

Title 3 FINANCE

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Chapter 1 BUSINESS LICENSING

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Article 1. General Provisions

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3-1.01 Definitions.

- (a) Persons. As used in this chapter, "person" includes all domestic and foreign corporations, association, syndicates, joint stock, corporations, partnerships of every kind, clubs, business, or common law trusts, societies, and individuals transacting and carrying on any business in the City, other than as an employee.
- (b) City. As used in this chapter, "City" shall mean the City of Avenal, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged or re-incorporated form.
- (c) Business. As used in this chapter, "business" includes profession, trades, and occupations and all and every kind of calling whether or not carried on for profit.
- (d) Sale. As used in this chapter, "sale" shall include the transfer in any manner or by any means whatsoever, of title to property for a consideration; the serving, supplying, or furnishing for a consideration of any property or service; and a transaction whereby the possession of property is transferred and the seller retains the title as security for the payment of the price shall be likewise be deemed a sale. The foregoing definitions shall not be deemed to exclude any transaction which is or which, in effect, results in a sale within the contemplation of law.
- (e) Sworn Statement. As used in this chapter, "sworn statement" shall mean an affidavit sworn to before a person authorized to take oaths, or in California a declaration or certification made under penalty of perjury.
- (f) Collector. As used in this chapter, "Collector" shall mean the City Tax Collector, Finance Director, or other City officer charged with the administration of this chapter.
- (g) Gross Receipts. As used in this chapter, "gross receipts" shall mean the total receipts of a business for the prior year. If the business is reporting on its first year receipts there shall be an estimate of such gross receipts, which amounts shall be adjusted as reflected in the actual receipts in the next succeeding year.

(Ord. No. 2010-01, § 2, 3-25-2010)

3-1.02 Revenue measure.

This chapter is enacted solely to raise revenue for municipal purposes, and is not intended for regulation.

3-1.03 Effect on other ordinances.

Persons required to pay a license tax for transacting and carrying on any business under this chapter shall not be relieved from the payment of any license tax for the privilege of doing such business required under any other ordinance of the City, and shall remain subject to the regulatory provisions of other ordinances.

3-1.04 License and tax payment required.

There are hereby imposed upon the businesses, trades, professions, callings and occupations specified in this chapter license taxes in the amounts hereinafter prescribed. It shall be unlawful for any person to transact and carry on any business, trade, profession, calling or occupation in the City without first having procured a license from said City so to do and paying the tax hereinafter prescribed or without complying with any and all applicable provisions of this chapter.

This section shall not be construed to require any person to obtain a license prior to doing business within the City if such requirement conflicts with applicable statutes of the United States or of the State of California. Persons not so required to obtain a license prior to doing business within the City nevertheless shall be liable for payment of the tax imposed by this chapter.

3-1.05 Branch establishments.

A separate license must be obtained for each branch establishment or location of the business transacted and carried on and for each separate type of business at the same location, and each license shall authorize the licensee to transact and carry on only the business licensed thereby at the location or in the manner designated in such license; provided that warehouses and distributing plants used in connection with and incidental to a business licensed under the provisions of this chapter shall not be deemed to be separate places of business or branch establishment.

3-1.06 Evidence of doing business.

When any person shall by use of signs, circulars, cards, telephone book, or newspapers, advertises, holds out, or represents that he is in business in the City, or when any person holds an active license or permit issued by a governmental agency indicating that he is in business in the City, and such person fails to deny by a sworn statement given to the Collector that he is not conducting a business in the City, after being requested to do so by the Collector, then these facts shall be considered prima facie evidence that he is conducting a business in the City.

3-1.07 Constitutional apportionment.

None of the license taxes provided for by this chapter shall be so applied as to occasion an undue burden upon interstate commerce or be violative of the equal protection and due process clauses of the Constitutions of the United States and of the State of California.

In any case where a license tax is believed by a licensee or applicant for a license to place an undue burden upon interstate commerce or be violative of such constitutional clauses, he may apply to the Collector for an adjustment of the tax. Such application may be made, before, at, or within six months after payment of the prescribed license tax. The applicant shall, by sworn statement and supporting

testimony, show his method of business and the gross volume or estimated gross volume of business and such other information as the Collector may deem necessary in order to determine the extent, if any, of such undue burden or violation. The Collector shall then conduct an investigation, and, after having first obtained the written approval of the City Attorney, shall fix as the license tax for the applicant, an amount that is reasonable and nondiscriminatory, or if the license tax has already been paid, shall order a refund of the amount over and above the license tax so fixed. In fixing the license tax to be charged, the Collector shall have the power to base the license tax upon a percentage of gross receipts or any other measure which will assure that the license tax assessed shall be uniform with that assessed on businesses of like nature, so long as the amount assessed does not exceed the license tax as prescribed by this chapter.

Should the Collector determine the gross receipts measure of license tax to be the proper basis, he may require the applicant to submit, either at the time of termination of applicant's business in the City, or at the end of each three-month period, a sworn statement of the gross receipts and pay the amount of license tax thereof, provided that no additional license tax during any one calendar year shall be required after the licensee shall have paid an amount equal to the annual license tax as prescribed in this chapter.

3-1.08 Exemptions.

Nothing in this chapter shall be deemed or construed to apply to any person transacting and carrying on any business exempt by virtue of the constitution or applicable statutes of the United States or of the State of California nor shall it be construed to require the payment of a license fee to conduct, manage, or carry on any business, occupation or activity from any institution or organization which is conducted, managed or carried on wholly for the benefit of charitable purposes or from which profit is not derived, either directly or indirectly, by any individual, firm or corporation.

Any person claiming an exemption pursuant to this section, shall file a sworn statement with the Collector stating the facts upon which exemption is claimed, providing the Collector with the Federal and State identification number for exempt organization, and in the absence of such statements substantiating the claim, such person shall be liable for the payment of the taxes imposed by this chapter.

The Collector shall, upon a proper showing contained in the sworn statement, issue a license to such person claiming exemption under this section without payment to the City of the license tax required by this chapter.

The Collector, after giving notice and a reasonable opportunity for hearing to a licensee, may revoke any license granted pursuant to the provisions of this section upon the information that the licensee is not entitled to the exemptions as provided herein.

3-1.09 Contents of license.

Every person required to have a license under the provisions of this chapter shall make application as hereinafter prescribed for the same to the Collector of the City, and upon the payment of the prescribed license tax the Collector shall issue to such person a license which shall contain the following information: (1) The name of the person to whom the license is issued; (2) The business licensed; (3) The place where such business is to be transacted and carried on; (4) The date of the expiration of such license; and (5) Such other information as may be necessary for the enforcement of the provisions of this chapter.

Whenever the tax imposed under the provisions of this chapter is measured by the number of vehicles, devises, machines, or other pieces of equipment used by the licensee, the Collector shall issue only one license; provided that he may issue for each tax period for which the license tax has been paid one identification sticker, tag, plate, or symbol for each item included in the measure of the tax.

3-1.10 Application first license.

Upon a person making application for the first license to be issued hereunder or for a newly established business, such person shall furnish to the Collector a sworn statement, upon a form provided by the Collector, setting forth the following information: (1) The exact nature or kind of business for which a license is requested; (2) The place where such business is to be carried on and if the same is not to be carried on at any permanent place of business, the places of residences of the owners of same; (3) In the event that application is made for the issuance of a license to a person doing business under a fictitious name, the application shall set forth the names and places of residences of those owning said business; (4) In the event that the application is made for the issuance of a license to a corporation or a partnership, the application shall set forth the names and places of residences of the officers or partners thereof; (5) Any further information which the Collector may require to enable him to issue the type of license applied for.

The Collector shall not issue to any person another license for the same or any other business, until such person shall have furnished to him the sworn statement and paid the license tax as herein required.

3-1.11 Renewal license.

In all cases, the applicant for the renewal of a license shall submit to the Collector for his guidance in ascertaining the amount of the license tax to be paid by the applicant, a sworn statement, upon a form to be provided by the Collector, setting forth such information concerning the applicant's business during the preceding year as may be required by the Collector to enable him to ascertain the amount of the license tax to be paid by said applicant pursuant to the provisions of this chapter.

No statements shall be conclusive as to the matters set forth herein nor shall the filing of the same preclude the City from collecting by appropriate action such sum as is actually due and payable hereunder.

3-1.12 Information confidential.

It shall be unlawful for the Collector or any person having an administrative duty under the provisions of this chapter to make known in any manner whatever the business affairs, operations, or information furnished or secured pursuant to the provisions of this chapter. Provided that nothing in this section shall be construed to prevent: (1) The disclosure to, or the examination of records and equipment by, another City official, employee, or agent for collection of taxes for the sole purpose of administering or enforcing any provisions of this chapter, or collecting taxes imposed hereunder; (2) The disclosure of information to, or the examination of records by, Federal or State officials; (3) The disclosure of information to a court of law in a proceeding brought to determine the existence or amount of any license tax liability of the particular taxpayers to the City; (4) The disclosure after the filing of a written request to that effect, to the taxpayer himself, or to his successors, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, of information as to the items in the measure of any paid tax, any unpaid tax or amount of tax required to be collected, interest and penalties; further provided, however, that the City Attorney approves each such disclosure and that the Collector may refuse to make any disclosure referred to in this paragraph when in his opinion the public interest would suffer thereby; (5) The disclosure of the names and addresses of persons to whom licenses have been issued and the general type or nature of their business; (6) The disclosure by way of public meeting or otherwise of such information as may be necessary to the City Council in order to permit it to be fully advised as to the facts when a taxpayer files a claim for refund of license taxes, or submits an offer of compromise with regard to a claim asserted against him by the City for license taxes, or when acting upon any other matter; (7) The disclosure of general statistics regarding taxes collected or business done in the City.

3-1.13 Failure to file.

If any person fails to file any required statement within the time prescribed, or if after demand therefor made by the Collector he fails to file a corrected statement, or if any person subject to the tax imposed by this chapter fails to apply for a license, the Collector may determine the amount of license tax due from such person by means of such information as he may be able to obtain.

If the Collector is not satisfied with the information supplied in statements or applications filed, he may determine the amount of any license tax due by means of any information he may be able to obtain.

If such a determination is made the Collector shall give the notice of the amount so assessed by serving it personally or by depositing it in the United States Post Office at Avenal, California, postage prepaid, addressed to the person so assessed at his last known address. Such person may, within fifteen (15) days after the mailing or serving of such notice, make application in writing to the Collector for a hearing on the amount of the license tax. If such application is made, the Collector shall cause the matter to be set for hearing within fifteen (15) days before the City Council. The Collector shall give at least ten (10) days' notice to such person of the time and place of hearing in the manner prescribed above for serving notices of assessment. The Council shall consider all evidence produced, and shall make finding thereon, which shall be final. Notice of such findings shall be served upon the applicant in the manner prescribed above for serving notices of assessment.

3-1.14 Appeal.

Any person aggrieved by any decision of the Collector with respect to the issuance or refusal to issue such license may appeal to the Council by filing a notice of appeal with the Clerk of the Council. The Council shall thereupon fix a time and place for hearing such appeal. The Clerk of the Council shall give notice to such person of the time and place of hearing by serving it personally or by depositing it in the United States Post Office at Avenal, California, postage prepaid, addressed to such person at his last known address. The Council shall have authority to determine all questions raised on such appeal. No such determination shall conflict with any substantive provision of this chapter.

3-1.15 Additional power of Collector.

In addition to all other power conferred upon him, the Collector shall have the power, for good cause shown, to extend the time for filing any required sworn statement or application for a period not exceeding thirty (30) days, and in such case to waive any penalty that would otherwise have accrued, except that simple ten (10) percent interest shall be added to any tax determined to be payable.

3-1.16 License nontransferable—Changed location and ownership.

No license issued pursuant to the chapter shall be transferable; provided, that where a license is issued authorizing a person to transact and carry on a business at a particular place, such licensee may upon application therefor and paying a fee of two dollars (\$2.00), have the license amended to authorize the transacting and carrying on of such business under said license at some other location to which the business is or is to be moved. Provided further that transfer, whether by sale or otherwise, to another person under such circumstances that the real or ultimate ownership after the transfer is substantially similar to the ownership existing before the transfer shall not be prohibited by this section. For the purpose of this section stockholders, bondholders, partnerships, or other persons holding an interest in a corporation or other entity herein defined to be a person are regarded as having the real or ultimate ownership of such corporation or other entity.

3-1.17 Duplicate license.

A duplicate license may be issued by the Collector to replace any license previously issued hereunder which has been lost or destroyed upon the licensee filing statement of such fact, and at the time of filing such statement paying to the Collector a duplicate license fee of two dollars (\$2.00).

3-1.18 Posting and keeping licenses.

- (a) Any licensee transacting and carrying on business at a fixed place of business in the City shall keep the license posted in a conspicuous place upon the premises where such business is carried on;
- (b) Any licensee transacting and carrying on business but not operating at a fixed place of business in the City shall keep the license upon his person at all times while transacting and carrying on the business for which it is issued;
- (c) Whenever identifying stickers, tags, plates, or symbols have been issued for each vehicle, device, machine, or other piece of equipment included in the measure of a license tax, the person to whom such stickers, tags, plates, or symbols have been issued shall keep firmly affixed upon each vehicle, device, machine, or piece of equipment the identifying sticker, tag, plate, or symbol which has been issued therefor at such locations as are designated by the Collector. Such sticker, tag, plate or symbol shall not be removed from any vehicle, device, machine, or piece of equipment kept in use, during the period for which the sticker, tag, plate, or symbol is issued;
- (d) No person shall fail to affix as required herein any identifying sticker, tag, plate, or symbol to the vehicle, device, machine, or piece of equipment, for which it has been issued at the location designated by the Collector, or to give away, sell, or transfer such identifying sticker, tag, plate, or symbol to another person, or to permit its use by another person.

3-1.19 License tax and how and when payable.

Unless otherwise specifically provided, all annual license taxes, under the provisions of this chapter, shall be due and payable in advance on the first day of July of each year; provided the license taxes covering new operations, commenced after the first day of July, may be prorated for the balance of the license period.

Except as otherwise herein provided, license taxes, other than annual, required hereunder shall be due and payable as follows: (a) Semi-annual license taxes, on the first day of January and the first day of July of each year; (b) Monthly license taxes, on the first day of each and every month; (c) Weekly license taxes on Monday of each week in advance; (d) Daily flat rate license taxes each day in advance; (e) Other flat rate license taxes are payable in advance on the first day of business and thereafter on the first day of any applicable period.

3-1.20 Delinquent taxes—Penalties—Installment payment.

For failure to pay a license tax when due the Collector shall add a penalty of fifteen (15) percent.

No license or sticker, tag, plate, or symbol shall be issued nor one which has been suspended or revoked shall be reinstated or reissued, to any person, who at the time of applying therefor, is indebted to the City for any delinquent license taxes, unless such person, with the consent of the Collector, enters into a written agreement with the City, through the Collector, to pay such delinquent taxes, plus 8% simple interest upon the unpaid balance, in monthly installments, or oftener, extending over a period of not to exceed one (1) year.

In any agreement so entered into, such person shall acknowledge the obligation owed to the City and agree that, in the event of failure to make timely payment of any installment, the whole amount unpaid shall become immediately due and payable and that his current license shall be revocable by the

Collector upon thirty (30) days' notice. In the event legal action is brought by the City to enforce collection of any amount included in the agreement, such person shall pay all costs of suit incurred by the City or its assignee; including a reasonable attorney's fee. The execution of such an agreement shall not prevent the prior accrual of penalties on unpaid balances at the rate provided hereinabove, but no penalties shall accrue on account of taxes included in the agreement, after the execution of the agreement, and the payment of the first installment and during such time as such person shall not be in breach of the agreement.

3-1.21 Refund of overpayments.

No refund of an overpayment of taxes imposed by this chapter shall be allowed in whole or in part unless a claim for refund is filed with the Collector within a period of three (3) years from the last day of the calendar month following the period for which the overpayment was made, and all such claims for refund of the amount of overpayment must be filed with the Collector on forms furnished by him and in the manner prescribed by him. Upon the filing of such claim and when he determines that an overpayment has been made, the Collector may refund the amount overpaid.

3-1.22 License taxes—License tax—Fixed place of business.

Every person engaged at a fixed place of business in the City of Avenal in any trade, calling, occupation, vocation, profession or other means of livelihood, as an independent contractor and not as an employee of another, and not specifically licensed by other provisions of this chapter, shall pay an annual license tax based upon the annual gross receipts of the year proceeding the tax year. Such tax shall be established by resolution by the City Council.

Licensed tax: No fixed place of business. Every person engaged at other than a fixed place of business in the City of Avenal in any trade, calling, occupation, vocation, profession or other means of livelihood, as an independent contractor and not as an employee of another, and not specifically licensed by other provisions of this chapter, shall pay an annual license tax. Said tax shall be established by resolution by the City Council.

License tax: Flat amount. Every person commencing, transacting and carrying on any business herein enumerated shall pay a license tax. Said tax shall be established by resolution by the City Council.

Coin machine: Outside owner. Every person commencing, transacting and carrying on at other than a fixed place of business in the City of Avenal the business of lending, renting, leasing, or otherwise distributing any coin operated machine while retaining title thereto, shall pay semi-annual license tax for each machine. Said tax shall be established by resolution by the City Council.

(Ord. 85-10, 1985; Ord. 87-03, 1987; Ord. 91-06 § 1, 1991)

3-1.23 Validity.

If any section, subsection, sentence, clause or phrase of this chapter is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction such decision shall not affect the validity of the remaining portions of the chapter. The City Council hereby declares each section, clause and phrase thereof valid and continuing irrespective of the fact that any one or more other sections, subsections, clauses or phrases be declared invalid or unconstitutional.

Article 2. Tow Service Providers

[3-1.200 Title.](#)

[3-1.205 Purpose.](#)

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[3-1.220 License requirement.](#)

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3-1.200 Title.

This article shall be known as and may be cited as the "Tow Service Provider Licensing Ordinance" of the City of Avenal.

(Ord. No. 2010-01, § 3, 3-25-2010)

3-1.205 Purpose.

The purpose of this article is to ensure the safety and welfare of the motor vehicles impounded within the boundaries of the City of Avenal, and to ensure that such vehicles will be closely accessible, and to preserve and enhance the viability of business operations within the City of Avenal.

(Ord. No. 2010-01, § 3, 3-25-2010)

3-1.210 Definitions.

For purposes of this Chapter, the following words and phrases are defined as follows:

- (a) "Tow service" and "tow services" mean the moving by a person of a motor vehicle from one place to another under power from other than such motor vehicle.
- (b) "Tow service provider" means any person who provides any tow service.
- (c) "This Code" and "this Code" refers to the Municipal Code of the City of Avenal.

(Ord. No. 2010-01, § 3, 3-25-2010)

3-1.215 Scope of chapter.

To the extent that the provisions of this article do not conflict with other applicable provisions outside of this article, but within this chapter, both shall be controlling. If any matter covered within this article conflicts with any provision(s) outside this article, but within this chapter, the provision(s) this article shall be controlling.

(Ord. No. 2010-01, § 3, 3-25-2010)

3-1.220 License requirement.

- (a) All persons who operate a business that provides any towing service whatsoever within the boundaries of the City of Avenal must possess a valid business license issued pursuant to Chapter 1 of Title 3 of the Municipal Code of the City of Avenal, unless otherwise exempt.
- (b) Notwithstanding any other provision in this Chapter, no tow service business license shall be issued to any person who has not demonstrated that such person has a motor vehicle storage yard within the City of Avenal, unless such person signs a tow service business license that expressly indicates:

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"The undersigned licensee acknowledges that he/she is not licensed or authorized to tow impounded motor vehicles."

- (c) All persons with a valid tow service business license must carry such license in their possession at all times when providing tow services within the City of Avenal.
- (d) This section shall not apply to a person in any calendar month in which such person provides tow service within the City of Avenal no more than once.

(Ord. No. 2010-01, § 3, 3-25-2010)

3-1.225 Period of license.

All business licenses issued to persons regulated under this article shall be effective for at least one year and shall expire the year after they were issued, on the last day of the same calendar month.

(Ord. No. 2010-01, § 3, 3-25-2010)

3-1.230 Storage and release of impounded vehicles.

- (a) All persons who, within the boundaries of the City of Avenal, provide tow service in connection with the impoundment of a motor vehicle by a peace officer must satisfy all of the following:
 - (1) Have a permanently fixed business structure (i.e. place of business) and a motor vehicle storage yard within the boundaries of the City of Avenal;
 - (2) Present to the impounding peace officer, proof of such person's current tow service business license issued by the City of Avenal;
 - (3) Present to the impounding peace officer, proof of such person's towing certification by California Highway Patrol (CHP); and
 - (4) Have on file in the office of the license collector proof of such person's current towing certification by California Highway Patrol;
- (b) All persons who, within the boundaries of the City of Avenal and at the request of a peace officer, provide tow service in connection with the impoundment of a motor vehicle must store such motor vehicle within the boundaries of the City of Avenal, except when such vehicle(s) must be immediately taken to a laboratory, or similar facility, for forensic testing and analysis by a law enforcement agency or such agency's contractor.
- (c) Any tow services provider who has stored an impounded motor vehicle must release such impounded motor vehicle only when presented with a signed CHP-180 Vehicle Report form (or any superseding form), as amended from time to time, and proper identification of a person authorized to retrieve the impounded motor vehicle.
- (d) When a motor vehicle has been impounded under California Vehicle Code section 22651(p), the tow services provider must not release such motor vehicle unless all applicable vehicle release fees have been paid to the City of Avenal. The tow services provider must, prior to release of the motor vehicle, require that the registered or licensed owner of the motor vehicle has presented to the tow service provider a written receipt from the City of Avenal evidencing full payment of all relevant vehicle release fees.

(Ord. No. 2010-01, § 3, 3-25-2010)

3-1.235 Violation.

Except where otherwise indicated, any person who willfully violates or causes, permits or assists in the violation of any of the provisions of this article shall be guilty of a misdemeanor and each and every day such violation continues constitutes a separate offense.

(Ord. No. 2010-01, § 3, 3-25-2010)

Chapter 2 FUNDS

Sections:

Article 1. - Depositories and Signatories

Article 2. - Gas Tax Street Improvement Fund

Article 1. Depositories and Signatories

[3-2.101 Designated.](#)

3-2.101 Designated.

All moneys belonging to, or collected or received for the use of the City by any officer or employee shall immediately be deposited with the City Clerk. The City Clerk shall deposit such moneys in and with the Bank of America, Avenal Branch, Avenal, California, which bank is hereby designated as depository of the City for the benefit of the funds to which such moneys respectively belong. Such moneys shall be subject to withdrawal by the combined signatures of the City Treasurer, the City Clerk, and the Mayor or Mayor Pro Tempore, or designated signatories.

Article 2. Gas Tax Street Improvement Fund

[3-2.201 Created.](#)

[3-2.202 Deposits.](#)

[3-2.203 Expenditures.](#)

3-2.201 Created.

To comply with the provisions of Section 2113 of the Streets and Highways Code (as amended by Chapter 1621, Statutes of 1967), there is hereby created in the City treasury a special fund to be known as the "Special Gas Tax Street Improvement Fund."

3-2.202 Deposits.

All moneys received by the City from the State pursuant to the provisions of the Streets and Highways Code of the State, for the acquisition of real property or interests therein, or for engineering, or the construction, maintenance, or improvement of streets or highways, other than State highways, shall be paid into the Special Gas Tax Street Improvement Fund.

3-2.203 Expenditures.

All moneys in the Special Gas Tax Street Improvement Fund shall be expended exclusively for the purposes authorized by, and subject to, all the provisions of Sections 2106—2116 of the Streets and Highways Code

(As amended by Chapter 1621, Statutes of 1967).

Chapter 3 PROPERTY TAXES

Sections:

[3-3.01 Transfer of assessment and collection to County.](#)

[3-3.02 Transfer of other duties to the City Clerk.](#)

3-3.01 Transfer of assessment and collection to County.

Pursuant to the provisions of Sections 51500 through 51521 of the Government Code of the State, the assessment and tax collection duties and the collection of assessments levied for municipal improvements are hereby transferred to the Assessor and Tax Collector of the County; provided, however, the duties of the City Treasurer shall be reserved to the City and shall not be performed by the County Treasurer.

3-3.02 Transfer of other duties to the City Clerk.

Pursuant to the provisions of Section 51507 of the Government Code of the State, the duties of the City Assessor, other than the assessing of City property, and the duties of the City Tax Collector, other than the collection of ad valorem taxes, are hereby transferred to the City Clerk or to such officer of the County as may by contract with the City be designated and authorized to perform such duties.

Chapter 4 REAL PROPERTY TRANSFER TAXES

Sections:

[3-4.01 Title.](#)

[3-4.02 Imposed—Rate.](#)

[3-4.03 Payment.](#)

[3-4.04 Exemptions—Debt security instruments.](#)

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[3-4.09 Administration.](#)

[3-4.10 Claims for refunds.](#)

[3-4.11 Operative date.](#)

3-4.01 Title.

This chapter shall be known and may be cited as the "Real Property Transfer Tax Law of the City of Avenal". It is adopted pursuant to the provisions of Part 6.7 (commencing with Section 11901) of Division 2 of the Revenue and Taxation Code of the State.

3-4.02 Imposed—Rate.

There is hereby imposed on each deed, instrument, or writing by which any lands, tenements, or other realty sold within the City shall be granted, assigned, transferred, or otherwise conveyed to, or vested in the purchaser, or any other person, by his direction, when the consideration or value of the interest or property conveyed (exclusive of the value of any lien or encumbrances remaining thereon at the time of sale) exceeds one hundred dollars (\$100.00) a tax at the rate of twenty-seven and one-half (27½) cents for each five hundred dollars (\$500.00), or fractional part thereof.

3-4.03 Payment.

The tax imposed by the provisions of Section 3-4.02 of this chapter shall be paid by any person who makes, signs, or issues any document or instrument subject to the tax or for whose use or benefit the same is made, signed, or issued.

3-4.04 Exemptions—Debt security instruments.

The tax imposed by the provisions of this chapter shall not apply to any instrument in writing given to secure a debt.

3-4.05 Exemptions—Governmental agencies.

The United States, or any agency or instrumentality thereof, any state or territory, or political subdivision thereof, or the District of Columbia shall not be liable for any tax imposed by the provisions of this chapter with respect to any deed, instrument, or writing to which such governmental agency is a party, but the tax may be collected by assessment from any other party liable therefor.

3-4.06 Exemptions—Bankruptcies and receiverships.

The tax imposed by the provisions of this chapter shall not apply to the making, delivering, or filing of conveyances to make effective any plan of reorganization or adjustment:

- (a) Confirmed under the Federal Bankruptcy Act, as amended;
- (b) Approved in an equity receivership proceeding in a court involving a railroad corporation, as defined in subsection (m) of Section 205 of Title 11 of the United States Code, as amended;
- (c) Approved in an equity receivership proceeding in a court involving a corporation, as defined in subsection (3) of Section 506 of Title 11 of the United States Code, as amended; or
- (d) Whereby a mere change in identity, form, or place of organization is effected.

The provisions of this section shall only apply if the making, delivery, or filing of instruments of transfer or conveyances occurs within five (5) years from the date of such confirmation, approval or change.

3-4.07 Exemptions—Securities and Exchange Commission orders.

The tax imposed by the provisions of this chapter shall not apply to the making or delivery of conveyances to make effective any order of the Securities and Exchange Commission, as defined in subsection (a) of Section 1083 of the Internal Revenue Code of 1954, but only if:

- (a) The order of the Securities and Exchange Commission in obedience to which such conveyance is made recites that such conveyance is necessary or appropriate to effectuate the provisions of Section 79k of Title 15 of the United States Code relating to the Public Utility Holding Company Act of 1953;
- (b) Such order specifies the property which is ordered to be conveyed; and
- (c) Such conveyance is made in obedience to such order.

3-4.08 Exemptions—Partnerships.

- (a) In the case of any realty held by a partnership, no tax shall be imposed pursuant to the provisions of this chapter by reason of any transfer of an interest in a partnership or otherwise if:
 - (1) Such partnership (or another partnership) is considered a continuing partnership within the meaning of the provisions of Section 708 of the Internal Revenue Code of 1954; and
 - (2) Such continuing partnership continues to hold the realty concerned.
- (b) If there is a termination of any partnership within the meaning of the provisions of Section 708 of the Internal Revenue Code of 1954, for the purposes of this chapter such partnership shall be treated as having executed an instrument whereby there was conveyed, for fair market value (exclusive of the value of any lien or encumbrance remaining thereof), all realty held by such partnership at the time of such termination.
- (c) Not more than one tax shall be imposed by the provisions of this chapter by reason of a termination described in subsection (b) of this section, and any transfer pursuant thereto, with respect to the realty held by such partnership at the time of such termination.

3-4.09 Administration.

The County Recorder shall administer the provisions of this chapter in conformity with the provisions of Part 6.7 of Division 2 of the Revenue and Taxation Code of the State and the provisions of any County ordinance adopted pursuant thereto.

3-4.10 Claims for refunds.

Claims for the refund of the taxes imposed by the provisions of this chapter shall be governed by the provisions of Chapter 5 (commencing with Section 5096) of Part 9 of Division 1 of the Revenue and Taxation Code of the State.

3-4.11 Operative date.

The provisions of this chapter shall become operative upon the operative date of any ordinance adopted by the County pursuant to the provision of Part 6.7 (commencing with Section 11901) of Division 2 of the Revenue and Taxation Code of the State, or on passage whichever is the later.

Chapter 5 SALES AND USE TAXES

Sections:

[3-5.01 Title.](#)

[3-5.02 Rate.](#)

[3-5.03 Operative date.](#)

[3-5.04 Purpose.](#)

[3-5.05 Contract with State Board of Equalization.](#)

[3-5.06 Sales taxes imposed.](#)

[3-5.07 Sales taxes—Place of sale defined.](#)

[3-5.08 Use taxes imposed.](#)

[3-5.09 Adoption of State law provisions.](#)

[3-5.10 Adoption of State law provisions—Limitations.](#)

[3-5.11 Sellers' permits.](#)

[3-5.12 Exclusions and exemptions.](#)

[3-5.13 Exclusions and exemptions.](#)

[3-5.14 Exclusions and exemptions—Operative dates.](#)

[3-5.15 State law provisions—Amendments.](#)

[3-5.16 Collection—Enjoining.](#)

3-5.01 Title.

This chapter shall be known as the "Uniform Local Sales and Use Tax Law of the City of Avenal".

3-5.02 Rate.

The rate of the sales tax and use tax imposed by the provisions of this chapter shall be ninety-eight hundredths (.98%) of one percent.

3-5.03 Operative date.

The provisions of this chapter shall be operative on November 1, 1979.

3-5.04 Purpose.

The Council hereby declares that the provisions of this chapter are adopted to achieve the following, among other, purposes and directs that the provisions of this chapter be interpreted in order to accomplish those purposes:

- (a) To adopt a sales and use tax law which complies with the requirements and limitations set forth in Part 1.5 of Division 2 of the Revenue and Taxation Code of the State;

- (b) To adopt a sales and use tax law which incorporates provisions identical to those of the Sales and Use Tax Law of the State insofar as those provisions are not inconsistent with the requirements and limitations set forth in Part 1.5 of Division 2 of the Revenue and Taxation Code of the State;
- (c) To adopt a sales and use tax law which imposes a tax and provides a measure therefor which can be administered and collected by the State Board of Equalization in a manner that adopts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the sales and use taxes of the State; and
- (d) To adopt a sales and use tax law which can be administered in a manner that will, to the degree possible consistent with the provisions of Part 1.5 of Division 2 of the Revenue and Taxation Code of the State, minimize the cost of collecting City sales and use taxes and at the same time minimize the burden of record keeping upon persons subject to taxation under the provisions of this chapter.

3-5.05 Contract with State Board of Equalization.

Prior to the operative date of this chapter, the City shall contract with the State Board of Equalization to perform all the functions incident to the administration and operation of this sales and use tax law. If the City shall not have contracted with the State Board of Equalization prior to such operative date, the City shall nevertheless so contract, and, in such a case, the operative date shall be the first day of the first calendar quarter following the execution of such contract rather than the first day of the first calendar quarter following the adoption of this chapter.

3-5.06 Sales taxes imposed.

For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the City at the rate set forth in Section 3-5.02 of this chapter of the gross receipts of the retailer from the sale of all tangible personal property sold at retail in the City on and after the operative date of this chapter.

3-5.07 Sales taxes—Place of sale defined.

For the purposes of this chapter, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-State destination or to a common carrier for delivery to an out-of-State destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the State sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the State Board of Equalization.

3-5.08 Use taxes imposed.

An excise tax is hereby imposed on the storage, use, or other consumption in the City of tangible personal property purchased from any retailer on and after the operative date of this chapter for the storage, use, or other consumption in the City at the rate set forth in Section 3-5.02 of this chapter of the sales price of the property. The sales price shall include delivery charges when such charges are subject to State sales or use tax, regardless of the place to which delivery is made.

3-5.09 Adoption of State law provisions.

Except as otherwise provided in this chapter and except insofar as they are inconsistent with the provisions of Part 1.5 of Division 2 of the Revenue and Taxation Code of the State, all of the provisions of Part 1 of Division 2 of said Code are hereby adopted and made a part of this chapter as though fully set forth in this chapter.

3-5.10 Adoption of State law provisions—Limitations.

In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code of the State, wherever the State is named or referred to as the taxing agency, the name of the City shall be substituted therefor. Such substitution, however, shall not be made when the word "State" is used as part of the title of the State Controller, the State Treasurer, the State Board of Control, the State Board of Equalization, the State Treasury, or the Constitution of the State. Such substitution shall not be made when the result of that substitution would require action to be taken by or against the City, or any agency thereof, rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of the provisions of this chapter. Such substitution shall not be made in those sections, including, but not necessarily limited to, sections referring to the exterior boundaries of the State, where the result of the substitution would be to provide an exemption from this tax with respect to certain sales, storage, use, or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use, or other consumption remains subject to tax by the State under the provisions of Part 1 of Division 2 of said Code, or to impose this tax with respect to certain sales, storage, use, or other consumption of tangible personal property which would not be subject to tax by the State under the said provisions of said Code. Such substitution shall not be made in Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797, or 6828 of the Revenue and Taxation Code of the State. Such substitution shall not be made for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 of said Code or in the definition of that phrase in said Section 6203.

3-5.11 Sellers' permits.

If a seller's permit has been issued to a retailer pursuant to the provisions of Section 6067 of the Revenue and Taxation Code of the State, an additional seller's permit shall not be required by the provisions of this chapter.

3-5.12 Exclusions and exemptions.

- (a) The amount subject to tax shall not include any sales or use tax imposed by the State upon a retailer or consumer.
- (b) The storage, use, or other consumption of tangible personal property, the gross receipts from the sale of which have been subject to tax under a sales and use tax ordinance enacted in accordance with Part 1.5 of Division 2 of the Revenue and Taxation Code by any City and County, County, or City, in this State shall be exempt from the tax due under this chapter.
- (c) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property to operators of aircraft to be used or consumed principally outside the city in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.
- (d) In addition to the exemptions provided in Section 6366 and 6366.1 of the Revenue and Taxation Code, the storage, use, or other consumption of tangible personal property purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of

public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government is exempted from the use tax.

(Ord. 83-09 § 1, 1983)

3-5.13 Exclusions and exemptions.

- (a) The amount subject to tax shall not include any sales or use tax imposed by the State upon a retailer or consumer.
- (b) The storage, use, or other consumption of tangible personal property, the gross receipts from the sale of which have been subject to tax under a sales and use tax ordinance enacted in accordance with Part 1.5 of Division 2 of the Revenue and Taxation Code by any city and county, county, or city in this State shall be exempt from the tax due under this chapter.
- (c) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property to operators of waterborne vessels to be used or consumed principally outside the city in which the sale is made and directly and exclusively in the carriage of persons or property in such vessels for commercial purposes.
- (d) The storage, use, or other consumption of tangible personal property purchased by operators of waterborne vessels and used or consumed by such operators directly and exclusively in the carriage of persons or property of such vessels for commercial purposes is exempted from the use tax.
- (e) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property to operators of aircraft to be used or consumed principally outside the city in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.
- (f) In addition to the exemptions provided in Sections 6366 and Sections 6366.1 of the Revenue and Taxation Code the storage, use, or other consumption of tangible personal property purchased by operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government is exempted from the use tax.

(Ord. 83-09 § 2, 1983)

3-5.14 Exclusions and exemptions—Operative dates.

- (a) The provisions of Section 3-5.13 of this chapter shall become operative on January 1 of the year following the year in which the State Board of Equalization adopts an assessment ratio for State-assessed property which is identical to the ratio which is required for local assessments by the provisions of Section 401 of the Revenue and Taxation Code of the State, at which time the provisions of Section 3-5.12 of this chapter shall become inoperative.
- (b) In the event the provisions of Section 3-5.13 of this chapter become operative, and the State Board of Equalization subsequently adopts an assessment ration for State-assessed property, which ratio is higher than the ratio which is required for local assessments by the provisions of said Section 401 of the Revenue and Taxation Code, the provisions of Section 3-5.12 of this chapter shall become operative on the first day of the month next following the month in which such higher ratio is adopted, at which time the provisions of said Section 3-5.13 shall be inoperative until the first day of the month following the month in which said Board again adopts an assessment ration for State-assessed property, which ratio is identical to the ratio required for local assessments by the provisions of said Section 401, at which time the provisions of said Section 3-5.13 shall again become operative and the provisions of said Section 3-5.12 shall become inoperative.

3-5.15 State law provisions—Amendments.

All subsequent amendments of the Revenue and Taxation Code of the State, which amendments relate to the sales and use tax and which are not inconsistent with the provisions of Part 1.5 of Division 2 of said Code, shall automatically become a part of this chapter.

3-5.16 Collection—Enjoining.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against the State or the City, or against any officer of the State or the City, to prevent or enjoin the collection of any tax or any amount of tax required to be collected under this chapter or Part 1.5 of Division 2 of the Revenue and Taxation Code of the State.

Chapter 6 TRANSIENT OCCUPANCY TAXES

Sections:

[3-6.01 Title.](#)

[3-6.02 Definitions.](#)

[3-6.03 Imposed—Rate.](#)

[3-6.04 Enforcement.](#)

[3-6.05 Exemptions.](#)

[3-6.06 Duties of operators.](#)

[3-6.07 Registration.](#)

[3-6.08 Penalties and interest.](#)

[3-6.09 Due dates—Returns—Payments.](#)

[3-6.10 Deficiency determinations.](#)

[3-6.11 Redeterminations.](#)

[3-6.12 Collection security.](#)

[3-6.13 Refunds.](#)

[3-6.14 Administration.](#)

[3-6.15 Appeals.](#)

[3-6.16 Transient Occupancy Tax Review Committee—Created—Powers and duties.](#)

[3-6.17 Violations.](#)

3-6.01 Title.

This chapter shall be known and may be cited as the "Uniform Transient Occupancy Tax Law of the City of Avenal."

3-6.02 Definitions.

For the purposes of this chapter unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

- (a) "Hotel" shall mean any structure, or any portion of any structure, which is occupied, or intended or designed for occupancy, by transients for dwelling, lodging, or sleeping purposes and shall include any hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure, or portion thereof.
- (b) "Occupancy" shall mean the use or possession, or the right to the use or possession, of any room, or portion thereof, in any hotel for dwelling, lodging, or sleeping purposes.
- (c) "Operator" shall mean the person who is the proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.
- (d) "Person" shall mean any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.
- (e) "Rent" shall mean the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor, or otherwise, including all receipts, cash, credits, property, and services of any kind or nature, without any deduction therefrom whatsoever.
- (f) "Tax Administrator" shall mean the City Clerk.
- (g) "Transient" shall mean any person who exercises occupancy or is entitled to occupancy in a hotel by reason of a lease, concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty (30) days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of the provisions of this chapter may be considered.
- (h) "Transient Occupancy Tax Review Committee" shall mean the Council.

3-6.03 Imposed—Rate.

For the privilege of occupancy in any hotel, each transient shall be subject to and shall pay a tax in the amount of six (6) percent of the rent charged by the operator. Such tax shall constitute a debt owed by the transient to the City, which debt shall be extinguished only by payment to the operator of the hotel or to the City. The transient shall pay the tax to the operator at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the Tax Administrator may require that such tax shall be paid directly to the Tax Administrator.

3-6.04 Enforcement.

The Tax Administrator shall enforce the provisions of this chapter and shall have the power to adopt rules and regulations not inconsistent with the provisions of this chapter as may be necessary or desirable to aid in such enforcement. He shall provide schedules for the payment of the tax, and such schedules shall eliminate fractions of one cent (\$0.01).

3-6.05 Exemptions.

No tax shall be imposed upon:

- (a) Any person as to whom or any occupancy as to which it is beyond the power of the City to impose the tax provided for in this chapter;
- (b) Any officer or employee of a foreign government, which officer or employee is exempt by reason of express provisions of Federal laws or international treaties;
- (c) Any occupant for more than thirty (30) successive calendar days;
- (d) Any occupant whose rent is of a value less than two dollars (\$2.00) per day;
- (e) Any person who rents a private home, vacation cabin, or like facility from an owner who is not regularly engaged in the business of renting such facilities but does so only occasionally and incidentally to his own use thereof; and
- (f) Any occupant whose rent is paid for a hospital room or to a medical clinic, convalescent home, or home for aged people.

No exemption shall be granted pursuant to the provisions of subsections (a) or (b) of this section, except upon a claim therefor made at the time the rent is collected and under penalty of perjury upon a form prescribed by the Tax Administrator.

3-6.06 Duties of operators.

Each operator shall collect the tax imposed by the provisions of this chapter to the same extent and at the same time as the rent is collected from every transient. The amount of tax shall be separately stated from the amount of the rent charged, and each transient shall receive a receipt for payment from the operator. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax, or any part thereof, will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, if added, any part will be refunded except in the manner provided in this chapter.

Every operator maintaining a place of business or renting rooms in the City, the occupancy of which is not exempted under the provisions of this chapter, shall collect the tax from the occupant. The tax required to be collected by the operator shall constitute a debt owed by the operator to the City. In all cases of transactions upon credit or deferred payment, the payment of the tax to the operator may be deferred in accordance therewith, and the operator shall be liable therefor at the time and to the extent such credits are paid or deferred payments are made in accordance with the rate of tax owing on the amount thereof.

3-6.07 Registration.

- (a) Required. Every person engaging or about to engage in business as an operator of a hotel in the City shall register with the Tax Administrator on a form provided by the Tax Administrator. Persons engaged in such business shall so register not later than fifteen (15) days after commencing business, but such registration after commencing business shall not relieve any person from the obligation of the payment or the collection of the tax on and after the date of commencing business.
- (b) Form. Such registration shall set forth the following information:

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- (1) The name under which such person transacts or intends to transact business.
 - (2) The location of his place or places of business; and
 - (3) Such other information to facilitate the collection of the tax as the Tax Administrator may require. The registration shall be signed by the owner if a natural person; in case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some other person specifically authorized by the corporation to sign the registration.
- (c) Certificates. The Tax Administrator shall, within ten (10) days after such registration, issue, without charge, a certificate of authority to each registrant to collect the tax from the occupant, together with a duplicate thereof for each additional place of business of such registrant. Such certificate shall, among other things, set forth the following information:
- (1) The name of the operator;
 - (2) The address of the hotel;
 - (3) The date upon which the certificate was issued; and
 - (4) A statement as follows: "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Uniform Transient Occupancy Tax Law of the City by registering with the Tax Administrator for the purpose of collecting from transients the transient occupancy tax and remitting such tax to the Tax Administrator. This certificate shall not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, nor to operate a hotel without strictly complying with all local applicable laws, including, but not limited to, those requiring a permit from any board, commission, department, or office of this City. This certificate shall not constitute a permit."

Such certificates shall be nonassignable and nontransferable and shall be surrendered immediately to the Tax Administrator upon the cessation of business at the location named or upon its sale or transfer. Each certificate and duplicate shall state the place of business to which such certificate is applicable and shall be prominently displayed therein so as to be seen and come to the notice readily of all occupants and persons seeking occupancy.

3-6.08 Penalties and interest.

- (a) Original delinquencies. Any operator who shall fail to remit any tax imposed by the provisions of this chapter within the time required shall pay a penalty of ten (10) percent of the tax in addition to the amount of the tax.
- (b) Continued delinquencies. Any operator who shall fail to remit any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty in the amount of ten (10) percent of the tax in addition to the amount of the tax and the ten (10) percent penalty first imposed.
- (c) Fraud. If the Tax Administrator determines that the non payment of any remittance due pursuant to the provisions of this chapter is due to fraud or intent to evade the provisions of this chapter, a penalty of twenty-five (25) percent of the amount of the tax shall be added thereto in addition to the penalties set forth in subsections (a) and (b) of this section.
- (d) Interest. In addition to the penalties imposed any operator who shall fail to remit any tax imposed by the provisions of this chapter shall pay interest at the rate of one percent per month, or fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- (e) Penalties and interest merged with tax. Every penalty imposed, and such interest as accrues, pursuant to the provisions of this section shall become a part of the tax required to be paid by the provisions of this chapter.

3-6.09 Due dates—Returns—Payments.

- (a) Due dates. The tax imposed by the provisions of this chapter shall become due and payable from the occupant at the time of occupancy. All amounts of such taxes collectible or collected by any operator shall be due and payable to the Tax Administrator quarterly on the first day of the months of April, July, October, and January next succeeding each respective quarterly period and shall be delinquent after the last day of such months.
- (b) Returns: Filing. On or before the last day of the month following each quarterly period of three (3) months, a return for the preceding quarterly period shall be filed with the Tax Administrator. The return shall be filed, in such form as the Tax Administrator may prescribe, by every operator and every person liable to the payment of the tax during such quarterly period who has not paid such tax and who has not made a return in regard to the related occupancy which is the subject of tax.
- (c) Returns: Form. The returns shall show the amount of tax collected or otherwise due for the related period and such other information as is required by the Tax Administrator. The Tax Administrator may require the returns to show the total rentals upon which the tax was collected or otherwise due, the gross receipts of a registered returnee for such period, and an explanation in detail of any discrepancy between such amounts.
- (d) Returns: Delivery. The person required to file the return shall deliver the return, together with the remittance of the amount of the tax due, to the Tax Administrator at his office.
- (e) Extensions of time. For good cause the Tax Administrator may extend for not to exceed one month the time for making any return of payment of the tax. No further extension shall be granted, except by the Transient Occupancy Tax Review Committee. Any person to whom an extension is granted, who makes a return and pays the tax within the period of such extension, shall pay, in addition to the tax, interest on the amount thereof at the rate of one percent per month, or fraction thereof, on the unpaid balance for the period of such extension to the time of the return and payment, which interest shall become a part of the tax.
- (f) Other than quarterly periods. The Tax Administrator, if he deems it necessary in order to insure payment or facilitate collection by the City of the amount of taxes in any individual case, may require the returns and the payment of the amount of the taxes for other than quarterly periods.

3-6.10 Deficiency determinations.

- (a) If the Tax Administrator is not satisfied with the returns of the tax or the amount of the tax required to be paid to the City by any person, the Tax Administrator may compute and determine the amount required to be paid upon the basis of the facts contained in the returns or upon the basis of any information within the possession of the Tax Administrator or that may come into his possession. One or more deficiency determinations may be made of the amount due for one or more than one period.
- (b) In making a determination the Tax Administrator may off set overpayments, if any, which may have been previously made for a period or periods, together with interest on the overpayments, against any underpayment for a subsequent period or periods, or against penalties and interest on the underpayments. The interest on underpayments and overpayments shall be computed in the manner set forth in Section 3-6.08 of this chapter.
- (c) The Tax Administrator shall give to the operator or occupant written notice of his determination. The notice may be served personally or by mail; if by mail, the notice shall be enclosed in a sealed envelope, postage prepaid, and be addressed to the operator at his address as it appears in the records of the Tax Administrator. In cases of service by mail or any notice required by the provisions of this chapter, the service shall be complete at the time of deposit in the United States Post Office.
- (d) Except in the case of fraud, intent to evade the provisions of this chapter or authorized rules and regulations, or failure to make a timely return, every deficiency determination shall be made and notice thereof mailed within three (3) years after the last day of the month following the close of the

quarterly period for which the amount is proposed to be determined, or within three (3) years after the return is filed, whichever period expires the later.

- (e) If any operator shall fail or refuse to collect such tax or to make, within the time provided in this chapter, any report and remittance of such tax, or any portion thereof, required by the provisions of this chapter, or makes a fraudulent return or otherwise wilfully attempts to evade the provisions of this chapter, the Tax Administrator shall proceed in such manner as he may deem best to obtain the facts and information on which to base his estimate of the tax due. As soon as the Tax Administrator shall procure such facts and information as he is able to obtain upon which to base the assessment of any such tax imposed by the provisions of this chapter and payable by any operator who has failed or refused to collect the tax and to make such report and remittance, the Tax Administrator shall proceed to determine and assess against such operator the tax, interest, and penalties provided for by this chapter. In the event such determination is made, the Tax Administrator shall give notice of the amount so assessed. Such determination and notice shall be made and mailed within three (3) years after discovery by the Tax Administrator of any fraud, intent to evade, or failure to file a return. Any determination shall become final within thirty (30) days after giving notice thereof as provided in this subsection.
- (f) If the Tax Administrator believes that the collection of any tax or any amount of tax required to be collected and paid to the City will be jeopardized by delay, or if any determination will be jeopardized by delay, he shall thereupon make a determination of the tax or amount of the tax required to be collected, noting that fact upon the determination. The amount determined shall be immediately due and payable. If the amount specified in the determination is not paid within ten (10) days after the service of the notice thereof upon the person against who the determination is made, the amount shall become final at the expiration of such ten (10) days, and the delinquency penalty and the interest provided for in Section 3-6.08 of this chapter shall attach to the amount of the tax or the amount of the tax required to be collected.

3-6.11 Redeterminations.

- (a) Any person against who a determination is made pursuant to the provisions of Section 3-6.10 of this chapter, or any person directly interested, may petition for a redetermination within fifteen (15) days after the service upon the person of the notice thereof. If a petition for redetermination is not filed within the thirty (30) day period, the determination shall become final at the expiration of the period; provided, however, a petition for redetermination pursuant to the provisions of subsection (f) of Section 3-6.10 of this chapter shall be filed within ten (10) days after notice.
- (b) If a petition for redetermination is filed within the allowable time, the Tax Administrator shall reconsider the determination and, if the person has so requested in his petition, shall grant the person an oral hearing and shall give him ten (10) days notice of the time and place of the hearing. The Tax Administrator may continue the hearing from time to time as may be necessary.
- (c) The Tax Administrator may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the Tax Administrator at or before the hearing.
- (d) The order or decision of the Tax Administrator upon a petition for redetermination shall become final fifteen (15) days after the service upon the petitioner of the notice thereof, unless an appeal of such order or decision is filed with the Transient Occupancy Tax Review Committee within fifteen (15) days after the service of such notice.
- (e) No petition for redetermination or an appeal therefrom shall be effective for any purpose unless at or before the filing thereof the amount due in the original determination is paid or a bond or other security satisfactory to the Tax Administrator is filed with him guaranteeing the payment of any amount finally determined to be due.

3-6.12 Collection security.

- (a) The Tax Administrator, whenever he deems it necessary to insure compliance with the provisions of this chapter, may require any person subject to the provisions of this chapter to deposit with him such security in the form of cash, a bond, or other security as the Tax Administrator may determine. The amount of the security shall be fixed by the Tax Administrator but shall not be greater than twice the person's estimated average liability for the period for which he files returns, determined in such manner as the Tax Administrator deems proper, or ten thousand dollars (\$10,000.00), whichever amount is the lesser. The amount of the security may be increased or decreased by the Tax Administrator, subject to the limitations set forth in this chapter.
- (b) If any person is delinquent in the payment of the amount required to be paid by him, or in the event a determination has been made against him which remains unpaid, the Tax Administrator may, not later than three (3) years after the payment became delinquent, give notice thereof by registered mail to all persons in the County having in their possession or under their control any credits or other personal property belonging to the delinquent or owning any debts to the delinquent. After receiving such notice, the persons so notified shall neither transfer nor make any other disposition of the credits, other personal property, or debts in their possession or under their control at the time they receive the notice until the Tax Administrator consents to a transfer or disposition or until twenty (20) days elapse after the receipt of the notice. All persons so notified shall, within five (5) days after the receipt of the notice, advise the Tax Administrator of all such credits, other personal property, or debts in their possession, under their control, or owing by them.
- (c) At any time within three (3) years after any tax or any amount of tax required to be collected becomes due and payable, or at any time within three (3) years after any determination becomes final, the Tax Administrator may bring an action in the courts of the State, or any other state, or of the United States, in the name of the City to collect the amount delinquent, together with penalties and interest.
- (d) If any operator liable for any amount pursuant to the provisions of this chapter sells his business or quits the business, his successors or assigns shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the Tax Administrator showing that he has been paid or a certificate stating that no amount is due. If the purchaser of a business fails to withhold the tax from the purchase price as required, he shall become personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price, valued in money. Within thirty (30) days after receiving a written request from the purchaser for a certificate, the Tax Administrator shall either issue the certificate or mail a notice to the purchaser at his address as it appears on the records of the Tax Administrator of the amount that shall be paid as a condition of issuing the certificate. Failure of the Tax Administrator to mail the notice will release the purchaser from any further obligation to withhold the purchase price as provided in this subsection.

The time within which the obligation of a successor may be enforced shall start to run at the time the operator sells his business or at the time the determination against the operator becomes final, whichever event occurs the later.

3-6.13 Refunds.

Whenever the amount of any tax, penalty, or interest has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the Tax Administrator pursuant to the provisions of this chapter, such amount may be refunded provided a verified claim in writing therefor, stating the specific grounds upon which the claim is founded, is filed with the Tax Administrator within three (3) years after the date of payment. The claim is approved by the Tax Administrator, the excess amount collected or paid may be refunded or may be credited on any amounts then due and payable from the person from whom such amount was collected or by whom paid, and the balance may be refunded to such person, his administrators, or executors.

3-6.14 Administration.

- (a) Deposit of moneys. The Tax Administrator shall deposit all moneys collected pursuant to the provisions of this chapter to the credit of the General fund.
- (b) Records of operators: Form. Every operator renting guest rooms in the City shall keep such records, receipts, invoices, and other pertinent papers in such form as the Tax Administrator may require. All records shall be retained by the operator for a period of three (3) years and six (6) months after they come into being.
- (c) Examinations of records: Investigations. The Tax Administrator, or any person authorized in writing by him, may examine the books, papers, records, and equipment of any person liable for the tax and may investigate the character of the business of the person in order to verify the accuracy of any return made or, if no return is made by the person, to ascertain and determine the amount required to be paid.
- (d) Authority to require reports: Contents. In the administration of the tax, the Tax Administrator may require the filing of reports by any person or class of persons having in his or their possession or custody information relating to rentals of guest rooms which are subject to the tax. The reports shall be filed when the Tax Administrator requires and shall set forth the rental charged for each occupancy, the date or dates of occupancy, and such other information as the Tax Administrator may require.
- (e) Information confidential: Unlawful disclosure. It shall be unlawful for the Tax Administrator, or any person having an administrative duty pursuant to the provisions of this chapter, to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of the records and equipment of any person required to obtain a Transient Occupancy Registration Certificate or pay a transient occupancy tax, or any other person visited or examined in the discharge of official duties, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth in any statement or application, or to permit any statement or application, or copy of either, or any book containing any abstract or particulars thereof, to be seen or examined by any person; provided, however, nothing set forth in this subsection shall be construed to prevent the following:
 - (1) The disclosure to, or the examination of, records and equipment by another City official, employee, or agent for the collection of taxes for the sole purpose of administering or enforcing any of the provisions of this chapter or collecting the taxes imposed by this chapter;
 - (2) The disclosure of information to, or the examination of records by, Federal or State officials or the tax officials of another city, county, or city and county, if a reciprocal arrangement exists, or to a Grand Jury or court of law, upon subpoena;
 - (3) The disclosure of information and the results of examinations of records of particular taxpayers, or relating to particular taxpayers, to a court of law in a proceeding brought to determine the existence or amount of any business tax liability of the particular taxpayer to the City;
 - (4) The disclosure, after the filing of a written request to that effect, to the taxpayer himself, or to his successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, of information as to the items included in the measure of any paid tax, any unpaid tax, or amounts of tax required to be collected, interest, and penalties, provided, however, the City Attorney shall approve each such disclosure, and the Tax Administrator may refuse to make any disclosure referred to in this subsection when, in his opinion, the public interest would suffer thereby;
 - (5) The disclosure of the names and addresses of persons to whom Transient Occupancy Registration Certificates have been issued, the names and addresses of the officers of corporations and the members of partnerships to whom such certificates have been issued, and the general type or nature of their business;

- (6) The disclosure to the Council by way of public meeting or otherwise, of such information as may be necessary in order to permit the Council to be fully advised as to the facts when a taxpayer files a claim for the refund of business taxes, or submits an offer of compromise with regard to a claim asserted against him by the City for business taxes, or when acting upon any other matter; and
- (7) The disclosure of general statistics regarding taxes collected or business done in the city.

Neither the Tax Administrator nor any person having an administrative duty pursuant to the provisions of this chapter shall make known in any manner whatever the business affairs, operations, or information obtained by an investigation of the records and equipment of any operator, or any person visited or examined in the discharge of official duties, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof, or any book containing any abstract or particulars thereof, to be seen or examined by any person. Successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, and upon submitting written proof of their interest, may be given information as to the items included in the measure and the amount of any unpaid tax or the amount of tax required to be collected, interest, and penalties.

3-6.15 Appeals.

Any person aggrieved by any decision of the Tax Administrator may appeal to the Transient Occupancy Tax Review Committee by filing a notice of appeal with the Tax Administrator within fifteen (15) days after the service or mailing of the notice of the decision. The Tax Administrator shall fix a time and place for hearing such appeal as prescribed by the Transient Occupancy Tax Review Committee in its rules and regulations and shall give the appellant ten (10) days written notice of the time and place of such hearing.

3-6.16 Transient Occupancy Tax Review Committee—Created—Powers and duties.

A Transient Occupancy Tax Review Committee is hereby created, which shall consist of the members of the Council. The committee shall have the following powers and duties:

- (a) To hear and determine appeals of orders or decisions of the Tax Administrator made upon petitions for redeterminations of taxes. The Committee may affirm, modify, or reverse such orders or decisions or dismiss the appeals therefrom, as may be just, and shall prescribe such forms, rules and regulations relating to appeals as the Committee may deem necessary. In the review of the decision or order of the Tax Administrator, the Committee may take such evidence and make such investigations as it may deem necessary. The Committee shall give notice of its determinations in the manner set forth for the service of notices of decisions by the Tax Administrator and shall file a copy of each such determination with the Tax Administrator with certification thereon of the date of service thereof. Such determination shall become final ten (10) days thereafter and shall thereupon become due and payable, subject to interest and penalties, and enforceable by the Tax Administrator in like manner as an order or decision of the Tax Administrator;
- (b) To approve, modify, or disapprove all forms, rules, and regulations prescribed by the Tax Administrator in the administration and enforcement of the provisions of this chapter, and such forms, rules and regulations shall be subject to, and become effective only on, such approval;
- (c) To hear and determine in such manner as shall be just any protest which may be made by any person who may be interested to any form, rule, or regulation approved or prescribed by the Committee;
- (d) To grant for good cause applications for extensions of time in excess of one month for making any return or payment of tax and to prescribe rules therefor; and

- (e) To make such investigations as the Committee deems advisable regarding the imposition and administration of the transient occupancy taxes.

3-6.17 Violations.

It shall be unlawful for any operator or other person so required to fail or refuse to register as required by the provisions of this chapter, or to furnish any return required to be made, or to fail or refuse to furnish a supplemental return or other data required by the Tax Administrator, or to render a false or fraudulent return. No person required to make, render, sign, or verify any report shall make any false or fraudulent report, with intent to defeat or evade the determination of any amount due, required by the provisions of this chapter to be made.

Chapter 7 UNCLAIMED PERSONAL PROPERTY

Sections:

[3-7.01 Found property—Duties of finders.](#)

[3-7.02 Found property—Duties of Custodian.](#)

[3-7.03 Found property—Unclaimed—Title.](#)

[3-7.04 Sales at public auction—Notices.](#)

[3-7.05 Sales at public auction—Proceeds—Unsold property.](#)

[3-7.06 Exception for lost and unclaimed bicycles and toys.](#)

3-7.01 Found property—Duties of finders.

Any person who finds and takes possession of any money or personal property within the City which they have reason to believe may have been stolen, lost, or abandoned shall deliver such property to the Avenal Police Department or to such other entity charged with code enforcement for the City, who shall be considered the Custodian. A receipt shall be issued to the person delivering such property or money.

(Ord. 90-04 (part), 1990; Res. No. 2010-64, 10-28-2010)

3-7.02 Found property—Duties of Custodian.

- (a) If the identity of the owner of such property is reasonably ascertainable, the Custodian shall notify the owner that it has the property and where it may be claimed. The Custodian may require payment by the owner of a reasonable charge for costs of storage and care of the property.
- (b) Such found personal property shall be stored in a safe place and such found money shall be deposited with the City unless sooner claimed by the true owner. At the end of such time property shall be subject to disposal as provided in this chapter.
- (c) If the owner appears within three (3) months after receipt of such property, proves ownership of the property and pays all reasonable charges, the Custodian shall restore the property to the owner. In the case of found money, such money shall be paid to the true owner upon written order to the City Director of Finance from the Custodian.
- (d) Any found property delivered to the Custodian which the Custodian determines is dangerous or perishable may be disposed of immediately, without notice, in such manner as shall be determined by the Custodian.

(Ord. 90-04 (part), 1990)

3-7.03 Found property—Unclaimed—Title.

- (a) Unclaimed property, except unclaimed bicycles and toys, shall be held by the Custodian for a period of at least three (3) months; thereafter, such property shall be transferred to the Chief Administrative Officer for the City for sale to the public pursuant to this section shall not be redeemable by the owner or other persons entitled to possession. If the Chief Administrative Officer determines that such property transferred to it for sale is needed for public use, such property may be retained by the City and need not be sold.

(Ord. 90-04 (part), 1990)

3-7.04 Sales at public auction—Notices.

- (a) The City shall, once a year or at such period as the City Manager deems appropriate, sell all unclaimed personal property at public auction. The auction shall be conducted by the City Manager or his/her duly appointed representative.
- (b) Notice of such sale shall be given by the City Manager at least five (5) days before the time fixed for the sale by publication once in a newspaper of general circulation and by the conspicuous posting of a notice in three (3) public places within the City outlining the conditions of sale, and the date, time and place at which such property will be offered at public auction.

(Ord. 90-04 (part), 1990)

3-7.05 Sales at public auction—Proceeds—Unsold property.

- (a) Property not claimed by its owner or the finder shall be sold at public auction by the City Manager or his duly appointed representative to the highest bidder for cash on the day of sale. Such items of property may be offered for bid singly or in combinations at the discretion of the City Manager. The money received from the sale shall be placed in the General Fund of the City.
- (b) The successful bidder at public auction shall also pay separately any reasonable charges for storage.
- (c) Any property remaining unsold after being offered for sale at such public auction may be appropriated for use by the City, donated to charity, destroyed, or otherwise disposed of by the City Manager as he directs.

(Ord. 90-04 (part), 1990)

3-7.06 Exception for lost and unclaimed bicycles and toys.

Pursuant to Section 217 of the Welfare and Institutions Code of the State of California, when any bicycles or toys, or both, in the possession of the Avenal Police Department or other entity charged with code enforcement for the City have been unclaimed for a period of at least sixty (60) days, instead of being sold at auction to the highest bidder, such bicycles or toys may be turned over to the probation officer, to the Welfare Department of the County, or to any charitable or nonprofit organization which is authorized under its articles of incorporation to participate in a program or activity designed to prevent juvenile delinquency and which is exempt from income taxation under federal or state law, or both, for use in any program or activity designed to prevent juvenile delinquency.

(Ord. 90-04 (part), 1990; Res. No. 2010-64, 10-28-2010)

Chapter 8 PURCHASING SYSTEM

Sections:

- [3-8.01 Adoption of purchasing system.](#)
- [3-8.02 Definitions.](#)
- [3-8.03 Purchasing Officer.](#)
- [3-8.04 Purchasing regulations.](#)
- [3-8.05 Exemptions from centralized purchasing.](#)
- [3-8.06 Estimates of requirements.](#)
- [3-8.07 Requisitions.](#)
- [3-8.08 Emergency procedures.](#)
- [3-8.09 Bidding.](#)
- [3-8.10 Purchase orders.](#)
- [3-8.11 Funding of purchases.](#)
- [3-8.12 Public project bidding procedures.](#)
- [3-8.13 Open market procedure.](#)
- [3-8.14 Small purchases.](#)
- [3-8.15 Local business enterprise credit.](#)
- [3-8.16 Professional and other services excluded.](#)
- [3-8.17 Public projects excluded.](#)
- [3-8.18 Disposition of obsolete and surplus property.](#)
- [3-8.19 Approval of modifications and change orders by City Manager.](#)
- [3-8.20 Gratuities.](#)
- [3-8.21 Contract splitting.](#)
- [3-8.22 Purchasing manual.](#)

3-8.01 Adoption of purchasing system.

In order to establish efficient procedures for the purchase of supplies and equipment, to secure for the City supplies and equipment at the lowest possible cost commensurate with quality needed, to exercise positive financial control over purchases, to clearly define authority of the purchasing function and to assure the quality of purchases, a purchasing system is hereby adopted.

(Ord. 92-03 (part), 1992)

3-8.02 Definitions.

As used in this chapter, unless the context otherwise clearly indicates:

"Contract" means a written agreement between the City and a vendor, including a purchase order issued to a vendor.

"Local business enterprise" means a business entity with fixed offices or distribution points located within the boundaries of the City, listed in the business license tax files with a City of Avenal business

address, and designating, for sales tax purposes, the City of Avenal as the point of sale for retail transactions.

"Purchasing Officer" means the City Manager, or his or her designated representative.

"Using agency" shall mean any office, department, bureau, commission, board or other agency of the City using supplies or equipment.

(Ord. 92-03 (part), 1992)

3-8.03 Purchasing Officer.

The Purchasing Officer shall be the City Manager or a person appointed by the City Manager as his or her designated representative. The Purchasing Officer may delegate duties to other employees. The duties of Purchasing Officer may be combined with those of any other office or position. The Purchasing Officer shall have authority to:

- (a) Purchase and contract for all supplies and equipment required by any using agency in accordance with purchasing procedures prescribed by this chapter, such administrative regulations as the Purchasing Officer shall adopt, and such other rules and regulations as shall be prescribed by the City Manager;
- (b) Negotiate and recommend execution of contracts for the purchase of supplies and equipment;
- (c) Act to procure for the City the needed quality in supplies and equipment at least expense to the City;
- (d) Discourage collusive bidding and endeavor to obtain as full and open competition as possible on all purchases;
- (e) Prepare and recommend rules governing purchasing, maintaining an inventory, and warehousing of supplies and equipment of the City;
- (f) Keep informed of current developments in the fields of purchasing, prices, market conditions and new products;
- (g) Prescribe and maintain such forms as are reasonably necessary to the operation of this chapter and other rules and regulations;
- (h) Be responsible for the inspection of all supplies and equipment purchased to insure conformance with specifications, and, where necessary, to require chemical and physical tests of samples submitted with bids and samples of deliveries to determine their quality and conformance with specifications;
- (i) Recommend the transfer of surplus or unused supplies and equipment between City departments as needed and the sale or other disposition of all supplies and equipment which cannot be used by any using agency or which have become obsolete or otherwise unsuitable for City use;
- (j) Maintain a bidders' list, vendors catalog file and records needed for the efficient operation of the purchasing division;
- (k) Perform such other duties and functions as may be necessary.

(Ord. 92-03 (part), 1992)

3-8.04 Purchasing regulations.

The Purchasing Officer shall be responsible for determining that the regulations and procedures set forth in this chapter are carried out.

(Ord. 92-03 (part), 1992)

3-8.05 Exemptions from centralized purchasing.

The Purchasing Officer may authorize, in writing, any using agency to purchase and contract for specified supplies and equipment independently of the purchasing division; but the Purchasing Officer shall require that such purchases and contracts be made in conformity with the procedures established by this chapter, and shall further require periodic reports from the using agency on the purchases and contracts made under such written authorization.

(Ord. 92-03 (part), 1992)

3-8.06 Estimates of requirements.

All using agencies shall file detailed estimates of their requirements in supplies and equipment in such manner, at such time, and for such future periods as the Purchasing Officer shall prescribe.

(Ord. 92-03 (part), 1992)

3-8.07 Requisitions.

Using agencies shall submit requests for supplies and equipment to the purchasing agent by standard purchase requisition forms.

(Ord. 92-03 (part), 1992)

3-8.08 Emergency procedures.

With regard to public works purchases, if there is a great public calamity, such as an extraordinary fire, flood, storm, epidemic, or other disaster, or if it is necessary to do emergency work to prepare for national or local defense, the City Council may pass a resolution by a four-fifths (4/5) vote of its members declaring that the public interest and necessity demand the immediate expenditure of public money to safeguard life, health or property. Upon adoption of the resolution, it may expend any sum required in the emergency without complying with the provisions of this chapter as they apply to such public works purchases.

(Ord. 92-03 (part), 1992)

3-8.09 Bidding.

Unless Section 3-8.12 is applicable, the purchase of supplies and equipment shall be by openmarket procedures pursuant to Section 3-8.13. Formal bidding procedures required pursuant to Section 3-8.12 may be dispensed with only:

- (a) When the City Manager finds that such supplies or equipment are unique because of their quality, durability, availability, or fitness for a particular use and are available from only one source; or
- (b) When an emergency, as determined by the City Manager, requires that the purchase be completed within a period of time which will not permit normal bidding or quotation procedures; or
- (c) When there is a breakdown in essential machinery or in an essential service, or when unforeseen circumstances arise including delays by contractors, delays in transportation, and unanticipated volume of work which requires the immediate attention of a professional or immediate service/repair in order to protect the public health, safety or welfare; or

- (d) When an essential operation affecting the preservation of life or property, public health, safety or welfare would be greatly hampered if the prescribed procedure would cause an undue delay in the procurement of the needed services or materials; or
- (e) When the City has contracted with another governmental entity to purchase particular supplies or equipment on a cooperative basis; or
- (f) When the City Manager determines that due to the nature of the supplies or equipment, formal bidding is not likely to result in the lowest price.

(Ord. 92-03 (part), 1992)

3-8.10 Purchase orders.

Purchases of supplies and equipment shall be made by contract, which may include a purchase order.

(Ord. 92-03 (part), 1992)

3-8.11 Funding of purchases.

The Purchasing Officer shall not authorize or issue a written contract for supplies or equipment unless there exists a sufficient unencumbered appropriation in the fund account against which the purchase is to be charged.

(Ord. 92-03 (part), 1992)

3-8.12 Public project bidding procedures.

- (a) Intent.
 - (1) It is the intent of this chapter to direct and authorize the establishment and maintenance of informal bidding procedures for the City of Avenal in accordance with Section 22034 of the Public Contract Code to govern the selection of contractors to perform public projects under the Uniform Public Construction Cost Accounting Act (the "Act").
 - (2) This chapter shall be in effect throughout the City of Avenal and shall apply to the performance of all public projects undertaken by, or to be undertaken by, the City of Avenal, and it shall be liberally construed for the accomplishment of its purposes.
- (b) Definitions. For the purpose of this chapter, the terms, phrases, and words used in this section shall have the same meaning given them in the Public Contract Code of the State of California. When not inconsistent with the context, words used in the present tense include the future, words used in the plural include the singular, and words used in the singular include the plural. The words "include," "including" or other similar words of inclusion shall mean without limitation or restriction.
- (c) Force account negotiated contract purchase order. Any public project to be undertaken by the City of Avenal, the estimated cost of which is less than thirty thousand dollars (\$30,000.00), may be performed by the City of Avenal.
- (d) Informal bidding requirements.
 - (1) Any public project to be undertaken by the City, the estimated cost of which is less than one hundred twenty-five thousand dollars (\$125,000.00) may be let to contract by the informal procedures established in this section.
 - (2) A list of contractors shall be developed and maintained in accordance with the provisions of Section 22034 of the Public Contract Code and in accordance with criteria promulgated from time to time by the California Uniform Construction Cost Accounting Commission.

- (3) Where a public project is to be performed which is subject to the provisions of this section, a notice inviting informal bids shall be mailed to all contractors for the category of work to be bid, as shown on the list of contractors described in subsection (d)(2) of this section, or to all construction trade journals as specified by the California Uniform Construction Cost Accounting Commission in accordance with Section 22036 of the Public Contract Code. Additional contractors or construction trade journals may be notified at the discretion of the City of Avenal, provided, however:
- (i) If there is no list of qualified contractors maintained by the City of Avenal for the particular category of work to be performed, the notice inviting bids shall be sent only to the construction trade journals specified by the California Uniform Construction Cost Accounting Commission.
 - (ii) If the product or service is proprietary in nature such that it can be obtained only from a certain contractor or contractors, the notice inviting informal bids may be sent exclusively to such contractor or contractors.
- (e) Administrative authority. The Public Works Director, with the written concurrence of the City Manager, is hereby authorized to award contracts pursuant to the informal procedures established in this chapter, subject to the requirement that the current adopted City of Avenal budget provides for the work.
- (f) Limitations. Nothing in this chapter shall prohibit, or construed to prohibit, the City Council of the City of Avenal, the Public Works Director, or the City Manager from utilizing the alternative procedures set forth in (1) Article 25 (commencing with Section 20390) of Chapter 1 of Part 3 of Division 2 of the Public Contract Code, or (2) in Article 7 (commencing with Section 25500) of Chapter 5 of Part 2 of Division 2 of Title 3 of the Government Code.

(Ord. 95-12 § 1, 1995; Ord. 95-11 § 1, 1995; Ord. 92-03 (part), 1992; Res. No. 2009-14, 6-3-2009)

3-8.13 Open market procedure.

Purchases of supplies and equipment of an estimated value in an amount less than fifty thousand dollars (\$50,000.00) but greater than twenty-five thousand dollars (\$25,000.00) may, upon receipt and approval of a purchase requisition executed by a department manager, be made by the Purchasing Officer in the open market without observing the formal bidding procedures prescribed by Section 3-8.12.

- (a) Minimum number of quotations. Open market purchases shall, wherever practicable, be based on at least three (3) quotations and shall be awarded to the lowest responsible vendor, except as otherwise provided herein.
- (b) Inviting quotations. The Purchasing Officer may solicit quotations by written requests to prospective vendors, by telephone or by public notice posted on a public bulletin board in the Avenal City Hall, or by any other means deemed effective.
- (c) Quotations. Sealed, written quotations shall be submitted to the Purchasing Officer, who shall keep a record of all open market quotations and contracts for a period of two (2) years after submission of quotations or the execution of contracts. This record, while kept, shall be open to public inspection, except that vendor proprietary data shall not be open to public inspection.

(Ord. 92-03 (part), 1992)

3-8.14 Small purchases.

All ordinary purchases of day-to-day supplies or capital acquisitions with a value of less than five thousand dollars (\$5,000.00) shall be made at the discretion and direction of the Purchasing Officer. No bidding procedures, formal or otherwise, or any other formal procedures or requirements, shall be necessary.

(Ord. 92-03 (part), 1992)

3-8.15 Local business enterprise credit.

In determining the lowest responsible bidder pursuant to Section 3-8.12, or the lowest responsible vendor pursuant to Section 3-8.13, the Purchasing Officer shall be authorized to give credit of up to one percent of the bid price or quotation to a local business enterprise. If such credit is to be given, the dollar or percentage amount thereof shall be set forth in the notice inviting bids or in the request for quotations. The Purchasing Officer shall provide a form by which a local business enterprise shall document and certify that it qualifies for such credit, where applicable.

(Ord. 92-03 (part), 1992)

3-8.16 Professional and other services excluded.

Except as provided in Section 3-8.19, the procedures set forth in this chapter shall not apply to purchase orders or contracts for professional or other services. The City Manager shall prepare an administrative instruction setting forth the procedures to be followed by all city departments in contracting for professional and other services, which procedures shall be approved by the City Council.

(Ord. 92-03 (part), 1992)

3-8.17 Public projects excluded.

Except for Section 3-8.19, the procedures set forth in this chapter shall not apply to a "public project," as said term is defined in Section 20161 of the Public Contract Code, when the expenditure required therefor exceeds five thousand dollars (\$5,000.00). The procedures to be followed by the Purchasing Officer and all city departments in contracting for a public project shall be in conformity with state law, including without limitation the Public Contract Code and the Labor Code.

(Ord. 92-03 (part), 1992)

3-8.18 Disposition of obsolete and surplus property.

Each using agency shall submit to the Purchasing Officer at least annually a report describing all supplies, equipment, materials, fixtures, and other personal property of the City in the agency's custody which is deemed to be surplus or which has become obsolete or unserviceable.

- (a) Subject to subsection (e) of this section, the Purchasing Officer, with the approval of the City Manager, is authorized from time to time to sell or exchange any and all supplies, equipment, materials, fixtures, and other personal property of the City having a salvage value and which is obsolete or unserviceable, or is deemed to be surplus, or for which replacements are to be purchased. The Purchasing Officer may sell the same for the best price obtainable in the open market, or, when it is deemed advisable, to the highest bidder at a public sale, or the Purchasing Officer may exchange the same for other property or for credit on other property.
- (b) If the Purchasing Officer determines that any such obsolete, unserviceable, or surplus property has no salvage value, it may be disposed of, with the approval of the City Manager, in any acceptable manner.
- (c) All sales shall be paid for in cash or by certified check or money order payable to the City.
- (d) The Purchasing Officer shall be authorized, with the approval of the City Manager, to sign bills of sale and any other documents evidencing transfer of title to such property by and on behalf of the City.

- (e) Prior to disposing of any obsolete, unserviceable or surplus property having an estimated market value in excess of one thousand dollars (\$1,000.00), the Purchasing Officer shall inform the City Council of the nature of the property proposed for disposition and the proposed sales price. Such disposition shall be subject to the City Council's prior approval.

(Ord. 92-03 (part), 1992)

3-8.19 Approval of modifications and change orders by City Manager.

The City Manager shall have the authority to approve modifications and change orders as follows:

- (a) After the effective date of any contract executed on behalf of the City for the purchase of equipment or supplies, the retention of professional or other services, or work on a public project, the City Manager shall have authority to approve in writing any modification involving an addition to, deletion from, or revision in any item in such contract, including, without limitation, plans, specifications and extra work, and change orders relating to the nature or quantity of services, equipment, supplies or work, subject to the following limitations:
 - (1) The dollar amount of all such modifications or change orders relating to any one contract having an original contract price of one million dollars (\$1,000,000.00) or less shall not exceed fifty thousand dollars (\$50,000.00) or twenty (20) percent of the original contract price, whichever is less.
 - (2) The dollar amount of all such modifications or change orders relating to any one contract having an original contract price of one million one dollars (\$1,000,001.00) or more shall not exceed one hundred thousand dollars (\$100,000.00).
- (b) The authority herein conferred upon the City Manager may, in the sound discretion of the City Manager, be delegated in whole or in part to a department manager or other designated employee or agent of the City.
- (c) In connection with any specific contract where the circumstances so warrant, the City Council may, by resolution, authorize the City Manager to exceed the specific dollar amounts or percentage limitations set forth in divisions (1) and (2) of subsection (a) of this section.
- (d) If a proposed contract modification, change order or request for extra work exceeds the limitations imposed upon the City Manager by this section or by resolution, and any extended delay in obtaining City Council approval is reasonably determined to subject the City to liability for damages incurred by a contractor, or to jeopardize the public health, welfare or safety, or to otherwise result in potential detriment to the City, then the City Manager shall have authority to exceed the dollar amounts or percentage limitations specified herein.
- (e) The City Manager shall, not less frequently than every six (6) months, report to the City Council on modifications and change orders which are approved pursuant to this Section 3-8.19.

(Ord. 92-03 (part), 1992)

3-8.20 Gratuities.

Each officer and employee of the City is hereby prohibited from accepting, directly or indirectly, any rebate, gift, money, or anything of value whatsoever from any person to whom any purchase order or contract is or might be awarded.

(Ord. 92-03 (part), 1992)

3-8.21 Contract splitting.

It is unlawful to split or separate into smaller portions, work orders, projects, purchases, contracts or any public work project for the purpose of evading the provisions of this chapter, including the splitting of work or services between or among departments or divisions or other organizational units of the City.

(Ord. 92-03 (part), 1992)

3-8.22 Purchasing manual.

The Purchasing Officer shall prepare a purchasing manual which will clearly define and describe the aims and purposes of this chapter. The purchasing manual shall describe and explain in detail the procedures that the using agencies must follow in the procurement of supplies and services.

(Ord. 92-03 (part), 1992)

Chapter 9 CRIMINAL JUSTICE ADMINISTRATIVE FEES

Sections:

[3-9.01 Statutory authority.](#)

[3-9.02 Purpose.](#)

[3-9.03 Definitions.](#)

[3-9.04 Procedures.](#)

[3-9.05 Delinquencies.](#)

[3-9.06 Alternatives.](#)

[3-9.07 Reimbursement.](#)

[3-9.08 Appeal.](#)

3-9.01 Statutory authority.

This chapter is enacted in accordance with the provisions of Sections 29550 and 29550.1 of the California Government Code and Article VIII, Section 22-120 of the Kings County Code.

(Ord. 94-03 § 1 (part), 1994)

3-9.02 Purpose.

The purpose of this chapter is to provide for the recovery of fees imposed against the City of Avenal for the reimbursement of expenses incurred by the County of Kings in the booking or other processing of persons arrested by employees or agents of the City of Avenal and brought to the Kings County Jail for booking or detention.

(Ord. 94-03 § 1 (part), 1994)

3-9.03 Definitions.

- (a) Criminal justice administrative fee. As used in this chapter, "Criminal Justice Administrative Fee" shall mean the fees provided for by California Government Code Section 29550 and Article VIII, Section 22-120 of the Kings County Code.
- (b) Criminal justice administrative fee recovery program. As used in this chapter, "Criminal Justice Administrative Fee Recovery Program" (the "Program") shall mean the City of Avenal's program for the recovery of criminal justice administrative fees in pursuant to the provisions of California Government Code Section 29550.1 and in accordance with the procedures set forth in this chapter.
- (c) Program Manager. As used in this chapter, "Program Manager" shall mean the City Manager of the City of Avenal or any individual or individuals designated by the City Manager to perform the functions of Program Manager.

(Ord. 94-03 § 1 (part), 1994)

3-9.04 Procedures.

- (a) A person arrested by an officer or agent of the City of Avenal will be billed for the amount of any criminal justice administrative fee imposed against the City of Avenal if the arrested person is convicted of any criminal offense related to the arrest.
- (b) The City of Avenal will bill the arrested and convicted person for the criminal justice administrative fees imposed by the County of Kings pursuant to Government Code Section 29550 and Kings County Ordinance No. 495, Section 2 (Article VIII, Section 22-120 et seq. of the Kings County Code).
- (c) The City of Avenal will treat the bill for criminal justice administrative fees as a civil debt of that person which is collectible by the City in the same manner as a contract obligation.

(Ord. 94-03 § 1 (part), 1994)

3-9.05 Delinquencies.

- (a) If the bill for criminal justice administrative fees is not paid within thirty (30) days after the initial bill is mailed by the City, or no arrangements are made for partial payment during the thirty (30) dayperiod, then the bill will be considered delinquent.
- (b) If a person refuses to pay a bill for criminal justice administrative fees, the City may pursue recovery in Small Claims Court. Such an action will not be initiated until after the criminal charges have been adjudicated.

(Ord. 94-03 § 1 (part), 1994)

3-9.06 Alternatives.

- (a) As an alternative to the procedure set forth in Section 3-8.04 of this chapter, the City may, in all appropriate cases:
 - (1) Seek to have payment of the bill for criminal justice administrative fees imposed as a condition of probation; or
 - (2) Seek to have an order for payment of the amount of the criminal justice administrative fees included in the judgment of conviction.
- (b) In all cases where an order for payment of the amount of the criminal justice administrative fee is included in the judgment of conviction, execution may be issued on the order in the same manner as a judgment in a civil action, but the order shall not be enforceable by contempt.

(Ord. 94-03 § 1 (part), 1994)

3-9.07 Reimbursement.

If a person who has paid a bill for criminal justice administrative fees is not convicted of criminal charges, the City will allow for reimbursement. A request for reimbursement must be made within thirty (30) days after the defendant has been acquitted or the charges against the defendant have been dismissed.

(Ord. 94-03 § 1 (part), 1994)

3-9.08 Appeal.

Any person receiving a bill for criminal justice administrative fees has the right to appeal the bill to the Program Manager within thirty (30) days of receipt of the bill. The Program Manager will review the bill for accuracy. If the bill is found to be in error, then the bill will be corrected or, if appropriate, rescinded.

(Ord. 94-03 § 1 (part), 1994)

Chapter 10 FRANCHISE FEES

Sections:

[3-10.01 Regulation of franchise.](#)

[3-10.02 Franchise required.](#)

[3-10.03 Matters subject to franchise.](#)

[3-10.04 Franchises—Authority of the City Council.](#)

[3-10.05 Franchise terms.](#)

[3-10.06 Franchise consideration.](#)

[3-10.07 Franchise application.](#)

[3-10.08 Application fee.](#)

[3-10.09 Franchise—Call for bids discretionary.](#)

[3-10.10 Application—Referral.](#)

[3-10.11 Franchise—Notice of hearing.](#)

[3-10.12 Hearing.](#)

[3-10.13 Franchise bond.](#)

[3-10.14 Transportation franchise.](#)

[3-10.15 Acceptance of franchise.](#)

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[3-10.17 Franchise—Obligation of grantee.](#)

[3-10.18 Franchise payments.](#)

[3-10.19 Property subject to franchise.](#)

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[3-10.26 Reservations of rights.](#)

[3-10.27 Relocation of facilities.](#)

[3-10.28 Failure to relocate.](#)

[3-10.29 Special permits.](#)

[3-10.30 Application for special permit.](#)

[3-10.31 Special permits—Granting.](#)

[3-10.32 Special permits—Bond.](#)

3-10.01 Regulation of franchise.

Every franchise hereafter granted by the City of Avenal for the use of the City streets for any purpose, except as otherwise provided in the ordinance granting such franchise, shall be granted upon and be subject to the following rules, regulations, restrictions, terms and conditions, which are hereby deemed incorporated into each such ordinance, in addition to the rules, regulations, restrictions, terms and conditions set forth in the ordinance granting each such franchise.

(Ord. 96-04 § 1 (part), 1996)

3-10.02 Franchise required.

No person, firm or corporation shall exercise any franchise, permit or privilege mentioned herein, except insofar as he, she or it may be entitled to do so by direct authority of the Constitution of the State of California or the Constitution or laws of the United States, in, upon, over, under or along any public place in the City of Avenal, or within the City limits of the City of Avenal, unless he, she or it shall have obtained a grant therefor in accordance with the provisions hereof and any applicable provisions of the Municipal Code of the City of Avenal. Nothing herein contained shall be construed to invalidate any lawful franchise heretofore granted, nor to necessitate the obtaining of a new franchise for a use for which a franchise holder shall have a valid, unexpired franchise.

(Ord. 96-04 § 1 (part), 1996)

3-10.03 Matters subject to franchise.

Except insofar as he, she or it may be entitled to do so by direct authority of the Constitution of California or the Constitution or laws of the United States, no person, firm or corporation shall exercise any privilege enumerated in this section unless he, she or it shall have been granted an appropriate franchise therefor by the City of Avenal, namely:

- (a) Collect, transport or dispose of solid waste or recyclables along, upon, over, under, in, across or along any public place in the City of Avenal, or within the City limits of the City of Avenal;
- (b) Construct, maintain or operate a street, interurban, underground or elevated steam or commercial railroad, or other system for transporting or conveying passengers or freight (including any appurtenances which are a part of the system), over a fixed route, along, upon,

over, in, under or across any public place in the City of Avenal, or within the City limits of the City of Avenal;

- (c) Construct, maintain or operate pipes, tubes or conduits along, upon, over, in, under or across any public place in the City of Avenal, or within the City limits of the City of Avenal, for the purpose of transmitting or distributing water, gas, steam, oil, air or other substance or utility;
- (d) Erect, construct, lay, maintain or operate poles, pipes, conduits, wires, cables or appurtenances upon, over, under, in, across or along any public place in the City of Avenal, or within the City limits of the City of Avenal, for the purpose of transmitting or distributing power, heat, electricity or electric energy, or for a communication by telephone, telegraph or other system; or
- (e) Construct, maintain or operate any other plants or system necessary or convenient for furnishing the City and its inhabitants with solid waste disposal, recycling, transportation, communication, water, light, power or other public utility services.

The term "public place" as used herein shall be deemed to include any street, lane, alley, court or other public place in the City.

The term "City limits" as used herein means the incorporated area of the City of Avenal, as it now or may hereafter exist.

Nothing in this section shall be construed as applying to spur or side tracks, nor to require motor, contract or other carriers of freight or passengers not operating over a fixed route to obtain franchises for use of any public place in the City.

(Ord. 96-04 § 1 (part), 1996)

3-10.04 Franchises—Authority of the City Council.

Pursuant to its constitutional and statutory authority, the City Council may grant franchises and privileges for all of the purposes enumerated herein to persons, firms and corporations, whether operating under any existing franchise or not, upon such terms and conditions as are in the applicable provisions of the Avenal Municipal Code and any ordinances adopted pursuant thereto, and may in such franchises impose such other and additional terms and conditions not in conflict with the Municipal Code, whether governmental or contractual in character, as in the judgment of the City Council are in the public interest.

(Ord. 96-04 § 1 (part), 1996)

3-10.05 Franchise terms.

Franchises may be granted for either a fixed or an indeterminate period. An indeterminate franchise shall provide that it shall endure in full force and effect until the same, with the consent of the appropriate state or federal agency, shall be voluntarily surrendered or abandoned by its possessor, or until the State of California, or some municipal or public corporation, duly authorized by law, shall purchase by voluntary agreement or shall condemn and take, under the power of eminent domain, the property actually used and useful in the exercise of such franchise and situate within the City limits of the City of Avenal or until the franchise shall be forfeited for noncompliance with its terms by the possessor thereof, or until it is terminated in any other manner that may be specified in the franchise grant.

(Ord. 96-04 § 1 (part), 1996)

3-10.06 Franchise consideration.

No franchise shall be granted without reserving to the City adequate consideration for the privilege conferred. As part of the consideration for the granting of each franchise, the grantee shall agree to pay the purchase price, if any, for such franchise as set forth in the ordinance granting the franchise, and to make the franchise payment, if any such payment shall have been fixed by the City Council, and the

grantee shall also agree to perform all covenants and agreements set out in the ordinance granting the franchise.

The City Council shall have the right, but shall not be obligated, to recognize that extensions of services, betterment of services, surrendering of existing franchises or parts thereof, settling litigation between the grantee and the City, or the performance by grantee of franchise obligations, may be consideration (other than the franchise payment) of benefit to the City and its inhabitants.

In determining the amount of adequate consideration for the franchise or the amount of the franchise payment, if any, to be paid by a grantee, the City Council shall have the right, but not the obligation, to give weight to such factors as are enumerated in this section.

(Ord. 96-04 § 1 (part), 1996)

3-10.07 Franchise application.

An applicant for any franchise above mentioned shall file with the City Council a verified application which shall state:

- (a) The name of the applicant;
- (b) The purpose and term, whether definite or indeterminate, for which the franchise is desired;
- (c) The amounts and/or percentages, if any, applicant, if granted the franchise, proposes to pay to the City during the life of such franchise;
- (d) Any limitations as to time, place or type of services proposed by applicant; and
- (e) Any other terms or conditions that applicant may desire, including surrender of existing franchises, or parts thereof, or claims to such franchises, or proposals to settle any litigation or controversies between applicant and the City.

Unless the franchise is to cover all of the incorporated territory of the City, the application shall be accompanied by six (6) copies of a map, drawn to scale, showing the location boundaries of the area to be described in the franchise. Franchise applications shall set forth such other information as the City Council may require.

(Ord. 96-04 § 1 (part), 1996)

3-10.08 Application fee.

Every application for a franchise, permit or privilege shall be accompanied by a cash deposit of not less than five hundred dollars (\$500.00), or by a certified check for such amount, payable to the City, as a fund out of which to pay all expenses connected with such application, including, but not limited to, all advertising and publishing costs. The deposit of the applicant shall be retained until the acceptance of the franchise and the filing of any bond or other security required, or until the City Council determines not to grant the franchise. Thereupon, the remainder, if any, of the five hundred dollars (\$500.00) after the payment therefrom of all such expenses incurred by the City shall be returned to the applicant.

(Ord. 96-04 § 1 (part), 1996)

3-10.09 Franchise—Call for bids discretionary.

The City Council may grant a franchise without calling for bids or may, in its discretion, advertise for bids for the sale of a franchise after notice inviting bids therefor, upon a basis not in conflict with the provisions of the Avenal Municipal Code, to be set out in advertisements for bids and notice of sale, provided that no bidding shall be had or required upon any renewal of a franchise, surrender of existing franchise or parts thereof, or in settlement of litigation between the grantee and the City.

(Ord. 96-04 § 1 (part), 1996)

3-10.10 Application—Referral.

Every application made to the City Council for a franchise, privilege or permit mentioned herein shall, before any action is taken thereon, be referred by the City Council to the City Manager and City Attorney for their respective recommendations.

Before making his or her recommendation to the City Council, the City Manager shall obtain the recommendations of the Director of Public Works, the Planning Director and the City Engineer.

(Ord. 96-04 § 1 (part), 1996)

3-10.11 Franchise—Notice of hearing.

Upon receipt of the City Manager's recommendation, the City Council may pass a resolution declaring its intention to consider the franchise application, stating the character of the same, setting forth a notice of the day, hour and place when and where any and all persons having any objection to the granting thereof may appear before the City Council and be heard thereon, and directing the City Clerk to publish said notice at least once within fifteen (15) days after the passage of said resolution. The time fixed for such hearing shall be not less than twenty (20) nor more than sixty (60) days after the date of the passage of said resolution.

Such notice shall state: (a) the name of the applicant; (b) the character of the franchise; (c) its terms, whether definite or indeterminate; (d) the amounts and/or percentages, if any, grantee shall pay to the City during the life of such franchise; (e) any limitations as to time, place or type of services proposed; (f) the amount and character of any bond or other security required; and (g) an outline of any other major provisions of the proposed franchise.

(Ord. 96-04 § 1 (part), 1996)

3-10.12 Hearing.

At any time not later than the hour set for the hearing of objections, any person interested may file a written protest stating objections against the granting of such franchise. Such protest must be signed by the protestant and be delivered to the City Clerk. At the time set for hearing objections, the City Council shall proceed to hear and pass upon all protests so made and its decision shall be final and conclusive. The City Council may adjourn said hearing from time to time.

If no protest in writing shall have been delivered to the Clerk up to the hour set for hearing, or such protests as shall have been filed shall have been heard and determined by the City Council to be insufficient, or shall have been overruled or denied, the City Council may grant such franchise. Such franchise shall be granted by ordinance adopted in the manner prescribed by law.

(Ord. 96-04 § 1 (part), 1996)

3-10.13 Franchise bond.

The City Council may require the grantee of any franchise to provide such bond or other security as it deems the public interest requires.

(Ord. 96-04 § 1 (part), 1996)

3-10.14 Transportation franchise.

Every franchise granted a transportation company shall specify the area in which the grantee shall operate, the public places or routes to be followed by the tracks or vehicles of the grantee; which area, public places and routes shall be subject to the lawful orders of the Public Utilities Commission of the State of California.

(Ord. 96-04 § 1 (part), 1996)

3-10.15 Acceptance of franchise.

The grantee of any franchise granted hereunder shall within ten (10) days after the franchise is granted, file with the City Clerk a written acceptance of the terms and conditions thereof and any bond or other security required by the City Council. By its acceptance of any franchise, the grantee shall covenant and agree to perform and be bound by all of the terms and conditions imposed by the Avenal Municipal Code, this chapter and the franchise.

(Ord. 96-04 § 1 (part), 1996)

3-10.16 Grant in lieu of all other franchises.

Any franchise granted by the City with respect to a particular utility service shall be in lieu of all other franchises, rights, or privileges then owned by the grantee for the furnishing of that particular utility or service within the City limits, and by acceptance of any franchise hereunder the grantee shall be deemed to have waived and abandoned all other franchises, rights and privileges then owned by the grantee for the furnishing of that particular utility or service within the City limits. The provisions of this section shall not apply to any franchise, right or privilege obtained by direct authority of the Constitution of the State of California or of the United States.

(Ord. 96-04 § 1 (part), 1996)

3-10.17 Franchise—Obligation of grantee.

The grantee of any franchise granted pursuant to this ordinance shall:

- (a) Construct, install and maintain all tracks, pipes, tubes, conduits, poles, wires, instrumentalities and appurtenances in accordance and in conformity with all of the lawful ordinances, rules and regulations theretofore or thereafter adopted by the City of Avenal in the exercise of its police powers and, as to state highways, subject to the provisions of general laws relating to the location and maintenance of such facilities therein, and with as little hindrance as practicable to the use of the streets for purpose of travel;
- (b) Upon completion of the construction, installation or maintenance of such tracks, pipes, tubes, conduits, poles, wires, instrumentalities and appurtenances, place all portions of the streets which have been excavated or otherwise injured thereby in as good condition as before the work of construction, installation or maintenance to the satisfaction of the Public Works Director;
- (c) Pay to the City on demand the cost of all repairs to public property made necessary by any operations of the grantee under such franchise;
- (d) Indemnify and hold harmless the City and its officers, agents, employees and volunteers from any and all liability for damages proximately resulting from any operations under such franchise;
- (e) Make such reports as the City or the franchise may specify;

- (f) At all reasonable times, permit any duly authorized representative of the City to examine and transcribe any and all books, accounts, papers, maps and other records kept or maintained by the grantee or under its control as the City deems material to the determination of the performance of the franchise obligations and as the franchise may require; and
- (g) At all reasonable times, permit any duly authorized representative of the City to examine any and all property of the grantee erected, constructed, laid, operated or maintained pursuant to the franchise, together with any appurtenant property of the grantee.

(Ord. 96-04 § 1 (part), 1996)

3-10.18 Franchise payments.

Franchise payments shall be due and payable monthly within ten (10) days following the first day of each month after the granting of the franchise. In the event a franchise payment is not made within ten (10) days following the first day of each month, the grantee shall further pay interest on the amount due at the rate of one percent per month.

(Ord. 96-04 § 1 (part), 1996)

3-10.19 Property subject to franchise.

All facilities erected, constructed, laid, operated or maintained by the grantee in highways, including services connected with the grantee's facilities, whether installed by the grantee or not, in the area described in and by virtue of the authority provided by the ordinance granting the franchise, prior to the effective date of such ordinance, except those maintained under prior right other than franchise, shall become subject to all the terms and conditions of such ordinance upon such effective date.

(Ord. 96-04 § 1 (part), 1996)

3-10.20 City property.

A franchise does not give the grantee the right to attach any pipe, conduit or other facility to any bridge or other City structure. Such attachments shall be made only in accordance with the provisions of the ordinances and regulations of the City, as they now exist or are hereafter amended or superseded.

(Ord. 96-04 § 1 (part), 1996)

3-10.21 Right to abandon property.

The Public Works Director, upon such terms and conditions as he or she may see fit to impose, may give the grantee of the franchise permission to abandon, without removing, any facility laid, erected, constructed, operated or maintained under the franchise. The length of any such facility abandoned with such permission shall not be considered in calculating payments due under the franchise except for the time prior to the effective date of such permission. Nothing contained in the franchise shall be construed to permit the grantee any right to omit from its annual reports, if such reports are required, and from the calculation of franchise payments the length of any abandoned facility of grantee except in the manner aforesaid. Unless such permission is granted, the grantee shall remove all abandoned facilities within ninety (90) days after such abandonment and shall restore the street to its former state at the time such facilities were removed, as near as may be, so as not to impair its usefulness.

(Ord. 96-04 § 1 (part), 1996)

3-10.22 Purchase by City.

Every franchise shall reserve to the City the right to purchase the property of grantee either at an agreed price or a price to be determined in a manner to be prescribed in the grant, to the extent that such purchase may be authorized or permitted by law.

(Ord. 96-04 § 1 (part), 1996)

3-10.23 Remedies of the City.

If any person, firm or corporation shall exercise a right or privilege for which he, she or it is required by the Avenal Municipal Code to obtain a franchise without having first obtained such franchise from the City, the City may establish by ordinance the reasonable amount or percentage that such person, firm or corporation shall pay to the City for the exercise of such right or privilege within the City for which a franchise is required, and if such person, firm or corporation shall thereafter fail to pay to the City on demand such amount or percentage which has been so established by ordinance, the City shall have the right to enforce the payment thereof from such person, firm or corporation. If the grantee of any franchise shall fail or refuse to comply with any of the provisions or conditions set out in any franchise ordinance enacted by the City Council, the City may declare a forfeiture, and/or may sue such person, firm or corporation for damages for such noncompliance, and/or may exercise any other rights or remedies provided by law.

(Ord. 96-04 § 1 (part), 1996)

3-10.24 Penalty for exercising rights without franchise.

In addition to any other remedies that the City may have, any person, firm or corporation exercising any right or privilege for which a franchise is required, without possessing a valid and existing franchise therefor, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars (\$500.00) or by imprisonment not exceeding six (6) months, or by both such fine and imprisonment. Each such person, firm or corporation shall be deemed guilty of a separate offense for each day during any portion of which said person, firm or corporation exercises any privilege for which a franchise is required, without possessing a valid and existing franchise therefor, and shall be punishable therefor as provided for in this ordinance.

(Ord. 96-04 § 1 (part), 1996)

3-10.25 Franchise assignment.

No franchise, permit or privilege granted by the City of Avenal shall be, in whole or in part, leased, assigned, transferred or otherwise disposed of without the express written consent of the City, provided that nothing herein shall be construed to prevent the grantee of such franchise, permit or privilege from including it in a mortgage or trust deed without such express consent of the City.

(Ord. 96-04 § 1 (part), 1996)

3-10.26 Reservations of rights.

- (a) The City reserves the right to change the grade, to change the width or to alter or change the location of any street over which the franchise is granted.
- (b) The City reserves the right for itself and public entities which are now or may later be established to lay, construct, repair, alter, relocate and maintain subsurface or other facilities or improvements of any type or description within the City streets over which the franchise is granted. If the City or other public entity finds that the location or relocation of such facilities or improvements conflicts with the

facilities laid, constructed or maintained under the franchise, whether such facilities were laid before or after the facilities of the City or such public entity were laid, the grantee of such franchise shall at no expense to the City or public entity, on or before a date specified in a written request from the Public Works Director, which date shall be not less than thirty (30) days after the receipt of such notice and request to do so, commence work to change the location either permanently or temporarily of all facilities so conflicting with such improvements to a permanent or temporary location in said highways to be approved by the Public Works Director. Grantee shall thereafter diligently prosecute such work to completion. If such street be subsequently constituted a state highway, while it remains a state highway the rights of the State of California shall be as provided in Streets and Highways Code Section 680 as it presently exists or may be amended or superseded.

- (c) The City reserves the right for itself, for all cities and public entities which are now or may be later established, to improve the surface of any City street over which the franchise is granted, upon written notice that the grantor intends to improve any such City street within the territory covered by the franchise, and requests that the grantee erect, install, lay or construct beneath the surface of the City street the facilities which at that time are known or believed by the grantor to be necessary or convenient to serve its needs and those of the public in the foreseeable future. The grantee shall commence such work on or before the date specified in such written notice and request, which date shall be not less than thirty (30) days from receipt of such written notice and request, and diligently prosecute such work to completion. After the completion of said highway improvements by the grantor, the right of the grantee to lay or construct facilities in, under or through the improved surface of said City street or portion of the City street, under the franchise, shall be subject to such additional terms and conditions as the Public Works Director may impose to minimize any damage to such improved surface.
- (d) The City expressly reserves the right and privilege, at no cost to the City, of installing and maintaining four (4) communication circuits upon any poles or in any communication conduit erected or placed by virtue of the franchise. The City may use the circuits for maintaining a communication, control and fire alarm service in the dispatch of City business; and all such poles erected or conduits laid under the authority of the franchise shall be erected and laid in such a manner as to leave sufficient space for the proper accommodation of the four (4) circuits to be installed and maintained by the City.

(Ord. 96-04 § 1 (part), 1996)

3-10.27 Relocation of facilities.

If any of the facilities heretofore or hereafter erected, constructed, installed or maintained by the grantee pursuant to the franchise on, along, upon, over, in, under or across any highway are located in a manner which prevents or interferes with the change of grade, traffic needs, operation, maintenance, improvement, repair, construction, reconstruction, widening, alteration or relocation of the highway, the grantee shall relocate permanently or temporarily any such facility at no expense to the City or public entity upon receipt of a written request from the Public Works Director to do so, and shall commence such work on or before the date specified in such written request, which date shall be not less than thirty (30) days from receipt of such written request, and thereafter diligently prosecute such work to completion; provided, however, if such City streets be subsequently constituted a state highway, thereafter and so long as such highway remains a state highway, no such change of location shall be required for a temporary purpose.

(Ord. 96-04 § 1 (part), 1996)

3-10.28 Failure to relocate.

If the grantee after reasonable notice fails or refuses to relocate permanently or temporarily its facilities located in, on, upon, along, under, over, across or above any highway or to pave, surface, grade, repave, resurface or regrade as required pursuant to any provision of the franchise, the City or public

entity may cause the work to be done and shall keep an itemized account of the entire cost thereof, and the grantee shall hold harmless the City, its officers and employees from any liability which may arise, or be claimed to arise from the moving, cutting or alteration of any of grantee's facilities, or the turning on or off of water, oil or other liquid, gas or electricity.

The grantee agrees to and shall reimburse the City or public entity for such cost within thirty (30) days after presentation to the grantee of an itemized account of such cost.

(Ord. 96-04 § 1 (part), 1996)

3-10.29 Special permits.

When the City Council shall find that an emergency exists and that public convenience and necessity require it, a special permit may be granted to any applicant for a franchise to permit such applicant to proceed with the relocation, extension, alteration or other change in existing facilities, except repairs or maintenance changes, which relocation, extension, alteration or other change in existing facilities by reason of such emergency should be made before the securing of a franchise is possible. Such special permit shall only be granted to an applicant for a franchise and shall only be granted after the filing of the application for a franchise as provided herein.

(Ord. 96-04 § 1 (part), 1996)

3-10.30 Application for special permit.

An application for a special permit shall be filed in writing with the City Council setting forth such information as will permit action thereon. Reference in the application may be made to the application for a franchise for a description of the proposed extension, alteration or other change in existing facilities. Applications for special permits shall be referred to the City Attorney and the City Manager in the manner provided for applications for franchises.

(Ord. 96-04 § 1 (part), 1996)

3-10.31 Special permits—Granting.

All such special permits shall be granted under the express condition that if a franchise under this chapter is not granted and accepted, all work done under such special permit shall be removed immediately at applicant's expense and the streets or alleys or other public places affected by such work shall be placed in as good condition as before such work was done, all to the satisfaction of the Director of Public Works.

(Ord. 96-04 § 1 (part), 1996)

3-10.32 Special permits—Bond.

The City Council may require, as a condition to the granting of such special permits, that a bond of a kind and in an amount determined by the City Council shall be furnished by applicant conditioned upon the faithful performance of the terms and conditions of the permit and further conditioned that applicant shall prosecute diligently to completion all work thereunder, including removal work as hereinbefore provided.

(Ord. 96-04 § 1 (part), 1996)

Chapter 11 DEVELOPMENT FEES

Sections:

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- [3-11.05 Adoption of fees by resolution.](#)
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3-11.01 Title.

This chapter shall be known, and may be cited, as the Development Impact Fee Ordinance of the City of Avenal, California.

(Ord. No. 2006-02, 7-13-2006)

3-11.02 Findings.

The City Council of the City of Avenal hereby finds and declares as follows:

- (a) The State of California, through the enactment of Government Code Sections 66001 through 66009 has, among other things, determined the nexus that must be established in the enactment of development impact fees.
- (b) The imposition of development impact fees is one of the preferred methods of ensuring that development bears a proportionate share of the cost of public facilities and service improvements necessary to accommodate such development. This must be done in order to promote and protect the public health, safety and welfare.
- (c) This chapter recognizes that all new development within the City will result in additional growth and that such growth will place additional burdens on various City facilities, infrastructure and services. This chapter further recognizes the types of land development that will generate

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impacts necessitating the acquisition of land and construction of public facilities and expansion of services and infrastructure in order to meet and accommodate them.

- (d) All land uses within the City should bear a proportionate financial burden in the construction and improvement of public facilities and services necessary to serve them.
- (e) The cost of providing public facilities and service improvements occasioned by development projects within the City of Avenal exceeds the revenue generated by fees exacted from the development projects.
- (f) The development impact fees established by this chapter are based upon the costs which are generated through the need for new facilities and other capital acquisition costs required, incremental, by new development within the City of Avenal.
- (g) The fees established by this chapter do not exceed the reasonable cost of providing public facilities occasioned by development projects within the City of Avenal.
- (h) The fees established by this chapter relate rationally to the reasonable cost of providing public facilities occasioned by development projects within the City of Avenal, which public facilities are consistent with the General Plan and the various Elements of the General Plan of the City of Avenal.
- (i) The public facilities and anticipated future development herein referenced are based upon an analysis of existing land use and zoning.
- (j) The fees established by this chapter are consistent with the goals and objectives of the City's General Plan and are designed to mitigate the impacts caused by new development throughout the City. Development impact fees are necessary in order to finance the required public facilities and service improvements and to pay for new development's fair share of their construction costs.
- (k) Imposition of fees to finance public facilities and service improvements is necessary in order to protect the public health, safety and welfare.

(Ord. No. 2006-02, 7-13-2006)

3-11.03 Definitions.

For purposes of this chapter, the following terms, phrases, words and their derivations shall have the meanings respectively ascribed to them by this section:

- (a) "Development project" means any project undertaken for the purpose of development. "Development project" shall include a project involving the issuance of a permit for construction or reconstruction, remodeling, or any work requiring any permit under the ordinances of the City of Avenal, as the same presently exist or may be amended from time to time hereafter. The term "development project" shall also include permits for erection of manufactured housing or structures, and structures moved into the City.
- (b) "Fee" means a monetary exaction, other than a tax or special assessment, which is charged by the City to an applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, but does not include fees specified in Section 66477 of the California Government Code, fees for processing applications for governmental regulatory actions or approvals, or fees collected under development agreements adopted pursuant to Article 2.5 (commencing with Section 65864) of chapter 4, division 1, title 7 of the California Government Code.
- (c) "Public facilities" include public improvements, public services and community amenities.
- (d) "City Council" shall mean the City Council of the City of Avenal.

- (e) "Permits" and "building permits" shall mean permits for construction of new housing only and shall not apply to permits issued in relation to rehabilitation of existing homes or where City has, in its discretion, waived permit requirements for any existing reconstruction project.

(Ord. No. 2006-02, 7-13-2006)

3-11.04 Establishment of development fees.

The following development impact fees are hereby established and imposed on the issuance of all building permits for development within the City to finance the cost of the following categories of public facilities and improvements required by new development. The development impact fees consist of the following fees which are hereby established:

- (a) Police Facilities and Equipment: A development impact fee is hereby established for police facilities and training;
- (b) Fire Facilities and Equipment: A development impact fee is hereby established for fire facilities and equipment;
- (c) General Facilities and Equipment Fee: A development impact fee is hereby established for general facilities and equipment;
- (d) Streets, Interchanges and Traffic Signals: A development impact fee is hereby established for streets, interchanges and traffic signals;
- (e) Bridges and Culverts: A development impact fee is hereby established for bridges and culverts;
- (f) Street Medians and Landscaping: A development impact fee is hereby established for street medians and landscaping;
- (g) Water Supply Facilities: A development impact fee is hereby established for water supply facilities;
- (h) Water Distribution and Holding Facilities: A development impact fee is hereby established for water distribution and holding facilities;
- (i) Sewage Collection Facilities: A development impact fee is hereby established for sewage collection facilities;
- (j) Wastewater Treatment Facilities: A development impact fee is hereby established for wastewater treatment facilities;
- (k) Storm Drainage Facilities: A development impact fee is hereby established for storm drainage facilities;
- (l) Street Sweeping: A development impact fee is hereby established for street sweeping;
- (m) Parks and Recreation Facilities: A development impact fee is hereby established for parks and recreation facilities.

(Ord. No. 2006-02, 7-13-2006; Res. No. 2010-64, 10-28-2010)

3-11.05 Adoption of fees by resolution.

The City Council shall, by resolution, set forth the specific amount of the fees, describe the benefit and impact area on which the fees are imposed, list the specific public improvements to be financed and describe the estimated cost of these facilities.

(Ord. No. 2006-02, 7-13-2006)

3-11.06 Imposition of development impact fee.

- (a) Any person who, after the effective date of the ordinance codified in this chapter, seeks to develop land within the City by applying for a building permit or applying for any discretionary land use permit, is hereby required to pay the appropriate development impact fees established pursuant to this chapter as the same may be applicable, in the manner, amount and for the purposes therein referenced.
- (b) No permits or extension of permits for the activities referenced in subsection (a) of this section shall be granted unless and until the appropriate development impact fees hereby required have been paid to the City.

(Ord. No. 2006-02, 7-13-2006)

3-11.07 Annual adjustment.

Each fee imposed by this chapter shall be adjusted on July 1st of each fiscal year, beginning on July 1, 2007, by Resolution of the City Council. In the alternative, the Council may elect, by resolution, to automatically adjust fees by a percentage equal to the Engineering Cost Index as published by Engineering News Record for the preceding twelve (12) months or any other index which the Council adopts by resolution. Any such automatic adjustments shall not apply to fees which are based on variable factors which themselves result in an automatic adjustment or those which are specifically indicated otherwise.

(Ord. No. 2006-02, 7-13-2006)

3-11.08 Creation of special fund.

Each fee collected pursuant to this chapter shall be deposited in a special fund created to hold the revenue generated by each such fee. Monies within each such fund may be expended only by appropriation by the City Council for specific projects which are of the same category as that for which the money was collected. In this regard, the following special funds are hereby created and established for the purposes indicated:

- (a) A Police Facilities and Equipment Fund is hereby established. The Police Facilities and Equipment Fund is a fund for the deposit of fees collected for, and the payment of, the actual or estimated costs of police facilities and equipment, including any required acquisition of land.
- (b) A Fire Facilities and Equipment Fund is hereby established. The Fund is a fund for the deposit of fees collected for, and the payment of, the actual or estimated cost of fire facilities and equipment, including any required acquisition of land.
- (c) A General Facilities and Equipment Fund is hereby established. The General Facilities Fund is a fund for the deposit of fees collected for, and the payment of, the actual or estimated costs of constructing and improving the general municipal facilities within the City, including any required acquisition of land.
- (d) A Streets, Interchanges and Traffic Signals Fund is hereby established. The Fund is a fund for the deposit of fees collected for, and the payment of, the actual or estimated costs of the design, upgrading or improvement of the traffic network, including any required acquisition of land.
- (e) A Bridges and Culvert Fund is hereby established. The Fund is a fund for the deposit of fees collected for, and the payment of, the actual or estimated cost of constructing and improving all bridges and culverts within the City, including any required acquisition of land.
- (f) A Street Medians and Landscaping Fund is hereby established. The Fund is a fund for the deposit of fees collected for, and the payment of, the actual estimated cost of constructing and improving all street medians and landscaping facilities within the City, including any required acquisition of land.

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- (g) A Water Supply Facilities Fund is hereby established. The Fund is a fund for the deposit of fees collected for, and the payment of, the actual estimated cost of constructing and improving the water supply facilities within the City, including any required acquisition of land and/or the purchase of any required water rights.
- (h) A Water Distribution and Holding Facilities Fund is hereby established. The Fund is a fund for the deposit of fees collected for, and the payment of, the actual or estimated cost of constructing and improving the water distribution and holding facilities within the City, including any required acquisition of land.
- (i) A Sewage Collection Facilities Fund is hereby established. The Fund is a fund for the deposit of fees collected for, and the payment of, the actual or estimated cost of constructing and improving the sewage collection facilities and system within the City, including any required acquisition of land.
- (j) A Wastewater Treatment Facilities Fund is hereby established. The Wastewater Treatment Facilities Fund is a fund for the deposit of fees collected for, and the payment of, the actual or estimated costs of constructing and improving the sewage treatment facilities within the City, including any required acquisition of land.
- (k) A Storm Drainage Facilities Fund is hereby established. The Storm Drainage Facilities Fund is a fund for the deposit of fees collected for, and the payment of, the actual or estimated costs of constructing and improving the storm drain facilities within the City, including any required acquisition of land.
- (l) A Street Sweeping Fund is hereby established. The Street Sweeping Fund is a fund for the deposit of fees collected for, and the payment of, the actual or estimated cost of street sweeping facilities and equipment.
- (m) A Parks and Recreation Facilities Fund is hereby established. The Parks and Recreation Facilities Fund is a fund for the deposit of fees collected for, and the payment of, the actual or estimated costs of constructing and improving the parks and recreation facilities within the City, including any required acquisition of land, as well as grading, irrigation and turfing costs associated therewith.

(Ord. No. 2006-02, 7-13-2006; Res. No. 2010-64, 10-28-2010)

3-11.09 Computation of fees.

If a parcel contains more than one (1) zone, then the applicable fees shall be prorated by acreage or units, as appropriate, attributable to each zone. Public properties shall be classified into the category of use as between residential, commercial or industrial, and shall pay fees pursuant to that classification, as determined by the City Manager or her duly authorized designee. All fees due hereunder shall be determined and calculated by the City Manager and/or her designated agent. The City Manager or her designee shall have the further authority to determine the specific amount of development impact fees to be assessed against a use which is not specifically or typically associated with the various land use zone districts for which the development impact fees are established. In the determination and calculation, the City shall establish a written record of the calculation and nexus to infrastructure impacts for the projects identified above.

(Ord. No. 2006-02, 7-13-2006)

3-11.10 Payment of fees.

The fees established pursuant to this chapter shall be paid for the property on which a development project is proposed at the time of the issuance of any required building permit, except as otherwise provided below:

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- (a) Fees imposed on residential development shall be collected in accordance with the provisions of California Government Code Section 66007, as the same presently exists or may hereafter be amended from time to time. An applicant for a residential building permit may request that payment be deferred until the date of final inspection. Said request shall be approved when the property owner posts proper security in the form of cash deposit, letter of credit or other similar instrument retrievable at the time request is made for final inspection. The form and manner of the security shall be approved by the City Manager.
- (b) Fees imposed on industrial and commercial development may be deferred by action of the City Council. Such action shall consist of the adoption of a resolution consistent with the following terms and conditions:
 - (1) A determination is made that such action will promote and stimulate economic development within the City. The City Council shall make specific findings setting forth how the subject project accomplishes this goal.
 - (2) Establish a specific timetable for payment in full of the deferred fees. The Council may also require a percentage to be paid with the issuance of a building permit. In no event shall deferral of payment in full be permitted for more than five (5) years.
 - (3) Interest on the unpaid portion of deferred impact fees shall accrue at a rate equal to the Local Agency Investment Fund (LAIF) interest rate in effect at the time the resolution is adopted and shall be articulated in said resolution. Interest shall be due and payable, in full, with the final payment, although interest may be paid earlier at the election of the party developing the project.
 - (4) A written guarantee of payment in full of said impact fees, in the form of a surety bond or some other form of surety instrument as may be acceptable to the City Engineer and the City Attorney, shall be executed and delivered to the City prior to the issuance of a building permit for the project. Interest in real property may be deemed an appropriate form of surety.
 - (5) A determination is made that such deferral of the fees shall not materially affect the financial ability of the City to satisfy its then current five (5) year capital improvement program.
- (c) Development impact fees shall be paid at the time of application for a building permit.
- (d) The fees created pursuant to this chapter shall be calculated on the basis of gross acreage, or number of units, as set forth in the resolution referenced in Section 3-11.05 of this chapter. For development projects containing a fraction of a net acre, the fee shall be calculated on the fraction of the acre involved in the development project. All fees collected shall be promptly deposited in the appropriate fund referenced in Section 3-11.08 of this chapter. All fees paid pursuant to this chapter shall be the fees in effect at the time of collection; provided that fees collected pursuant to subsection (b) hereinabove shall be those in effect at the time the Council adopts the required resolution.

(Ord. No. 2006-02, 7-13-2006)

3-11.11 Fee adjustments.

- (a) A developer of any project subject to the fees described herein may apply to the City Council for a reduction, adjustment, or waiver of any one or more of the fees, based upon the absence of any reasonable relationship or nexus between the impacts of that development and either the amount of the fee(s) charged or the type of facilities to be financed. The application shall be made in writing and filed with the City Clerk not later than: 1) ten (10) days prior to the public hearing on the development permit application for the project; or 2) if no development permit is required, at the time of the filing of the request for a building permit.
- (b) The application shall state in detail the factual basis for the claim of waiver, reduction or adjustment.

- (c) The City Council shall consider the application at the public hearing on the permit application or at a separate public hearing held within sixty (60) days after the filing of the fee adjustment application, whichever is later. The hearing shall be noticed and conducted in the same fashion and manner as prescribed by the laws of the City for hearing on development permits. The decision of the City Council shall be final.
- (d) If a reduction, adjustment or waiver is granted, any change in use within the project shall invalidate the waiver, adjustment or reduction of the fee if such change in use would render the same inappropriate.
- (e) The City Council may, from time to time, and as the need may arise, set forth, by Council resolution, specific limitations which will apply to reductions, adjustments or waivers of development impact fees which may be made pursuant to this section. In this regard, this chapter shall be considered enabling and directory.

(Ord. No. 2006-02, 7-13-2006)

3-11.12 Use of funds.

- (a) Funds collected from development impact fees shall be used for the purpose of: 1) paying the actual or estimated costs of constructing and/or improving the public facilities within the City to which the specific fee or fees relate, including any required acquisition of land or rights-of-way therefore; 2) reimbursing the City for the development's share of those public facilities already constructed by the City or to reimburse the City for costs advanced, including, without limitation, administrative costs incurred with respect to a specific public facilities project; or 3) to reimburse other developers who have constructed public facilities described in the resolution adopted pursuant to Section 3-11.05 of this chapter, where those facilities were beyond that needed to mitigate the impact of the developer's project or projects.
- (b) In the event that bonds or similar debt instruments are issued for advanced provision of public facilities for which development impact fees may be expended, impact fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the facilities provided are of the type to which the fees involved relate.
- (c) At least once each fiscal period, the City Manager of the City of Avenal (herein "City Manager"), or his/her duly authorized designee, shall present to the City Council a proposed five (5) year capital improvement program for the various public facilities referenced in the resolution adopted pursuant to Section 3-11.05 of this chapter assigning monies (including any accrued interest) from the funds referenced in Section 3-11.08 of this chapter to specific improvement projects and related expenses. Monies, including any accrued interest, not assigned in any fiscal period shall be retained in the same fund until the next fiscal period except as provided by the refund provisions of Section 3-11.13 of this chapter.
- (d) Funds may be used to provide refunds as described in Section 3-11.08.
- (e) The City shall be entitled to make loans of funds collected from one fund to another, provided that the loans are properly recorded in the records of the Finance Department and repaid with interest equal to the interest earned by the City on its funds invested with the Local Agency Investment Fund (LAIF) through the State.

(Ord. No. 2006-02, 7-13-2006)

3-11.13 Refund of fees paid.

- (a) If a building permit expires without commencement of construction, then the fee payer shall be entitled to a refund, without interest, of the impact fee paid as a condition for its issuance, except that the City shall retain one (1) percent of the fee to offset a portion of the costs of collection and refund. The fee payer must submit an application for such a refund to the City Manager within thirty (30)

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calendar days of the expiration of the permit. Failure to timely submit the required application for refund shall constitute a waiver of any right to the refund.

- (b) In the event any fee collected pursuant to this chapter remains unexpended or uncommitted in any fund established pursuant to Section 3-11.08 five (5) or more years after deposit of the fee, the City shall make findings once each fiscal year to identify the purpose to which the fee is to be put and to demonstrate a reasonable relationship between the fee and the purpose for which it was charged.
- (c) The unexpended or uncommitted portion of the fee, and any interest accrued thereon, for which need cannot be demonstrated pursuant to subsection (b) of this section shall be refunded to the then-current record owner or owners of lots or units of the development project or projects on a prorated basis.
- (d) The provisions of California Government Code Section 66001(d), (e) and (f) shall apply fully to any refund of fees remaining unexpended or uncommitted in any such City fund for five (5) or more years after deposit, and the provisions of subsections (b) and (c) of this section shall be subordinate to the section and shall be applied consistent therewith.

(Ord. No. 2006-02, 7-13-2006)

3-11.14 Exemptions.

- (a) Any claim of exemption with respect to any one (1) or more of the fees referenced in Section 3-11.04 of this chapter must be made no later than the time of application for a building permit. The following shall be exempted from payment of the development impact fees of this chapter:
 - (1) Alterations or renovations of an existing building or structure where no additional dwelling units are created and/or the use is not changed;
 - (2) The replacement of a destroyed or partially destroyed or damaged building or structure with a new building or structure of the same size and use.

(Ord. No. 2006-02, 7-13-2006)

3-11.15 Credits.

- (a) New development that, through demolition or conversion, will eliminate existing development is entitled to a fee credit if the existing development is a lawful use under the Zoning Ordinance, including a nonconforming use.
- (b) New development that will replace development that was partially or totally destroyed by fire, flood, earthquake, mudslide, or other casualty or Act of God, is entitled to a fee credit if the development that was partially or totally destroyed was a lawful use under the Zoning Ordinance, including a nonconforming use, at the time thereof.
- (c) Credit for such eliminated development or development that was partially or totally destroyed (as above specified) shall be calculated by the City Engineer in accordance with the fee schedule set forth in the resolution adopted pursuant to Section 3-11.05 of this chapter and shall be applied to new development on the same site.

(Ord. No. 2006-02, 7-13-2006)

3-11.16 Developer construction of facilities.

- (a) In-Lieu Fee Credits for Construction of Improvements:
 - (1) A developer that has been required by the City to construct any facilities or improvements (or a portion thereof) described in the resolution adopted pursuant to Section 3-11.05 of this chapter as a condition of approval of a development permit may request an in-lieu credit of the specific

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development impact fee(s) involved for the same development. Upon request, an in-lieu credit of fees shall be granted for facilities or improvements that mitigate all or a portion of the need therefor that is attributable to and reasonably related to the given development.

- (2) Only costs proportional to the amount of the improvement or facility that mitigates the need therefor attributable to and reasonably related to the given development shall be eligible for in-lieu credit, and then only against the specific relevant fee(s) involved to which the facility or improvement relates.
- (3) Fees required under this chapter shall be reduced by the actual construction costs of the facilities or improvements that relate to the fees, as demonstrated by the applicant and reviewed and approved by the City Engineer, all consistent with the provisions of paragraphs (1) and (2) above. Subject to the applicable provisions of subsection (b) of this section, if the cost of the facilities or improvements is greater than required relevant fees, this chapter does not create an obligation on the City to pay the applicant the excess amount.
- (4) An amount of in-lieu credit that is greater than the specific fee(s) required under this chapter may be reserved and credited toward the fee of any subsequent phases of the same development, if determined appropriate by the City Engineer. The City Engineer may set a time limit for reservation of the credit.
- (5) Credits shall be calculated by the City Engineer in accordance with the fee schedule set forth in the resolution adopted pursuant to Section 3-11.05 of this chapter.
- (b) Developer Construction of Facilities Exceeding Needs Related to Development Project: Whenever an applicant is required, as a condition of approval of a development permit, to construct any facility or improvement (or a portion thereof) described in the resolution adopted pursuant to Section 3-11.05, which facility or improvement is determined by the City to exceed the need therefor attributable to and reasonably related to the given development project, a reimbursement agreement with the applicant and a credit against the specific relevant fee which would otherwise be charged pursuant to this Chapter on the development project, shall be offered. The credit shall be applied with respect to that portion of the improvement or facility which is attributable to and reasonably related to the need therefor caused by the development, and shall be determined, administered and processed in accordance with and subject to the provisions of this section. The amount to be reimbursed shall be that portion of the cost of the improvement or facility which exceeds the need therefor attributable to and reasonably related to the given development. The reimbursement agreement shall contain terms and conditions mutually agreeable to the developer and the City, and shall be approved by the City Council.
- (c) Site-Related Improvements: Credit shall not be given for site-related improvements, including, but not limited to, traffic signals, right-of-way dedications, or providing paved access to the property, which are specifically required by the project in order to serve it and do not constitute facilities or improvements specified in the resolution referenced in Section 3-11.05 of this chapter.
- (d) Determination of Credit: The developer seeking credit and/or reimbursement for construction of improvements or facilities, or dedication of land or rights-of-way, shall submit such documentation, including without limitation, engineering drawings, specifications and construction cost estimates, and utilize such methods as may be appropriate and acceptable to the City Engineer to support the request for credit or reimbursement. The City Engineer shall determine credit for construction of improvements or facilities based upon either these cost estimates or upon alternative engineering criteria and construction cost estimates if he determines that such estimates submitted by the developer are either unreliable or inaccurate. The City Engineer shall determine whether facilities or improvements are eligible for credit or reimbursement.
- (e) Time for Making Claim for Credit: Any claim for credit must be made no later than the application for a building permit, or within sixty (60) days of completion of the construction dedication, whichever occurs first. Any claim not so made shall be deemed waived.
- (f) Transferability of Credit; Council Approval: Credits shall not be transferable from one project or development to another without the approval of the City Council.

- (g) Appeal of Determinations of City Engineer: Determinations made by the City Engineer pursuant to the provisions of this section may be appealed to the City Council by filing a written request with the City Manager, together with a fee established by resolution of the City Council, within ten (10) calendar days of the determination of the City Engineer.

(Ord. No. 2006-02, 7-13-2006)

3-11.17 Review.

- (a) Except for the first year the ordinance codified in this Chapter is in effect, no later than six (6) months following the end of each fiscal year, the City Manager shall prepare a report for the City Council identifying the balancing of fees in the various funds established pursuant to Section 3-11.08 of this Chapter, the facilities constructed, and the facilities to be constructed. In preparing the report, the City Manager shall adjust the estimated costs of the public improvements in accordance with the approved cost adjustment criteria established pursuant to Section 3-11.07 of this chapter.
- (b) At a noticed public hearing, the City Council shall review the report and the development impact fees to determine whether the fee amounts continue to be reasonably related to the impact of development and whether the described public facilities are still needed. The Council may revise the development impact fees to include additional projects not previously foreseen as being needed.
- (c) The report prepared by the City Manager and its review by the City Council, as well as any findings thereon, shall be subject to the provisions of California Government Code Section 66001(d), to the extent applicable (which shall be controlling in the event of any conflict).

(Ord. No. 2006-02, 7-13-2006)

3-11.18 Controlling state law.

The provisions of this chapter and any resolution adopted pursuant hereto, shall at all times be subject and subordinate to the provisions of Chapter 5 (commencing with Section 66000), Division 1, of Title 7 of the California Government Code, as the same presently exist or may hereafter be amended from time to time, to the extent the same are applicable. In the event of any conflict between the provisions of this chapter and the state law, the latter shall control.

(Ord. No. 2006-02, 7-13-2006)

3-11.19 Superseding provisions.

The provisions of this chapter and any resolution adopted pursuant hereto, shall supersede any previous ordinance or resolution to the extent the same is in conflict herewith.

(Ord. No. 2006-02, 7-13-2006)

3-11.20 Severability.

If any section, phrase, sentence or portion of this chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision; and such holding shall not affect the validity of the remaining portions hereof.

(Ord. No. 2006-02, 7-13-2006)