ORDINANCE NO. 2017-01

AN ORDINANCE OF THE CITY OF AVENAL ENACTING REGULATIONS FOR MEDICINAL AND NON-MEDICINAL CANNABIS USE, CULTIVATION, BUSINESSES, TRANSACTIONS AND LAND USES.

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

Section 1. PURPOSE. There are adverse secondary impacts of marijuana cultivation, processing, manufacturing, distribution, sales and use which include, without limitation, criminal activity, pungent odors, excess water consumption, toxic mold, excess energy consumption and indoor electrical fire hazards. The provisions of this ordinance are intended in order to promote the public safety, health, comfort and general welfare, in order 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. FINDINGS AND PURPOSE. The City Council of the City of Avenal hereby finds and declares the following:

(a) California Constitution Article 11, Section 7 authorizes the City of Avenal ("**City**") to make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws;

(b) California Government Code § 37100 authorizes the legislative body of a local government to enact local ordinances which are not in conflict with the Constitution and laws of the State of California or the United States;

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

distribution, dispensation or possession of cannabis for medical or non-medical purposes;

(d) On June 28, 2016, the Secretary of State of the State of California certified Proposition 64, the Control, Regulate and Tax Adult Use of Cannabis Act ("**AUMA**" or "**Proposition 64**"), for the November 8, 2016 statewide presidential general election ballot;

(e) The AUMA become law when a majority of the electorate voted "yes" on Proposition 64. The AUMA, to a certain degree, decriminalized under state law the possession, consumption, cultivation, processing, manufacture, distribution, testing and sale of non-medicinal cannabis/marijuana and derivative products, including edibles, for adults twenty-one (21) years of age and older. The AUMA also included provisions for licensing commercial cannabis and preserved the authority of local governments to regulate, and in some cases ban, certain cannabis activities within their boundaries.

(f) On June 27, 2017, Senate Bill 94 ("**SB-94**"), which was a state budget trailer bill, was signed into law by the Governor of the State of California. This legislation clarified and/or revised certain portions of the AUMA and also certain state statutes pertaining to medicinal cannabis/marijuana, including the authority of local governments to regulate, and in some cases ban, certain cannabis activities within their boundaries;

(g) The AUMA now regulates, among other matters, the use of cannabis/marijuana for non-medicinal personal and commercial purposes, including the recreational use of cannabis by adults over twenty-one (21) years of age;

(h) To regulate personal use of cannabis, the AUMA added Health and Safety Code § 11362.1 which, among other things and with certain exceptions, made it "...lawful under state and local law..." for persons 21 years of age or older to "...possess, process, transport, purchase, obtain or give away to persons 21 years of age or older without any compensation whatsoever..." up to 28.5 grams of non-medical cannabis in the form of concentrated cannabis or not more than eight grams in the form of concentrated cannabis contained in cannabis products;

(i) The AUMA also removed certain state criminal law prohibitions for adult individuals who "...possess, plant, cultivate, harvest, dry or process not more than six living cannabis plants and possess the cannabis produced by the plants...";

(j) The AUMA also clarified that state law does not prohibit specified adult individuals from smoking or ingesting cannabis or cannabis products;

(k) To regulate commercial use of non-medical cannabis, the AUMA added Division 10 (Cannabis) to the Business & Professions Code, which vested certain state agencies with "...the sole authority to create, issue, deny, renew, discipline, suspend, or revoke

licenses…" for certain non-medicinal commercial cannabis business activity including microbusinesses, transportation, storage (unrelated to manufacturing activities), distribution, testing, and sale of cannabis and cannabis products within the state;

(l) The AUMA provides that specified state agencies shall promulgate rules and regulations and shall begin issuing state business licenses under Division 10 of the Business & Professions Code by January 1, 2018;

(m) The AUMA specifies that a local jurisdiction shall not prevent transportation of non-medicinal cannabis or derivative products on public roads by a licensee transporting cannabis or derivative products in compliance with Division 10;

(n) The AUMA authorized cities to "…reasonably regulate…" without completely prohibiting cultivation of cannabis inside a private residence or inside an "…accessory structure to a private residence located upon the grounds of a private residence which is fully enclosed and secure…";

(o) The AUMA authorized cities to completely prohibit outdoor cultivation on the grounds of a private residence until a "…determination by the California Attorney General that nonmedical use of cannabis is lawful in the State of California under federal law…";

(p) The AUMA authorized cities to completely prohibit the establishment or operation of any non-medicinal cannabis business licensed under Division 10 within its jurisdiction, including cannabis dispensaries, cannabis retailers and cannabis delivery services;

(q) Absent appropriate local regulation, which is authorized by the AUMA, only state regulations will be controlling within a given local jurisdiction;

(r) Until the AUMA was enacted, state statutes prohibited cultivation, possession and sales of non-medicinal cannabis and therefore overlapping local regulations would have been preempted by state statute;

(s) The City has permissive zoning standards which prohibit all land uses not expressly allowed and has applied the same, without exception, to all instances of medicinal cannabis, including, but not limited to, cultivation, distribution, dispensing, transportation, sales and gifting;

(t) The existence of cannabis cultivation operations carries the potential to increase secondary impacts such as: (1) robberies, break-ins and other thefts due to the high monetary value of cannabis plants; (2) dangerous alterations to the electrical wiring of buildings; (3) toxic amounts of mold spores present in buildings intended for human occupation; (4) the potential for exposure to or increased usage by school aged children; (5) the spread of strong, pungent and/or noxious odors from cannabis plants;

(u) The City has legitimate and compelling interests in protecting the public health, welfare and safety of its residents, as well as preserving the peace and quiet of the neighborhoods within the City;

(v) The City has determined that a regulatory ordinance is necessary to protect the public health, welfare and safety of residents of the City to the maximum extent allowable under California law to address the adverse secondary impacts resulting from changes to California law through the AUMA and Senate Bill 94 (2017);

(w) The cultivation of substantial amounts of cannabis/marijuana in any location or parcel of real property within the City poses serious threats to the health, safety, and well-being of the City and its residents, including the following:

(1) By concentrating substantial amounts of cannabis in one place, such locations and parcels are frequently associated with, and create a significant risk of, burglary, robbery, armed robbery, and larceny and other property crimes; and acts of violence in connection with the commission of such crimes or the occupants' attempts to prevent such crimes.

(2) Such locations and parcels are frequently associated with other criminal activities, including unlawful sales of cannabis to individuals, including minors who are not qualified medical patients, trafficking of cannabis outside the City by unlawful enterprises, and possession and discharge of unlawful firearms.

(3) The creation of persistent malodorous smells reaching into populated areas far beyond cannabis grow sites. Cannabis plants, as they begin to flower and for a period of two (2) months or more during the growing season (August - October for outdoor grows), produce an extremely strong odor, offensive to many people, and detectable far beyond property boundaries. This malodorous smell is often described as "skunky," as it resembles the odor of a skunk.

(4) The distinctive smell of flowering cannabis also creates an attractive nuisance, alerting persons to the location of the valuable cannabis plants, and creating a risk of theft, burglary, robbery and armed robbery and associated violent confrontations.

(5) Cultivation of large amounts of cannabis also frequently requires excessive use of water resources, which exacerbates drought conditions.

(6) Extensive indoor cultivation of large amounts of cannabis also frequently requires excessive use of electricity, which often creates an unreasonable risk of fire from the electrical grow lighting systems used in indoor cultivation.

(x) Cultivation and sales of any amount of cannabis and/or derivative products at locations or parcels within one thousand (1,000) feet of schools, school bus stops, school evacuation sites, churches, parks, child care centers, or youth-oriented facilities creates unique risks that the cannabis plants may be observed by juveniles, and therefore be especially vulnerable to theft or recreational consumption by juveniles. Further, the potential for criminal activities associated with cannabis cultivation in such locations poses heightened risks that juveniles will be involved or endangered. Therefore, cultivation and sales of any amount of cannabis or derivative products within such locations or parcels is especially hazardous to public safety and welfare, and to the protection of children.

(y) As recognized by the California Attorney General's August 2008 GUIDELINES FOR THE SECURITY AND NON-DIVERSION OF CANNABIS GROWN FOR MEDICAL USE, the cultivation or other concentration of cannabis in any location or parcels without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime. There is no known reason why this same principle would not apply to non-medicinal cannabis.

(z) It is the purpose and intent of this Ordinance to implement State law by providing a means for regulating non-medicinal and medicinal cannabis in a manner which is consistent with applicable state laws and which promotes the health, safety, security and welfare of local residents within the City. This Chapter is intended to be consistent with Proposition 64 and Senate Bill 94, and to that end, is not intended to prohibit any person from exercising any right otherwise granted by state law. Rather, the intent and purpose of this Chapter is to establish reasonable regulations upon the manner in which cannabis and cannabis products must or must not be cultivated, manufactured, processed, stored and sold or gifted, in order to protect the public health, safety, security and welfare of all of the residents of the City.

(aa) The limited right of individuals under state law to cultivate cannabis plants for non-medicinal purposes and/or to carry on a cannabis business without violating state criminal laws does not confer the right to create or maintain a public nuisance. By adopting the regulations contained in this Chapter, the City will achieve a significant reduction in the aforementioned harms caused or threatened.

(bb)

(cc) Nothing in this ordinance shall be construed to allow or legalize cannabis for any purposes, or allow or legalize any activity relating to the cultivation, distribution or consumption of cannabis which is otherwise illegal under state or federal law. No provision of this Chapter shall be deemed a defense or immunity to any action brought against any person by the County District Attorney or the Attorney General of State of California.

Section 3. CODE REPEAL. Except to the extent expressly indicated otherwise

herein, the specific provisions of each and all existing ordinances which are in actual conflict with any provision of this ordinance shall be repealed.

Section 4. 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:

> Cannabis. Shall be defined as provided within California Health and Safety Code section 11018, or successor statute. The terms "cannabis" and "marijuana" shall have the same meaning within the Avenal Municipal Code. Furthermore, except where otherwise distinguished, the term "cannabis" shall include and refer to both medicinal cannabis and non-medicinal cannabis.
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> Cannabis business. Shall refer to commercial cannabis activity, as defined within this section.
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> Commercial cannabis activity. Shall be defined as provided within California Business and Professions Code § 26001(k), or successor statute, but shall not include any business whose only relationship to cannabis is the production or sale of accessories for individual consumption and/or use of cannabis or cannabis products.
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> Commercial cannabis delivery. Shall be defined as provided within California Business and Professions Code section 26001(p).
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> Cannabis products. Shall have the meaning as provided within California Health and Safety Code section 11018.1.

Section 5. ~~CODE REPEAL. Section 9.75.08 of Chapter 9.75 of Title 9 of the Avenal Municipal Code, pertaining to medical marijuana dispensaries, is hereby repealed.~~

~~**Section 6.**~~ CODE ADOPTION. Section 9.75.0~~9~~08 is hereby added to Chapter 9.75 of Title 9 the Avenal Municipal Code to read in its entirety as follows:

> **9.75.0~~9~~08 All Commercial Cannabis Activity Prohibited.**
>
> A. In accordance with California Business and Professions Code section 26200(a) and Article 11, Section 7 of California Constitution, each and all businesses of the type which require or could obtain licensure under Division 10 of the California Business and Professions Code (presently consisting of sections 26000-26211), shall be completely prohibited within the

entirety of the City of Avenal including all lands therein and each and all zoning districts established by Chapter 9.02 of the Municipal Code. Notwithstanding any other portion of the Municipal Code, all permitted land use tables within Title 9 of the Municipal Code, including but not limited to Table 9-1, must be construed to reflect that each and any commercial cannabis activity is not a permitted land use within any zoning district within the City.

B. No business license application, development application or request for land-use approval shall be accepted, filed, processed, issued or approved for any such business, business facility or business site and any such license, permit or other approval by the City for the establishment or operation of such a business, facility or site shall be deemed void from its in inception.

~~**Section 7.** CODE REPEAL. Chapter 9.69 of Title 9 of the Avenal Municipal Code, pertaining to mobile marijuana dispensaries, is hereby repealed.~~

Section 68. CODE ADOPTION. Chapter ~~9.69~~9.80 of Title 9 is hereby added to the Avenal Municipal Code and reads in its entirety as follows:

CHAPTER ~~9.69~~9.80 CANNABIS REGULATIONS

9.80.010 Authority and Title.
9.80.020 Definitions.
9.80.030 Nuisance Declared.
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9.80.060 Regulatory Inspections of Registered Parcels and Records.
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9.80.100 Notice to Abate Cannabis Violation.
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9.80.190 Hearing on Accounting.
9.80.200 Modifications.
9.80.210 Special Assessment and Lien.
9.80.220 Enforcement by Civil Action.
9.80.230 Summary Abatement.
9.80.240 No Duty to Enforce.

9.80.010 Authority and Title.

Pursuant to the authority granted by Article XI, section 7 of the California Constitution, Health and Safety Code § 11362.2(b)(1), and Government Code § 38773.5, the City Council does enact this Chapter, which shall be known and may be cited as the "Cannabis Ordinance."

9.80.020 Definitions.

(a) All definitions set forth within California Health and Safety Code § 11362.7, California Business and Professions Code § 26001 and California Revenue and Taxation Code § 34010, as amended from time to time, and as interpreted by judicial opinions from time to time, shall apply under this Chapter in addition to the definitions set forth within subsection (b) below. In the event of an actual conflict between the definitions within the aforementioned statutes and those contained within subsection (b) below, the definition within subjection (b) shall prevail.

(b) Except where the context otherwise requires, the following definitions shall govern the construction of this Chapter:

(1) "City" refers to the City of Avenal.

(2) "Enforcing officer" means the Chief of Police or the Code Enforcement Officer, or the authorized deputies or designees of either, each of whom is independently authorized to enforce this Chapter.

(3) "Legal parcel" means any parcel of real property which may be separately sold in compliance with the Subdivision Map Act [Division 2 (commencing with section 66410) of Title 7 of the Government Code].

(4) The terms "cannabis" and "marijuana" shall have the same meaning within this ordinance. Furthermore, except where otherwise distinguished, the term "cannabis" shall include and refer to both

medicinal cannabis and non-medicinal cannabis.

(5) "Mature cannabis plant" and "immature cannabis plant" shall have the same meaning as those terms are used in California Health and Safety Code § 11362.77.

(6) "Medical cannabis" shall have the same meaning as medicinal cannabis in California Business and Professions Code § 26001.

(7) "Municipal Code" refers to the Avenal Municipal Code.

(8) The term "State" refers to the State of California.

(c) Effect of Headings/Titles Within this Chapter: Section and subsection headings and title are provided for organizational purposes only and must not be read to in any manner affect the scope, meaning or intent of the provisions associated with them.

9.80.030 Nuisance Declared.

(a) Unless and until this subsection is specifically cited as repealed, notwithstanding any other ordinance of the City, each and all of the following activities are hereby declared to be a public nuisance and unlawful when the same occur in violation of any of the provisions of this Chapter or any State law, and any such public nuisance may be abated by the City in any manner allowed by any State law or local ordinance:

(1) The operation of any indoor and/or outdoor cannabis cultivation site upon any parcel of real property within the City which does not have an active registration with the City; and

(2) The operation of any cannabis business upon any parcel of real property within the City which does not have an active registration with the City.

(b) Prohibited Cannabis Business and Non-Business Activities: Unless and until this subsection is specifically cited as repealed, notwithstanding any other ordinance of the City, each of the following shall be prohibited everywhere within the City and shall constitute a public nuisance:

(1) Outdoor Cultivation: All outdoor possession, planting, cultivation, harvesting, drying or processing of cannabis and industrial hemp, including any such activities with

non-commercial cannabis upon any private residence under California Health and Safety Code § 11362.1.

(2) Commercial Cannabis Cultivation and Sales: Commercial cultivation of cannabis and industrial hemp and each and all sales of cannabis, cannabis products, industrial hemp and industrial hemp products.

(3) Retail Deliveries Within the City: The delivery, as defined by Businesses and Professions Code § 26001(p) or any successor statute, of cannabis and/or cannabis product(s) to any parcel of real property within the City in connection with a retail sale thereof;

(4) Microbusinesses: The operation of any cannabis microbusiness within any land-use zone within the City;

(5) Use In Certain Areas: The inhalation, ingestion, use and/or other consumption, by any natural person, of any cannabis and/or any cannabis product(s):

a. In any place where any form of tobacco use is prohibited under California Labor Code § 6404.5 (or successor statute);

b. Within any building and/or other facility owned, leased, operated or controlled by City;

c. Upon any public road, street, right-of-way, easement, sidewalk, park or recreation site; and

d. Upon any privately owned parcel, when such inhalation, ingestion, use and/or other consumption is to any degree detectable to the unaided senses of any reasonable observer who is not located upon the same parcel; and

(6) Commercial Cannabis Activity: The operation of any business of the type which requires or could obtain licensure under Division 10 of the California Business and Professions Code (presently consisting of sections 26000-26211) within any portion of the City of Avenal including all lands therein and each and all zoning districts established by Chapter 9.02 of the Avenal Municipal Code.

(7) Child-Resistant Containers: Failure to at all times maintain cannabis products and harvested cannabis within secured child-resistant containers, except during active use or consumption in accordance with State law.

(c) Cannabis Use Prohibited During Public Business Hours: Notwithstanding any other ordinance of the City to the contrary, and to any extent not already prohibited by State law, federal law or subsection (b), inhalation, ingestion, use and/or other consumption of any cannabis and/or any cannabis product(s) by any natural person is prohibited upon each parcel of real property within the City during such times when any commercial business conducted thereon is open to the public.

9.80.040 Registration of Parcels Prior to Non-Commercial Cannabis Cultivation.

(a) Registration Required: This section applies to non-commercial cannabis cultivation under Health and Safety Code § 11362.1. Each parcel of real property within the City must be registered under this section with the City Manager or designee prior to the non-commercial cultivation thereon of any quantity of cannabis whatsoever. Violation of this requirement is hereby declared to be unlawful and a public nuisance which may be abated by the City in any manner allowed by State law or local ordinance. Registration of a parcel does not create any vested right.

(b) Conditions of Active Registration: Registration of any parcel of real property under this section shall be invalid, void and inactive except during such times when all of the following conditions are all simultaneously satisfied:

(1) Registration Application Requirements: Any person owning, leasing, occupying and/or having charge or possession of the parcel has, within the twelve (12) months preceding each date when cultivation will occur, submitted an accurate and signed application for registration, which was ultimately approved for registration by the City, containing all of the following information and documentation:

(A) The name of each person, owning, leasing, occupying and having possession of the parcel;

(B) The maximum number of plants which will be cultivated on the parcel;

(C) Written consent to allow a City inspection of the cultivation site, during normal business hours and on a mutually suitable date, in order to complete the registration process; and

(D) Such other information and/or documentation as the City Manager reasonably determines is necessary to ensure compliance with State law and this Chapter including, without limitation, information reasonably necessary to establish compliance with subsection (b)(2) of this section.

The application information and documentation shall be received in confidence, and shall be used or disclosed only for purposes of administration or enforcement of this Chapter and/or State law, or as otherwise required by law or legal process.

The City Council may, by adoption of a resolution, establish a fee for such annual registration, which may include a fee for issuance of a registration certificate in accordance with all applicable legal requirements. Such fee must be paid in full for a registration to be valid and effective. All registrations, whether initial or renewal, of all parcels of real property shall expire at the end of the day on January 31st of the calendar year following the calendar year in which the parcel was registered.

(2) Zoning Compliance: This subsection shall apply notwithstanding any other provision within the Municipal Code. For cannabis cultivations within the scope of Health and Safety Code § 11362.1, the parcel to be registered must be located within any zone where a residential land use is permitted, as established by Title 9 of the Municipal Code.

(3) Owner's Consent: When a person cultivating cannabis on any parcel is not the legal owner(s) of the parcel, such person(s) must obtain the notarized written consent to such cultivation from the legal owner(s) of the parcel prior to commencing cultivation of cannabis on such parcel, and must provide the original of said consent to the City Manager at the time of application for registration of the parcel. Any withdrawal or revocation of the owner's consent must be notarized and shall, without any notice from the City, terminate any existing annual registration at the end of the thirtieth (30th) day after personal service of the notice, which must be dated, upon the tenant(s)/occupant(s), provided that a copy is

contemporaneously served upon or mailed to the City. Any such notice which is mailed to a tenant(s)/occupant(s) must be postmarked and shall require an additional five (5) days to become effective.

(4) Cultivation Buildings: All cannabis cultivations must occur within properly constructed and permitted real property improvements which are fully enclosed and comply with applicable State laws and building standards. The windows to all buildings or structures where cannabis is cultivated, excluding greenhouses, must eliminate visibility of all cannabis plants from all exterior vantage points and must be equipped with security bars. Windows on all buildings or structures must not be broken. All door frames must be made of metal or solid wood reinforced with metal at the point where locks latch to them. All non-metal doors must be solid-core and equipped with either a deadbolt lock, or an industrial grade padlock, which can only be unlocked with a unique key and each door must be locked at all times when not within the view of the cultivator. Minors under the age of eighteen (18) years must not enter into any indoor cultivation area during cultivation and harvesting. After a citation issued for excessive odor becomes final and non-appealable, and after written notice of at least fifteen (15) business days, the City may require, as a condition for maintaining registration of a parcel, the installation of a ventilation system which includes one or more charcoal filters sufficient to eliminate further violations of odor restrictions. Each building must also comply with any existing, adopted or revised ordinances and/or standards pertaining to ventilation rates, exhaust termination, ventilation inlets and humidity levels.

(5) Plant Size: At all times during indoor cannabis cultivation under Health and Safety Code § 11362.1 within a parcel containing a private residence, each cannabis plant must not exceed a height which is the lesser of eight (8) feet or one (1) foot from the ceiling above the plant, and the width must not exceed three (3) feet, provided that in no event should the size of cannabis plants which are grown together increase to a degree that any of them to any degree obstruct ingress and egress between each doorway and window within the room wherein they are located. Notwithstanding the foregoing, cannabis plants must not be cultivated in such a manner that the cannabis plant makes contact with any wall, door, window or ceiling at any time and there must at all times exist at least a one (1) foot space between each plant and the walls, doors, windows and the ceiling.

(6) Safety Requirements: At all times during indoor cannabis cultivation under Health and Safety Code § 11362.1 within a parcel containing a private residence, whenever any person under the age of twenty-one (21) years resides, regularly visits or is actually present upon such parcel, the cultivated cannabis plants must not be located within any common area of such parcel which is accessible by such minor including, without limitation, any hallway, living room, den, family room, kitchen, bathroom, garage or sunroom. Except when being actively consumed or handled in accordance with applicable state and local laws, all harvested cannabis and all cannabis products which are located on the parcel must be secured in a safe or room which is locked and inaccessible by persons under the age of twenty-one (21) years of age. This section should not be construed to prohibit any medicinal cannabis patient from using medicinal cannabis in accordance with all applicable state laws.

(7) Records: At all times during cannabis cultivation under Health and Safety Code § 11362.1 which occurs within the City, at least one legible and up-to-date hardcopy journal must be maintained on the parcel, containing all of the following information:

(A) Each cannabis plant's date of acquisition;
(B) The source of such acquisition;
(C) Height and width in inches during each calendar month;
(D) Each cannabis plant's corresponding owner; and
(E) The date of each journal entry next to the printed and signed name of the person making the entry into the journal.

Said journal must be retained for a period of not less than five (5) years after each date listed within the journal. As a pre-condition of registration or registration renewal, the City may require individual tags, bar codes or other physical labels or markers to be affixed onto each cannabis plant exceeding one inch in vertical height.

(8) Metered Water: Water service to the parcel must be metered with a device which is both capable of wireless transmission of metering data and approved by the City.

(9) Building Standards: All waterlines, electrical wiring and structures used for cultivation of cannabis must comply with all applicable building codes, laws and ordinances.

(10) Compliance with State Cannabis Laws: Each registrant must at all times remain in full compliance with all State statutes which are applicable to cannabis including, without limitation, those pertaining to personal cultivation, sales, gifting, use and possession.

(11) Overdue City Balance: Each owner of the parcel to be registered must not have any amount which is overdue, thirty (30) or more days, to the City in unpaid fines, penalties, fees, charges, taxes and/or assessments.

(d) Registration Voided Upon Violation: Any registration which becomes void for lack of compliance with any requirement of this Chapter shall remain void and ineffective from the initial moment of noncompliance and cannot be reinstated without a renewal application.

(e) Responsibility for Cultivation Violations: No person owning, leasing, occupying or having charge or possession of any parcel within the City shall cause, allow, suffer, or permit such parcel to be used for cultivation of cannabis in violation of any provision in this Chapter. Violation of this provision by any person owning, leasing, occupying or having charge or possession of any registered parcel shall be grounds for revocation of registration in addition to abatement under this Chapter.

(f) The City Manager or designee shall have authority to, in writing, waive any registration fee and/or registration requirement, and thereafter issue a registration when State or federal law might so require.

9.80.050 Registration Application and Certificate; Identification Cards.

(a) Applications: Each applicant seeking to register a parcel for a cannabis cultivation submit a written application on a form approved by the City. Within twenty (20) business days after receipt of registration application, the City Manager or designee shall either:

(1) Act upon the registration application;

(2) Provide a written notice of extension, not to exceed twenty (20) business days; or

(3) Return the registration application with written notification as to why the application is incomplete.

(b) Registration Certificate: Upon approval of a registration application, the City shall issue a registration certificate. Duplicate

registration certificates will require payment of fee which shall be set by resolution of the City Council.

9.80.060 Regulatory Inspections of Registered Parcels and Records.

(a) Annual Inspections: Each parcel upon which cultivation of cannabis occurs must be inspected by the City a minimum of one (1) time each calendar year.

(b) Regulatory Parcel Inspections: Each parcel upon which cultivation of cannabis occurs shall be subject to inspection by the City during the ordinary business hours. If the owner or other person in charge of or in possession of the parcel fails to consent to the regulatory inspection, the registrant shall be deemed to have requested that the City obtain and execute a regulatory inspection warrant and a fee shall be assessed against the registrant. Said fee shall be set in accordance with a fee resolution approved by the City Council. The inspection required by this section shall be for the purpose of ensuring compliance with the requirements of this Chapter and applicable State laws.

(c) Regulatory Records Inspections: The records required to be maintained under this Chapter shall be subject to inspection by the City during the ordinary business hours. Said inspection shall be for the purpose of ensuring compliance with the requirements of this Chapter and applicable State laws.

9.80.070 Denial of Registration.

(a) Identification: Each applicant must verify their identity by presenting an unexpired identification card or driver's license issued by any U.S. state or the federal government.

(b) Grounds for Denial/Revocation/Suspension: The City Manager, or her/his designee, may deny, refuse to renew, suspend or revoke any registration obtained or sought to be obtained under this Chapter where the applicant or registrant satisfies any one or any combination of the following:

(1) Failed to provide a fully completed application for registration;

(2) Provided inaccurate information on an application for registration;

(3) Failed to pay to the City the required registration fee and inspection costs;

(4) Repeatedly violated this Chapter within the preceding twenty-four (24) months;

(5) Refused to allow the City to conduct a regulatory inspection of the parcel registered or inspection of records required, as required by this Chapter; or

(6) Failed to pay to the City any amount which is overdue, thirty (30) or more days, to the City in unpaid fines, penalties, fees, charges, taxes and/or assessments.

(c) Appeal: Any person aggrieved by a denial of their application for registration may appeal the decision in the same manner as a notice to abate under Section 9.80.130. Upon receipt of a request for appeal, the City Manager or designee may elect to have the appeal proceed under Section 9.80.130 or another process within the Municipal Code, by providing a copy of such process.

9.80.080 Responsibilities of Registrants.

(a) For the purpose of enforcing the requirements of this Chapter, the registrant of each parcel within the City shall be fully responsible for all conduct occurring on the parcel which may violate the terms of this Chapter, including the conduct of each of the registrant's invitees, guests, employees, agents and independent contractors working on the parcel, if applicable.

(b) If any violation of the requirements of this Chapter occurs on a registered parcel, notice of suspension, revocation or restriction may be issued by providing written notice thereof within or in addition to a notice of violation and/or a notice to abate, which identifies the violation(s) supporting the decision to suspend, revoke or restrict the registration. The suspension, revocation or restriction shall become final when finding regarding the related violation(s) becomes final, unless an immediate suspension, revocation or restriction is reasonably necessary to protect against a substantial risk of significant bodily harm, death or significant property damage.

(c) In addition, the City may report all violations committed by State licensees to the State.

9.80.090 Violations.

(a) Any violation of the provisions of this Chapter by any member of the public is hereby declared to be a public nuisance and may be abated by any or all remedies available under local, State and federal laws.

(b) The City may abate the violation of this Chapter by the prosecution of a civil action through the City Attorney, including an action for injunctive relief. The remedy of injunctive relief may take the form of a court order, enforceable through civil contempt proceedings, prohibiting the maintenance of the violation of this Chapter or requiring compliance with other terms.

(c) Each cannabis plant cultivated in violation of the applicable provisions of this Chapter shall constitute a separate and distinct violation.

(d) Each and every day that a violation exists as to any violation within this Chapter shall constitute a separate and distinct violation.

(e) Each violation of this Chapter may be enforced by any and all lawful remedies available under the Municipal Code and applicable state statute(s), including but not limited to civil fines and penalties, infraction citation, public nuisance abatement and civil injunction, and all available remedies shall be cumulative and not preclude other available remedies.

9.80.100 Notice to Abate Cannabis Violation.
Whenever the enforcing officer determines that a public nuisance as described in Chapter exists on any parcel within the City, he or she is authorized to notify the record owner(s) and/or occupant(s) of the parcel, through issuance of a written Notice to Abate Cannabis Violation ("***notice to abate***").

9.80.110 Contents of Notice.
The written notice required under section 9.80.100 must be in writing and must:

(a) Identify the owner(s) of the parcel upon which the nuisance exists, as named in the records of the county assessor, and identify the occupant(s), if other than the owner(s), and if known or reasonably identifiable.

(b) Describe the location of such parcel by its commonly used street address, giving the name or number of the street, road or highway and the number, if any, of the parcel.

(c) Identify such property by reference to the assessor's parcel number.

(d) Contain a statement that cannabis violation exists on the parcel and that it has been determined by the enforcing officer to be a public nuisance as described in this Chapter.

(e) Describe the cannabis violation that exists and the actions required to

abate it.

(h) Contain a statement that the owner or occupant is required to abate the cannabis violation within fourteen (14) calendar days after the date of service of the required *notice to abate*.

(i) Contain a statement that the owner or occupant may, within ten (10) calendar days after the date that said notice was served, make a request in writing to the City Clerk for a hearing with the City Manager or the City Manager's designee to appeal the determination of the enforcing officer that the conditions existing constitute a public nuisance, or to show other cause why those conditions should not be abated in accordance with the provisions of this Chapter.

(j) Contain a statement that, unless the owner or occupant abates the cannabis violation, or requests a hearing before the City Manager or designee, within the time prescribed in the written notice, the enforcing officer will abate the nuisance. It shall also state that the abatement costs, including administrative costs, shall be made a special assessment added to the real property tax assessment roll and become a lien on the parcel, or be placed on the unsecured tax roll.

(k) Indicate that the parcel may be sold by the tax collector after three (3) years of unpaid delinquent assessments.

9.80.120 Service of Notice.

(a) The *notice to abate* shall be served by delivering it personally to any adult occupant of the parcel and, pursuant to Government Code § 38773.5(c), shall also be served by certified United States mail address to each owner of the parcel, together with a Certificate of Mailing, to the address of each owner of the parcel as shown on the last equalized assessment roll, except that:

(1) If the records of the county assessor show that the ownership has changed since the last equalized assessment roll was completed, the written notice shall also be mailed to each new owner at his or her address as it appears in said records; or

(2) In the event that, after reasonable effort, the enforcing officer is unable to serve the written notice as required by this section, service shall be accomplished by posting a copy of the written notice on the parcel upon which the nuisance exists as follows:

(A) Copies of the written notice shall be posted along the

frontage of the subject property and at each entryway or such other locations on the property reasonably likely to provide notice to the owner and occupant.

(B) In no event shall fewer than two (2) copies of the written notice be posted on a property pursuant to this section.

(b) The service of the written notice is deemed complete as of the date of deposit in the U.S. mail, personal delivery, or posting, as applicable.

(c) Upon completion of service of the *notice to abate*, said notice may be recorded in the Office of the County Recorder pursuant to Government Code § 38773.5(e).

9.80.130 Administrative Review.

(a) Any person upon whom a *notice to abate* has been served may appeal the determination of the enforcing officer, that the conditions set forth in such notice constitute a violation and/or public nuisance, to the City Manager or designee, or may show cause before the City Manager or designee why those conditions should not be abated in accordance with the provisions of this Chapter.

(b) An administrative review must be commenced by filing a written request for a hearing with the City Clerk within ten (10) calendar days after the date when the relevant notice was served upon them. The written request shall include a statement of all facts supporting the appeal. The time requirement for filing the written request for administrative review shall be deemed jurisdictional and may not be waived. In the absence of a timely filed written request which complies fully with the requirements of this section, the findings of the enforcing officer contained in the relevant notice shall become final and conclusive on the eleventh (11th) day following service of the relevant notice.

(c) Upon timely receipt of a written request for hearing which complies with the requirements of this section, the City Clerk shall set a hearing date not less than seven (7) days nor more than thirty (30) days from the date the request was filed, unless the City and the person requesting the hearing agree otherwise in writing. The City Clerk shall send written notice of the hearing date to the requesting party, to any other parties upon whom the City served, and to the enforcing officer. Pursuant to Government Code § 38773.5(c), said notice of the hearing date shall be sent by certified mail to the record owners of the parcel.

(d) Any hearing conducted pursuant to this Chapter need not be conducted

according to technical rules relating to evidence, witnesses and hearsay. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely upon in the conduct of serious affairs regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions. The City Manager or designee has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.

(e) The City Manager or designee may continue the administrative hearing from time to time.

(f) The City Manager or designee shall consider the matter de novo, and may affirm, reverse, or modify the determinations contained in the notice identifying the disputed violations. The City Manager or designee shall issue a written decision in the form of a resolution, which shall include findings relating to the existence or nonexistence of the alleged cannabis violation, as well as findings concerning the propriety and means of abatement of the conditions set forth in the *notice to abate*. Such decision shall be mailed to, or personally served upon, the party requesting the hearing, any other parties upon whom the *notice to abate* was served, and the enforcing officer except that pursuant to Government Code § 38773.5(c), said notice shall be sent by certified mail to the record owners of the parcel.

(g) The decision of the City Manager or designee shall be final and conclusive.

(h) After issuance of the decision of the City Manager or designee, if a *notice to abate* was recorded against any property that, under the decision of the City Manager or designee, shall not secure any special assessment under this Chapter, the City Clerk shall cause a *Notice of Withdrawal* to be recorded in the Office of the County Recorder pursuant to Government Code § 38773.5(e). Said *Notice of Withdrawal* need not be acknowledged but must have attached a certified copy of the City Manager or designee resolution authorizing the recordation of the *Notice of Withdrawal*, and shall specifically reference the official recorded document number listed on the *notice to abate* to be withdrawn.

9.80.140 Liability for Costs and Expenses.

(a) In any enforcement action brought pursuant to this Chapter, whether by administrative proceedings, judicial proceedings, or summary abatement, each person who causes or permits to exist, or who maintains any cannabis violation shall be liable for all costs incurred by the City,

including, but not limited to, administrative costs, and any and all costs incurred to undertake, or to cause or compel any responsible party to undertake, any abatement action in compliance with the requirements of this Chapter, whether those costs are incurred prior to, during, or following enactment of this Chapter.

(b) In any action by the enforcing officer to abate cannabis violation under this Chapter, whether by administrative proceedings, judicial proceedings, or summary abatement, the prevailing party shall be entitled to a recovery of the reasonable attorneys' fees incurred. In no action, administrative proceeding or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees actually incurred by the City in such action or proceeding. Pursuant to Government Code § 38773.5(b), recovery of attorneys' fees under this subsection shall be limited to those actions or proceedings in which the City elects, in the *notice to abate*, to seek recovery of its own attorneys' fees.

9.80.150 Abatement by Owner or Occupant.

Any owner or occupant may abate an cannabis violation on parcel of real property owned, occupied or controlled by them or cause such cannabis violation to be abated at any time prior to commencement of abatement by, or at the direction of, the enforcing officer.

9.80.160 Enforcement.

(a) Whenever the enforcing officer becomes aware that an owner or occupant has failed to abate any cannabis violation within fourteen (14) days of the date of service of the *notice to abate*, or if an such notice was appealed, as of the date set by the City Manager or designee requiring such abatement, if any, the enforcing officer may take one or more of the following actions:

> (1) Enter upon the parcel and abate the nuisance with City personnel, or by private contractor under the direction of the enforcing officer. The enforcing officer may apply to a court of competent jurisdiction for an abatement warrant authorizing entry upon the property for the purpose of undertaking the abatement work. If any part of the work is to be accomplished by a private contractor(s), a written estimate of the work shall be provided to the owners and occupants of the parcel. Nothing herein shall be construed to require that any contract be awarded under this Chapter through competitive bidding procedures whenever such procedures are not required by the general laws of the State of California or this Code; or

(2) Request that the City Attorney commence a civil action to redress, enjoin and/or abate the public nuisance.

9.80.170 Accounting.

The enforcing officer shall keep a written accounting of the cost of every abatement carried out and shall render a report in writing, itemized by parcel, to the City Manager or designee showing the cost of abatement and the administrative costs for each parcel.

9.80.180 Notice of Hearing on Accounting; Waiver by Payment.

Upon receipt of the accounting report of the enforcing officer, the City Clerk shall send a copy of each report by certified mail addressed to each corresponding property owner and include therewith a notice informing each owner that at the date and time specified, which shall not be less than five (5) business days after the date of mailing of the notice, the City Manager or designee will meet to review the accounting report and that each owner may appear at said time and be heard. The owner may waive the hearing on the accounting by paying the cost of abatement and the cost of administration to the City Clerk prior to the time set for the hearing by the City Manager or designee. Unless otherwise expressly stated by the owner, payment of any costs of abatement and any costs of administration prior to said hearing shall be deemed a full waiver of the right to said hearing and a conclusive admission that said accounting is accurate and reasonable.

9.80.190 Hearing on Accounting.

(a) At the time fixed, the City Manager or designee shall meet to review the report of the enforcing officer. An owner may appear at said time and be heard on the question of whether the accounting, so far as it pertains to the cost of abating a nuisance upon the land of the owner, is accurate and the amounts reported are reasonable. The cost of administration shall also be reviewed.

(b) The report of the enforcing officer shall be admitted into evidence. The owner(s) shall bear the burden of proving by clear and convincing evidence that the accounting is not accurate and reasonable.

9.80.200 Modifications.

The City Manager or designee shall make such modifications in the accounting as it deems necessary and thereafter shall confirm the report by resolution.

9.80.210 Special Assessment and Lien.

After the hearing on the accounting under section 9.80.190, the City

Manager or designee may order that the cost of abatement of any nuisance pursuant to this Chapter and the administrative costs as confirmed by the City Manager or designee be recorded as a special assessment against the respective parcels of land and placed upon the secured County tax roll, or placed on the unsecured roll, pursuant to section 38773.5 of the Government Code. However, the cost of abatement and the cost of administration as finally determined by the City Manager or designee shall not be placed on any tax roll if paid in full prior to entry of said costs on the tax roll. The City Manager or designee may also authorize or require that a *Notice of Abatement Lien* be recorded against the respective parcels of real property pursuant to section 38773.5(e) of the Government Code.

9.80.220 Enforcement by Civil Action.

As an alternative to the procedures set forth in sections 9.80.100 through 9.80.130, the City may abate the violation of this Chapter by the prosecution of a civil action through the City Attorney, including an action for injunctive relief. The remedy of injunctive relief may take the form of a court order, enforceable through civil contempt proceedings, prohibiting the maintenance of the violation of this Chapter or requiring compliance with other terms.

9.80.230 Summary Abatement.

Notwithstanding any other provision of this Chapter, when any cannabis violation constitutes an immediate threat to public health, security or safety, and when the procedures set forth in sections 9.80.100 through 9.80.130 would not result in abatement of that nuisance within a short enough time period to avoid that threat, the enforcing officer may direct any officer or employee of the City to summarily abate the nuisance. The enforcing officer shall make reasonable efforts to notify the persons identified in section 9.80.120, but the formal notice and hearing procedures set forth in this Chapter shall not apply. Pursuant to Government Code § 38773, the City may nevertheless recover its costs for abating that nuisance in the manner set forth in sections 9.80.170 through 9.80.210.

9.80.240 No Duty to Enforce.

Nothing in this Chapter shall be construed as imposing on the enforcing officer or the City any duty to issue a *notice to abate*, nor to abate any cannabis violation, nor to take any other action with regard to any cannabis violation, and neither the enforcing officer nor the City shall be held liable for failure to issue an order to abate any cannabis violation, nor for failure to abate any cannabis violation, nor for failure to take any other action with regard to any cannabis violation.

Section 7. 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 8. 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 9. 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 10. 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.

other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 11~~13~~. 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 12~~14~~. 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 **OCTOBER 19, 2017**, 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 **OCTOBER 26**, 2017 at a regular meeting of said Council duly and regularly convened on said day by the following vote:

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

ALVARO PRECIADO, Mayor
CITY OF AVENAL

ATTEST:
MARIA A. ORTIZ, City Clerk
CITY OF AVENAL

MD/10172017 - Avenal - Cannabis Ordinance (Comm Ban & Regs)-3.rtf