate or fee schedule in a font no smaller than 20-point. A copy of all rate or fee schedules must be kept by fortune teller for at least five (5) years and must indicate the effective dates of such rate or fee schedules. All fortune tellers are prohibited from charging any customer more than the posted rate or fee.

9.26.12 – PENALTY.

A person who violates this chapter shall be subject to the penalties prescribed in title 1, chapter 2 of this code.

9.26.13 - PROTECTED SPEECH.

Nothing in this chapter shall be construed to prohibit or interfere with any person's exercise of free and open speech or religion.

9.26.14 – DEFINITIONS.

The following words and phrases, as used in this Chapter, shall have the following meanings:

A. "For pay" means a fee, reward, donation, loan, compensation or receipt of anything of value.

B. "Fortune teller" means any person who, for pay or for any consideration whatsoever, engages in the practice of fortune telling as herein defined unless otherwise excepted.

C. "Fortune telling" means telling of fortunes, forecasting of futures, or furnishing of any information not otherwise obtainable by the ordinary process of knowledge, by means of any occult, psychic power, faculty, force, chiromancy, clairvoyance, clair-audience, cartomancy, psychology, psychometry, phrenology, spirits, tea

leaves or other such reading, mediumship, telepathy, or other craft art, science, cards, talisman, charm, potion, magnetism, magnetized article or substance, crystal gazing or magic, of any kind or nature. Fortune telling shall include pretending to perform these actions.

Section 3. 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 4. 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 5. 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 6. 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 7. 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 8. 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 9. 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 **DECEMBER 18**, 2014 at a regular meeting of said Council duly and regularly convened on said day by the following vote:

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

HARLIN CASIDA, Mayor
CITY OF AVENAL

ATTEST:

MARIA ORTIZ, City Clerk
CITY OF AVENAL

ATTACHMENT 1

MASTER LIST ZONE DISTRICT	Intensive Ag. A-I	Exclusive Ag. A-E	Community Comm. C-C	Highway Comm. H-C	Downtown Commercial D-C	Service Comm. S-C	Light Mfg. M-1	Heavy Mfg. M-2	Public Facilities P-F	Open Space, Parks & Rec. O
Courier services					P	P	P			
Equipment and Machinery Rental						P	P	P		
Exterminators/Fumigators						P	P			
Furniture cleaning, refinishing or upholstery						P	P	P		
Household maintenance services (other)						P	P			
Interior decorator					P	P				
Janitorial service						P	P			
Lawn Maintenance and Tree Trimming						P	P			
Locksmiths			P		P	P	P			
Mini warehouse						P	P			
Mortuary or funeral parlor						P	P			
Palm reader, fortune telling and related businesses										
Pest control						P	P			
Pet Grooming					P	P	P			
Photography studio			P		P	P	P			
Picture Framing			P		P		P			
Printing Service (See Photocopy Services)					P		P			
Repair Shops										
- Small appliances/machinery					P	P	P			
- Large appliances/machinery					C	P	P			
Sharpening Service										
- Tools, knives, saw blades, lawn mowers, etc.						P	P			
- Small tools not including saw blades and lawn mowers						P	P			
Shoe repair shops			P		P					
Shoe shine stand incidental to primary use					P					

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