ORDINANCE NO. **2022-05**

AN ORDINANCE OF THE CITY OF AVENAL IMPOSING A BUSINESS TAX ON COMMERCIAL CANNABIS BUSINESSES

THE PEOPLE of the City of Avenal do ordain as follows:

By adopting **Resolution No. 2022-_41_** by a vote of at least two-thirds vote of all members of the City Council, the City Council authorized placing this Ordinance before the voters of the City of Avenal at the **November 8, 2022** general election.

Section 1. PURPOSE. The provisions of this Ordinance are adopted to achieve the following purposes:

A. To impose a tax on the privilege of conducting Commercial Cannabis Businesses within the City pursuant to the "California Control, Regulate and Tax Adult Use of Marijuana Initiative" approved by the voters in November 2016 election, or other enabling legislation, notwithstanding if state law uses the term "marijuana" or "Cannabis;"

B. To impose a general tax on lawful Commercial Cannabis Businesses in accordance with the authority granted by California Government Code § 37100.5 to impose a business tax;

C. To specify the type of tax and rate of tax to be levied and the method of collection;

D. To comply with all requirements for imposition of a general tax, such tax to become operative only if submitted to the electorate and approved by a majority vote of the voters voting in an election on the issue; and

E. The provisions of this Ordinance are necessary for the safety of the public and for the preservation of essential City services for the residents of the City.

Section 2. CODE ADOPTION. Chapter 5C of Title 3 of the Municipal Code of the City of Avenal is added to read in its entirety as follows:

Chapter 5C
COMMERCIAL CANNABIS BUSINESS TAX

5C-010: SHORT TITLE.

This chapter shall be known as the City of Avenal Cannabis Business Tax. The City of Avenal shall be referred to as "**City**" in this ordinance. This chapter shall be applicable within the incorporated territory of the City.

5C-020: OPERATIVE DATE.

"Operative Date" refers to the first day of the first calendar quarter commencing more than one hundred ten (110) days after the adoption of this chapter.

5C-030: DEFINITIONS.

A. "Business" shall include all activities engaged in or caused to be engaged in within the incorporated area of the City, including any Commercial or industrial enterprise, trade, profession, occupation, vocation, calling or livelihood, whether or not carried on for gain or profit, but shall not include the services rendered by an employee to his or her employer.

B. "Cannabis" means all parts of the plant Cannabis Sativa Linnaeus Cannabis Indica, or Cannabis Ruderalis or any other strain or varietal of the genus Cannabis which may exist or hereafter be discovered or developed that has psychoactive or medicinal properties, whether growing or not, including the seeds thereof. "Cannabis" also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. For purposes of this section, "Cannabis" does not mean "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code. Cannabis is classified as an agricultural product separately from other agricultural crops.

C. "Cannabis Business Tax," "Business Tax," "Cannabis Tax" or "Cannabis Industry Tax" means the tax due pursuant to this Chapter for engaging in Commercial Cannabis Businesses.

D. "Cannabis Cultivation Area" means the total aggregate area(s) of Cannabis Cultivation by a Cannabis business as measured around the outermost perimeter of each separate and discrete area of Cannabis Cultivation at the dripline of the canopy expected at maturity and includes, but is not limited to, the space between plants within the Cultivation area, the exterior dimensions of garden beds, garden plots, hoop houses, green houses, and each room or area where Cannabis plants are grown, excluding non-

production areas, as determined by the Community Development Director or his or her designee.

E. "Cannabis Nursery" means a Person who produces Cannabis clones, immature plants, and/or seeds for distribution, used specifically for the planting, propagation, and Cultivation of Cannabis. In addition, and without limiting the foregoing, "nursery" includes "nursery" as defined in California Business and Professions Code § 19300.5 and any successor statute, as may be adopted or amended from time to time.

F. "Cannabis Product" means any product containing Cannabis, including, but not limited to, flowers, buds, oils, tinctures, concentrates, extractions, edibles and those products described in Health and Safety Code § 11018.1.

G. "Cannabis Production" means the processes associated with the processing, extraction, manufacturing, testing, distribution and transportation of medical and non-medical cannabis products.

H. "Canopy" means all areas occupied by any portion of a cannabis plant, inclusive of all vertical plans, whether the areas are contiguous or noncontiguous. The plant canopy need not be contained to a single parcel of land in determining the total square footage that will be subject to the tax under this Chapter. If mature plants are being cultivated using a shelving system, the surface area of each level shall be included in the total canopy calculation.

I. "City" means the City of Avenal.

J. "City Council" means the City Council of the City of Avenal.

K. "City Permit" refers to any registration or other written authorization duly issued by the City to a Person to allow that Person to operate or engage in a Commercial Cannabis Business in accordance with City requirements.

L. "Collector" means the city clerk, or other city official charged by the city manager with the administration of the provisions of this chapter.

M. "Commercial Cannabis Business" means any commercial business activity relating to cannabis, including but not limited to cultivating, transporting, distributing, manufacturing, compounding, converting processing, preparing, storing, packaging, delivering, and selling (wholesale

and/or retail sales) of cannabis and any ancillary products and accessories in the City, whether or not carried on for gain or profit.

N. "Commercial Cannabis Cultivation" means Cultivation conducted by, for, or as part of a Commercial Cannabis Business.

O. "County" shall mean Kings County, within sphere of influence of the City.

P. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading or trimming of Cannabis.

Q. "Delivery" means the commercial transfer of cannabis or cannabis products from a Commercial Cannabis Business.

R. "Distributor" or "distribution" or "distribution facility" means a person involved in the procurement, sale, and/or transport of cannabis and cannabis products between two or more cannabis businesses.

S. "Employee" means each and every Person engaged in the operation or conduct of any business, whether as owner, member of the owner's family, partner, associate, agent, manager, or solicitor, and each and every other Person employed or working in such business for a wage, salary, commission, barter or any other form of compensation.

T. "Engaged in business" means the commencing, conducting, operating, managing, or carrying on of a Commercial Cannabis Business and the exercise of corporate or franchise powers, whether done as owner, or by means of an officer, agent, manager, employee, or otherwise.

U. "Fiscal Year" means July 1 through 30 of the following calendar year.

V. "Gross Receipts" means the total amount or compensation received or receivable from all sales; the total amount or compensation actually received or receivable for the performance of any act or service, or whatever nature it may be, for which a charge is made or credit allowed, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, wares or merchandise; discounts, rents, royalties, fees, commissions, dividends and gains realized from trading in stocks or bonds, however designated. Included in "Gross Receipts" shall be all receipts, cash, credits and property of any kind or nature, without any deduction there from an account of the cost of the property sold, the cost of materials used, labor or

service costs, interest paid or payable, or losses or other expenses whatsoever, except that the following shall be excluded therefrom:

1. Cash discounts where allowed and taken on sales;
2. Credit allowed on property accepted as part of the purchase price and which property may later be sold, at which time the sales price shall be included as gross receipts;
3. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
4. Such part of the sale price of any property returned by purchasers to the seller as refunded by the seller by way of cash or credit allowances or return of refundable deposits previously included in gross receipts;
5. Receipts from investments where the holder of the investment received only interest and/or dividends, royalties, annuities and gains from the sale or exchange of stock or securities solely for a Person's own account, not derived in the ordinary course of a business;
6. Receipts derived from the occasional sale of used, obsolete or surplus trade fixtures, machinery or other equipment used by the taxpayer in the regular course of the taxpayer's business;
7. Cash value of sales, trades or transactions between departments or units of the sale business;
8. Wherever there are included within the gross receipts amounts which reflect sales for which credit is extended and such amount proved uncollectible in a subsequent year, those amounts may be excluded from the gross receipts in the year they prove to be uncollectible; provided, however, if the whole or portion of such amounts excluded as uncollectible are subsequently collected they shall be included in the amount of gross receipts for the period when they are recovered;
9. Transactions between a partnership and its partners;
10. Receipts from services or sales in transactions between affiliated corporations. An affiliated corporation is a corporation:
    a. The voting and non-voting stock of which is owned at least eighty percent (80%) of such other corporation with which such transaction is had; or
    b. Which owns at least eighty percent (80%) of the voting and non-voting stock of such other corporation; or

c. At least eighty percent (80%) of the voting and non-voting stock of which is owned by a common parent corporation which also has such ownership of the corporation with which such transaction is had.

11. Transactions between a limited liability company and its member(s), provided the limited liability company has elected to file as a Subchapter K entity under the Internal Revenue Code and that such transaction(s) shall be treated the same as between a partnership and its partner(s) as specified in Subsection 9 above;

12. Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded when in excess of one dollar ($1.00);

13. Amounts collected for others where the business is acting as an agent or trustee and to the extent that such amounts are paid to those for whom collected. These agents or trustees must provide the Finance Department with the name and addresses of the others and amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustees.

W. "Indoor" means indoor Cultivation of cannabis using exclusively artificial lighting.

X. "Manufacturer" means a person that conducts the production, preparation, propagation, or compounding of manufactured cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container.

Y. "Mixed-Light" means Cultivation of cannabis using any combination of natural and supplemental artificial lighting. Greenhouses, hoop houses, hot houses and similar structures or light deprivation systems are included in this category.

Z. "Outdoor" means Cultivation of cannabis using no artificial lighting conducted in the ground or in containers outdoors with no covering. Outdoor Cultivation does not include greenhouses, hoops houses, hot houses or similar structures.

AA. "Person" means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, syndicate tribe or any other group or combination acting as a unit, and includes the plural as well as the singular member.

BB. "Sale" means and includes any sale, exchange, or barter.

CC. "Square Foot" or "Square Footage" means the maximum amount of Cannabis Business Area registered with the City for a person to engage in a Commercial Cannabis Business, or by a state license in the absence of any City registration, not deducting for unutilized square footage, and shall be the basis for the tax.

DD. "State" means the State of California.

EE. "State License" means a State license issued pursuant to California Business & Professions Code §§ 19300 *et seq.* or other applicable State law.

FF. "Testing Laboratory" means a facility, entity, or site in the state which offers or performs testing of Cannabis or "Cannabis Products" and which is both of the following:

a. Accredited by an accrediting body which is independent from all other persons involved in the cannabis industry in the state; and
b. Registered with the California State Department of Public Health.

GG. "Transport" means the transfer of cannabis or cannabis products from the permitted business location of one permittee or licensee to the permitted business location of another permittee or licensee, for the purposes of conducting Commercial Cannabis activity authorized pursuant to State law.

HH. "Transporter" means a person issued all required State and City registrations and authorizations to transport cannabis or cannabis products between permitted facilities.

5C-040: TAX AUTHORIZATION

A Cannabis Industry Tax is hereby imposed on every Person who is engaged in a Commercial Cannabis Business in the City as prescribed herein, from and after the effective date of a City Council resolution implementing the tax. It is unlawful for any Person to transact or carry on any Commercial Cannabis Business in the City without paying, in accordance with this Chapter, the Cannabis Industry Tax imposed by this Section.

5C-050: TAX ON COMMERCIAL CANNABIS BUSINESS

A. Every Person who is engaged in a Commercial Cannabis Business in the City shall pay an annual Cannabis Business tax at a rate established by resolution of the City Council which rate shall not exceed twenty-five dollars ($25) per square foot of Commercial Cannabis Business area or fifteen percent (15%) of annual gross receipts per fiscal year, whichever is greater. When the rate is determined on a square footage basis, on July 1 of each fiscal year succeeding the year of imposition of a square footage based tax upon Commercial Cannabis Businesses, the amount of tax shall be increased by the most recent change in the annual average of the Consumer Price Index ("**CPI**") for all urban consumers in the San Francisco-Oakland-San Jose areas, as published by the United States Government Bureau of Labor Statistics. However, no CPI adjustment resulting in a decrease of any tax imposed by this subsection shall be made. The tax under this subsection shall not be imposed unless and until the City Council acts by resolution to do so.

B. The taxable square footage calculation shall be determined by including all portions of the premises where the Commercial Cannabis Business operates deducting therefrom driveways, sidewalks, landscaping, vacant unused space, areas used exclusively for office space, employee break rooms, restrooms, and storage space unrelated to the Commercial Cannabis Businesses.

C. If more than one Commercial Cannabis Business operates on the premises, each Person shall be responsible for paying the tax.

D. The City Council may by resolution, in its discretion, implement a tax rate lower than the maximum rates set established within Subsection A for all Persons engaged in any Commercial Cannabis Business within the City, or establish differing tax rates for different categories of Commercial Cannabis Business, subject to the maximum rate established in Subsection A. The City Council also may, by resolution, increase any such tax rate from time to time, not to exceed the maximum tax rate authorized in Subsection A of this Section.

5C-060: REPORTING AND REMITTANCE OF TAX

The Cannabis Business Tax imposed by this Chapter shall be imposed on a fiscal year basis and shall be due and payable in quarterly installments as follows:

A. Each person owning a Cannabis Business Tax shall, on or before the last day of the month following the close of each Fiscal Year quarter, prepare and submit a tax statement on the form prescribed by the Collector and remit to the Collector the tax due. The tax due shall be no less than the quarterly installment due, but the taxpayer may at any time pay the tax due for the entire fiscal year. Each Commercial Cannabis Business shall

pay on or before the last day of the month following the close of each calendar quarter.

B. If the Cannabis Business Tax is owed for Commercial Cannabis Cultivation, the tax due shall be paid based upon the Square Footage allowed by the City. The tax will not be reduced, prorated or adjusted downward for any Square Footage which is allowed by the City but actually not utilized for Cultivation. If the Cultivation begins in the middle of a fiscal year, the Collector shall prorate, in monthly increments, the amount due for the fiscal year.

C. All tax statements shall be completed on forms prescribed by the Collector.

D. Tax statements and payments for all outstanding taxes owed to the City are immediately due to the Collector upon cessation of business for any reason.

E. The Collector may, as part of administering the tax and in his or her discretion, modify the form of payment and take such other administrative actions as needed to facilitate the collection of the tax.

5C-070: REGISTRATION.

In order that the City will have an accurate record of parties collecting the Cannabis Business Tax, prior to commencing business each Person engaged in a Commercial Cannabis Business must register such Commercial Cannabis Business with the Collector, submitting to the Collector any information deemed necessary by the Collector.

5C-080: PAYMENTS AND COMMUNICATIONS – TIMELY REMITTANCE.

Whenever any payment, statement, report, request or other communication is due, it must be received by the Collector on or before the final due date. A postmark will not be accepted as timely remittance. If the due date falls on Saturday, Sunday or a State holiday, the due date shall be the next regular business day on which the City is open to the public.

5C-090: PAYMENT – WHEN TAXES DEEMED DELINQUENT.

Unless otherwise specifically provided under other provisions of this Chapter, the taxes required to be paid pursuant to this Chapter shall be deemed delinquent if not received by the Collector on or before the due date as specified in Sections 5C-060.

5C-100: NOTICE NOT REQUIRED BY CITY.

The Collector is not required to send a delinquency or other notice, statement, bill or invoice to any Person subject to the provisions of this

Chapter. Failure to send any such document shall not affect the validity of any tax or penalty due under the provisions of this Chapter.

5C-110: PENALTIES AND INTEREST.

A. Any Person who fails or refuses to pay any Cannabis Business Tax required to be paid pursuant to this Chapter on or before the due date shall pay penalties and interest as follows:

1. A penalty equal to twenty-five percent (25%) of the amount of the tax, in addition to the amount of the tax, plus interest on the unpaid tax calculated from the due date of the tax at the rate of one and one-half percent (1.5%) per month;
2. If the tax remains unpaid for a period exceeding one calendar month beyond the due date, an additional penalty equal to twenty-five percent (25%) of the amount of the tax, plus interest at the rate of one and one-half percent (1.5%) per month on the unpaid tax; and
3. Interest shall be applied at the rate of one and one-half percent (1.5%) per month on the first day of the month for the full month, and will continue to accrue monthly on the tax until the balance is paid in full.

B. Whenever a check or electronic payment is submitted in payment of a Cannabis Business Tax and the payment is subsequently returned unpaid by the bank for any reason, the taxpayer will be liable for the tax amount due, the returned check fee, a penalty in the amount of the returned check fee, the penalties and interest as provided for in this Section, and any other amount allowed under State law.

C. The Cannabis Business Tax due shall be that amount due and payable from the first date on which the Person was engaged in a Commercial Cannabis Business in the City, together with all applicable penalties and interest calculated in accordance with this Section.

D. Any Person whose Cannabis Business Tax is delinquent by at least sixty (60) calendar days may be subject to revocation of each and all City permits associated with the subject Commercial Cannabis Business.

E. The Collector is authorized to make an assessment in the manner provided for in Section 5C-050 of the anticipated tax liability for up to the following four quarters if any Person has failed to file one or more returns or payments, or who has filed one or more delinquent returns or payments, within any twelve (12) month period, without curing the failure or delinquency within sixty (60) days after the original due date after written notice from Collector of the failure or delinquency. Failure to remit the anticipated tax within sixty (60) days after the notice of assessment shall be

grounds for revocation of each and all City permits associated with the subject Commercial Cannabis Business.

5C-120: REFUNDS AND CREDITS.

A. No refund shall be made of any tax collected under this Chapter, except as provided in Section 5C-130.

B. No refund of any tax collected pursuant to this Chapter shall be made because of the discontinuation, dissolution or other termination of a Commercial Cannabis Business.

5C-130: REFUNDS AND PROCEDURES.

A. Whenever the amount of any Cannabis Business Tax, penalty or interest has been overpaid, paid more than once or has been erroneously collected or received by the City under this Chapter, it may be refunded to the claimant who paid the tax, provided that a written claim for refund is timely filed with the Collector within one (1) year of the date the tax was originally due and payable.

B. The Collector, his or her deputies, or any other City officer charged with the administration of this Chapter shall have the right to examine and audit all the books and business records of the claimant in order to determine the eligibility of the claimant to the claimed refund. No claim for refund shall be allowed if the claimant refuses to allow such examination of claimant's books and business records after request by the Collector to do so. The Collector may collect a fee adopted by the City Council to pay for the cost of examination and audit if the books and records are be provided in a form which is insufficient to allow the Collector to make a determination on the claim for refund.

C. In the event that the Cannabis Business Tax was erroneously paid and the error is attributable to the City, the City shall refund the amount of tax erroneously paid, but only as to such period not exceeding one (1) year from the date when the error presented to the Collector in a timely claim.

5C-140: EXEMPTIONS FROM THE TAX.

A. The provisions of this Chapter shall not apply to non-commercial Cannabis Cultivation for personal use.

B. The provisions of this Chapter shall not apply to personal use of Cannabis which is specifically exempted from State licensing requirements, which satisfies the definition of personal use or equivalent terminology under State law, and for which the individual receives no compensation whatsoever related to that personal use.

5C-150: ADMINISTRATION OF THE TAX.

A. It shall be the duty of the Collector to collect the taxes, penalties and/or fees, and to perform the duties required by this Chapter.

B. For purposes of administration and enforcement of this Chapter generally, the Collector may from time to time promulgate such administrative rules and procedures consistent with the purpose, intent and express terms of this Chapter as she or he deems necessary to implement or clarify such provisions or aid in enforcement.

C. The Collector may take such administrative actions as needed to administer the tax, including but not limited to:

1. Provide to all Commercial Cannabis Business taxpayers forms for the reporting of the tax;
2. Adjust tax rates in accordance with this Chapter, including related resolutions of the City Council;
3. Provide information to any taxpayer concerning the provisions of this Chapter;
4. Receive and record all taxes remitted to the City as provided in this Chapter;
5. Maintain records of taxpayer reports and taxes collected pursuant to this Chapter;
6. Assess penalties and interest to taxpayers pursuant to this Chapter; and
7. Determine amounts owed and enforce collection pursuant to this Chapter.

5C-160: ENFORCEMENT – ACTION TO COLLECT.

A. Any taxes, penalties and/or fees required to be paid under the provisions of this Chapter shall be deemed a debt owed to the City. Any Person owing money to the City under the provisions of this Chapter shall be liable in an action brought in the name of the City for the recovery of such debt. The provisions of this Section shall not be deemed a limitation upon the right of the City to bring any other action including criminal, civil and equitable actions, based upon the failure to pay the tax, penalties and/or fees imposed by this Chapter or the failure to comply with any provisions of this Chapter.

B. In addition to any other remedies available under federal, State or local law, if any amount required to be paid to the City under this Chapter is not paid when due, the Collector may, within three (3) years after the

amount is due, record a certificate of lien specifying the amount of taxes, fees and penalties due, and the name and address of the Person as it appears on the records of the Collector. The lien shall also specify that the Collector has complied with all provisions of this Chapter in the determination of the amount required to be paid. From the time of the filing of the record, the amount required to be paid, together with penalties thereon, constitutes a lien upon all real property in the County owned by the Person, or subsequently acquired by the Person before the lien expires. The lien has the force, effect and priority of a judgment lien and shall continue for ten (10) years from the filing of the certificate unless sooner released or otherwise discharged. A fee may be adopted by the City Council and collected by the Collector to pay for the cost of recording and administering the lien.

C. To the extent authorized by State law, at any time within three (3) years after any Person is delinquent in the payment of any amount herein required to be paid or within three (3) years after the last recording of a certificate of lien under Subsection B of this Section, the Collector may issue a tax warrant for the enforcement of any liens and for the collection of any amount required to be paid to the City under this Chapter. The warrant shall be directed to the Chief of Police or other appropriate official and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy and sale pursuant to a writ of execution. The Collector may pay or advance all fees, commissions and expenses for service provided in connection with the execution of the tax warrant, including fees for publication in the newspaper.

D. To the extent authorized by State law, at any time within three (3) years after recording a lien against any Person, if the lien is not discharged and released in full, the Collector may forthwith seize any asset or property, real or Personal (including but not limited to, bank account), of the Person and sell at public auction the asset or property, or a sufficient part of it to pay the amount due together with any penalties and interest imposed for the delinquency and any cost incurred on account of the seizure and sale. Assets or property of the Person subject to seizure and sale subject to this Chapter shall not include any assets or property which is exempt from execution under the provisions of the California Code of Civil Procedure.

5C-170: APPORTIONMENT.

If a Commercial Cannabis Business subject to a Cannabis Business Tax is operating both within and outside the City, it is the intent of the City to apply the Cannabis Business Tax so that the measure of the tax fairly reflects the proportion of the taxed activity actually carried on within the City. For purposes of apportionment as may be required by law, the Collector may promulgate administrative procedures for apportionment in accordance

with State law or otherwise negotiate an apportionment agreement to be approved by the City Council or designee.

5C-180: CONSTITUTIONALITY AND LEGALITY.

This tax is intended to be applied in a manner consistent with the United States and California Constitutions and State law. None of the tax provided for in this Chapter shall be applied in a manner which causes an undue burden upon interstate commerce, a violation of the equal protection and due process clauses of the Constitutions of the United States or the State of California, or a violation of any other provisions of the California Constitution or State law.

5C-190: AUDIT AND EXAMINATION OF RECORDS AND EQUIPMENT.

A. The Collector shall have the power to audit and examine all books and records of any Person engaged in Commercial Cannabis Businesses in the City, including both State and federal income tax returns, California sales tax returns, or other evidence documenting the gross receipts of Persons engaged in Commercial Cannabis Businesses, and, where necessary, all facilities, premises and equipment of any Person engaged in Commercial Cannabis Businesses within the City, for the purpose of ascertaining the amount of Cannabis Business Tax, if any, required to be paid under this Chapter, and for the purpose of verifying any statements or any item thereof when filed by any Person pursuant to this Chapter. If such Person, after written demand by the Collector, refuses to make available for audit, examination or verification such books, records, facilities, premises or equipment as the Collector requests, the Collector may, after full consideration of all information within his or her knowledge concerning the Commercial Cannabis Businesses and activities of the Person so refusing, make an assessment against the Commercial Cannabis Business of the taxes estimated to be due under this Chapter. The Collector may collect a fee adopted by the City Council to pay for the cost of examination and audit should the books and records be provided in a form insufficient to allow the Collector to make a determination of tax due.

B. It shall be the duty of every Person liable for the collection and payment to the City of any tax imposed by this Chapter to keep and preserve, for a period of at least three (3) years, all records as may be necessary to determine the amount of such tax as she or he may have been liable for the collection of and payment to the City, which records the Collector shall have the right to inspect at all reasonable times.

5C-200: OTHER LICENSES, PERMITS, TAXES, FEES, OR CHARGES.

Nothing contained in this Chapter shall be deemed to repeal, amend, be in lieu of, replace or in any way affect any requirements for any permit, registration or license required by, under or by virtue of any provision of any other title or chapter of the Avenal Municipal Code or any other ordinance or resolution of the City, nor be deemed to repeal, amend, be in lieu of, replace or in any way affect any tax, fee or other charge imposed, assessed or required by, under or by virtue of any other title or chapter of this code or any other ordinance or resolution by the City. Any references made or contained in any other title or chapter of the Avenal Municipal Code to any licenses, license taxes, fees or charges, or to any schedule of license fees, shall be deemed to refer to the licenses, license taxes, fees or charges or schedule of license fees, provided for in other titles or chapters of the Avenal Municipal Code.

5C-210: CHANGE OF OWNERSHIP.

A. If any Person, while liable for any amount under this Chapter, sells, assigns or otherwise transfers the Commercial Cannabis Business, whether voluntarily or involuntarily, the Person's successor, assignee or other transferee, or other Person or entity obtaining ownership or control of the business ("**Transferee**"), shall be jointly and severally liable with the Person for satisfying all of the Cannabis Business Tax liability owed to the City associated with the business when due hereunder. Failure to do so for the benefit of the City will result in being personally liable to the City for the full amount of the unpaid tax liability, interest and penalties. The Transferee must in writing notify the Collector of the date of transfer at least thirty (30) days before the transfer date; or if the agreement to sell, transfer or otherwise dispose of the business was made less than thirty (30) days before the date of transfer, written notice shall be provided immediately upon the existence of the agreement. All Transferees are required to meet each and every condition outlined in this Chapter and have prior written approval of the City prior to the transfer.

B. The Transferee shall be deemed to have complied with the requirement of this section to satisfy the unpaid tax liability if the Transferee complied with the purchaser/transferee steps within California Revenue and Taxation Code § 7283.5, by withholding from the purchase price, for the benefit of the City, an amount sufficient to cover the tax liability, or by otherwise paying the tax liability and obtaining from the Collector a "**Tax Clearance Certificate**" showing that all outstanding tax liability has been paid and stating that no amount is due through the date of transfer.

C. The Collector, within ninety (90) days after receiving a written request from the Transferee, may issue a "Tax Clearance Certificate" stating either the amount of tax liability due and owing for the business, or stating

that there is no tax liability due and owing for the business through a stated date. The Collector may also request financial records from the current or former owner or operator of a Commercial Cannabis Business to audit the tax which may be due and owing. The Collector shall issue a "Tax Clearance Certificate" within thirty (30) days after completing the audit, stating the amount of the tax liability owed, if any, unless the Collector determines that the records provided in connection with the audit are insufficient to determine whether taxes are due and owed or in what amount. If the Collector determines that the records are insufficient, the Collector may rely upon the facts and information available to estimate any tax liability. The Collector may issue a "Tax Clearance Certificate" stating the amount of the tax liability, if any, based upon such facts and information available. Unless an appeal is timely filed in accordance with Section 5C-270, the "Tax Clearance Certificate" shall serve as conclusive evidence of the tax liability associated with the property through the date stated on the "Tax Clearance Certificate."

5C-220: PAYMENT OF TAXES DOES NOT AUTHORIZE UNLAWFUL BUSINESS.

A. The payment of a tax required by this Chapter, and its acceptance by the City, shall not entitle any Person to carry on any Commercial Cannabis Business unless the Person has complied with all of the requirements of this Code and all other applicable state laws.

B. No tax paid under the provisions of this Chapter shall be construed as authorizing the conduct or continuance of any illegal or unlawful business, or any business in violation of any local or state law.

5C-230: DEFICIENCY DETERMINATIONS.

If the Collector is not satisfied that any tax return or other statement filed as required under this Chapter is correct, or that the amount of tax is correctly computed, she or he may compute and determine the amount to be paid and make a deficiency determination upon the facts contained in the tax return or statement or any information in his or her possession or which may come into his or her possession within three (3) years after the date the tax was originally due and payable, or such later date as allowable by law. One or more deficiency determinations of the amount of tax due for a period or periods may be made. When a Person discontinues engaging in a business, a deficiency determination may be made at any time within three (3) years thereafter, or such later date as allowable by law, as to any liability arising from engaging in such business whether or not a deficiency determination is issued prior to the date the tax would otherwise be due. Whenever a deficiency determination is made, a notice shall be given to the Person concerned in the same manner as notices of assessment are given under Section 5C-250.

5C-240: FAILURE TO REPORT.

A. Under any of the following circumstances and at any time, the Collector may make and give notice of an assessment of the amount of tax owed by a Person under this Chapter.

1. If the Person has not filed a complete return or statement required under this Chapter; or
2. If the Person has not timely paid any tax, fee, interest and/or penalty due under this Chapter; or
3. If the Person has not, after demand by the Collector, filed a corrected return or statement, or furnished to the Collector adequate substantiation of the information contained in a return or statement filed previously; or
4. If the Collector determines that the nonpayment of any business tax due under this Chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to penalties and interest otherwise stated in this Chapter and any other penalties allowed by law.

B. The notice of assessment shall separately set forth the amount of any tax known or estimated by the Collector to be due, after consideration of all information within the Collector's knowledge concerning the business and activities of the Person assessed, to be due under each applicable section of this Chapter, and shall include the amount of any penalties or interest accrued on each amount to the date of the notice of assessment.

5C-250: TAX ASSESSMENT – NOTICE REQUIREMENTS.

The notice of assessment shall be served upon the Person either by personal delivery, or by a deposit of the notice in the United States mail, postage prepaid thereon, addressed to the Person at the address of the location of the business or to such other address as he, she or it shall register with the Collector for the purpose of receiving notices provided under this Chapter, or, should the Person have no address registered with the Collector for such purpose, then to such Person's last known address. For the purposes of this Section, a service by mail is complete at the time of deposit in the United States mail.

5C-260: TAX ASSESSMENT – HEARING, APPLICATION, AND DETERMINATION.

Within ten (10) calendar days from the date of service, the Person may apply in writing to the Collector for a hearing on the assessment. If

application for a hearing before the City is not timely made within the prescribed time, the tax assessed by the Collector shall become final, conclusive and no further right to appeal or hearing shall exist. Within thirty (30) business days after the receipt of any such application for hearing, the Collector shall cause the matter to be set for hearing before him or her not later than thirty-five (35) business days after the receipt of the application, unless a later date is agreed to by the Collector and the Person requesting the hearing. Notice of such hearing shall be given by the Collector to the Person requesting such hearing not later than five (5) business days prior to such hearing. At such hearing said applicant may appear and offer evidence why the assessment as made by the Collector should not be confirmed and fixed as the tax due. After such hearing, the Collector shall determine and reassess the proper tax to be charged and shall give written notice to the Person in the manner prescribed in Section 5C-250 for giving notice of assessment. The amount determined to be due shall become due and payable thirty (30) calendar days after written notice is provided, unless it is appealed to the City Council.

5C-270: APPEAL PROCEDURE.

Any taxpayer aggrieved by any decision of the Collector with respect to the amount of tax, fee, interest and penalties, if any, due under this Chapter may in writing appeal to the City Council as provided in Title 1, Chapter 4 of the Avenal Municipal Code, provided that the full amount of the tax found to be due is deposited with the City Clerk no later than the time when the written appeal is received by the City Clerk.

5C-280: CONVICTION FOR CHAPTER VIOLATION – TAXES NOT WAIVED.

The conviction and punishment of any Person for failure to pay a required tax, fee, penalty and/or interest under this Chapter shall not excuse or exempt such Person from any civil action for the amounts due under this Chapter. No civil action shall prevent a criminal prosecution for any violation of the provisions of this Chapter or of any State law requiring the payment of all taxes.

5C-290: VIOLATION DEEMED MISDEMEANOR.

Any Person who violates any provision of this Chapter or who other than by a sworn statement, knowingly or intentionally misrepresents to any officer or employee of the City any material fact herein required to be provided is guilty of a misdemeanor punishable up to the maximum provided in Government Code § 36901. A Person who on a sworn statement states as true a material fact which she or he knows to be false is guilty of perjury.

5C-300: REMEDIES CUMULATIVE.

All remedies prescribed under this Chapter shall be cumulative and the use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions hereof.

5C-310: AMENDMENT OR REPEAL.

This Chapter may be amended by ordinance of the Avenal City Council without a vote of the People except that, as required by Article XIIIC of the California Constitution, voter approval is required for any amendment which would increase the rate of any tax levied pursuant to this Chapter above the maximum rates established by this Chapter. The People of the City of Avenal affirm that each and all of the following actions shall not constitute an increase of the rate of a tax:

A. The restoration of the rate of the tax to a rate which is no higher than the maximum allowed by this Chapter, if the City Council has acted to suspend or reduce the rate of the tax;

B. An action which interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the text of this Chapter;

C. The collection of the tax imposed by this Chapter, even if the City had, for some period of time, failed to collect the tax;

D. The establishment of a class of Persons which are exempt or excepted from the tax or the discontinuation of any such exemption or exception (other than the discontinuation of an exemption or exception specifically set forth in this Chapter); or

E. The City Council's adoption of a resolution, as authorized by Section 5C-050, to raise the tax rate provided that the rate is not increased to a rate higher than the maximum established in this Chapter.

5C-320: SUSPENSION OF COLLECTION.

The City Council shall have authority to temporarily suspend collection of all or a portion of the tax imposed by this chapter by resolution unanimously approved by all members of the entire City Council, in accordance with applicable State law. However, the authority to levy the tax imposed by this chapter shall not expire or otherwise terminate, unless terminated by a duly enacted ordinance which is approved at a regular meeting of, and by unanimous vote of all five (5) of the seats on, the City Council.

Section 3. CEQA REVIEW. The City Council hereby finds that this Ordinance is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines 15060(c)(2), 15061(b)(3) and 15378(b)(2) and (4). The City Manager is hereby directed to ensure that a *Notice of Exemption* is filed pursuant to CEQA Guidelines section 15062 [14 C.C.R. § 15062].

Section 4. NO LIABILITY. The provisions of this Ordinance shall not in any way be construed as imposing any duty of care, liability or responsibility for damage to Person or property upon the City of Avenal, or any official, employee or agent thereof.

Section 5. PENDING ACTIONS. Nothing in this Ordinance or in the codes hereby adopted shall be construed to affect any suit or proceeding pending or impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or Ordinance or code repealed by this Ordinance, nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

Section 6. SEVERABILITY. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any Person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other Person or circumstance. The City Council of the City of Avenal hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 7. CONSTRUCTION. The City Council intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent. To the extent the provisions of the Avenal Municipal Code as amended by this Ordinance, if any, are substantially the same as provisions in the Avenal Municipal Code existing prior to the effectiveness of this

Ordinance, then those amended provisions shall be construed as continuations of the earlier provisions and not as new enactments.

Section 7. EFFECTIVE DATE. Pursuant to Elections Code § 9217, this Ordinance shall be deemed adopted on the date when the final vote is declared by the City Council and this Ordinance shall go into effect ten (10) days after that date, contingent upon approval by a majority of the voters voting on the measure in the **November 8, 2022** election.

Section 8. CERTIFICATION; PUBLICATION. Upon approval by the voters, the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause it to be published according to law.

THE FOREGOING ORDINANCE was approved by the City Council of the City of Avenal, State of California, on **June 23, 2022** at a regular meeting of said Council duly and regularly convened on said day by the following vote:

AYES: **Gravelle, Hernandez, Ramirez, Preciado**
NOES: **None**
ABSTAIN: **None**
ABSENT: **Verdugo**

ALVARO PRECIADO, Mayor

ATTEST: Maria Ortiz
Maria A. Ortiz, City Clerk

CLERKS CERTIFICATE

City of Avenal}
County of Kings } ss.
State of California }

I, Maria A. Ortiz, City Clerk of the City of Avenal hereby certify that the foregoing is a full, true and correct copy of an ordinance approved by the City Council of the City of Avenal at a meeting held on the _23_ day of June, 2022, by the vote as set forth therein.

DATED: June _23_, 2022

ATTEST:

Maria A. Ortiz, City Clerk