ORDINANCE NO. 2011-04

ORDINANCE OF THE CITY OF AVENAL ADDING CHAPTER 9 TO TITLE 8 OF AVENAL MUNICIPAL CODE, PERTAINING TO RECYCLING AND DIVERSION OF CONSTRUCTION AND DEMOLITION WASTE.

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

Section 1. PURPOSE. The provisions of this ordinance are enacted to provide minimum requirements and standards for the protection of the public health, safety, welfare, and property and are to be liberally construed to obtain the beneficial purpose thereof. This ordinance is intended to comply with the Integrated Waste Management Act of 1989 and its applicable implementing regulations.

Section 2. CODE ENACTMENT. Chapter 9 of Title 8 of the Avenal Municipal Code is hereby added to read in its entirety as follows:

Section 8-9.01: Findings and Statement of Intent

(a) **WHEREAS,** under California law as embodied in the California Waste Management Act of 1989 (California Public Resources Code sections 40000 et seq.), the City of Avenal ("**City**") is required to prepare, adopt and implement source reduction and recycling plans to reach landfill diversion goals, and is required to make substantial reductions in the volume of waste materials going to the landfills, or face fines up to ten thousand dollars ($10,000) per day.

(b) **WHEREAS,** in order to meet these goals it is necessary that the City promote the reduction of solid waste, and reduces the solid waste going into landfills.

(c) **WHEREAS,** waste from construction, demolition, and renovation of buildings represents a significant portion of the volume of waste presently coming from the City and much of this waste is particularly suitable for recycling and reuse.

(d) **WHEREAS,** the City's commitment to the reduction of waste requires the establishment of programs for recycling and salvaging of construction and demolition (C&D) waste.

(e) **WHEREAS,** certain types of projects shall be exempt from these requirements.

Section 8-9.02: Definitions

(a) "**Applicant**" means the person applying for a construction, repair or demolition permit from the City of Avenal.

(b) "**Building Official**" means the City Manager or his/her designee.

(c) "**City**" means the City of Avenal or the Avenal Redevelopment Agency.

(d) "**Covered Project**" includes any project which consists of one or more of the following:

(1) Demolition work only where the work is equal to or greater than one thousand (1,000) square feet;
(2) The renovation, remodel or addition to an existing structure, or the construction of a new structure where the cost of the work equals or exceeds one hundred thousand dollars ($100,000), as determined by the Building Official;
(3) Commercial, residential or multi-family residential development or any new structure that is equal to or greater than one thousand (1,000) square feet;
(4) Any project, regardless of size, funded by the City, including public works and capital improvement projects.

(e) "**This Chapter**" means Chapter 9 of Title 8 of the Avenal Municipal Code. This Chapter shall be known as the "**Construction and Demolition Debris Ordinance**".

(f) "**Construction and Demolition Debris**" and "**C&D Debris**" shall have the definition prescribed in Title 14, Division 7 of the California Code of Regulations, section 17381(e).

(g) "**Disposal**" and "**disposed**" mean to discard in a landfill.

(h) "**Diversion Requirement**" means the requirement prescribed in section 8-9.04 of this Chapter.

(i) "**Existing Construction**" means building, adding, altering, or repairing of any structure or any portion thereof including any tenant improvements to an existing structure.

(j) "**Inert Debris**" shall have the definition prescribed in Title 14, Division 7 of the California Code of Regulations, section 17381(k).

(k) "**Permitee**" means an Applicant who has been granted a construction, repair or demolition permit from the City of Avenal.

(l) "**WMP Compliance Official**" means the City Manager or his/her designee.

Section 8-9.03: Requirements for Newly Constructed Structures

(a) Diversion Requirement: It is required that at least fifty percent (50%) of waste material, consisting of any combined proportion of Construction and Demolition Debris and Inert Debris, generated from newly constructed low-rise residential and non-residential commercial construction shall be diverted from disposal.

(b) Waste Management Plan: Prior to starting the project, every applicant shall submit a properly completed "Waste Management Plan" (**WMP**) as required under section 8-9.06 of this Chapter.

Section 8-9.04: Diversion Requirement

Unless otherwise exempted, each Covered Project must divert from disposal at least fifty percent (50%) of waste material, consisting of any combined proportion of Construction and Demolition Debris and Inert Debris, generated from said project.

Section 8-9.05.: Diversion Requirement Exemption

(a) Application: If an Applicant for a Covered Project experiences circumstances that the Applicant believes make it infeasible to comply with the Diversion Requirement, the Applicant may apply for a diversion exemption at the time the Applicant submits a Waste Management Plan required under section 8-9.07 of this Chapter.

(b) Meeting with WMP Compliance Official: The WMP Compliance Official shall review the information supplied by the

Applicant and may meet with the Applicant to discuss feasible ways of satisfying the diversion requirement. Upon request by the Applicant, the WMP Compliance Official may request that City staff attend this meeting or may require the Applicant to request a separate meeting with the City staff. Based on the information supplied by the Applicant, City staff (if applicable), and the WMP Compliance Official shall determine whether it is feasible for the Applicant to satisfy the Diversion Requirement.

(c) Granting of Exemption: If the WMP Compliance Official determines that it is infeasible for the Applicant to meet the Diversion Requirements, he or she shall determine the maximum feasible diversion rate for waste generated by the Covered Project and shall indicate the new diversion requirement the Applicant shall be required to meet, and will inform the Applicant in writing of the new requirement. The Applicant shall then have fourteen (14) days to resubmit another WMP, which is in compliance with the new diversion requirement. If the Applicant fails to resubmit, or if the resubmitted WMP does not comply with section 8-9.07, the WMP Compliance Official shall disapprove the WMP in accordance with section 8-9.07.

Section 8-9.06: Exempt Covered Projects

(a) A diversion deposit and a Waste Management Plan shall not be required for the following:

(1) Work for which a building or demolition permit is not required.

(2) Residential and non-residential alterations of less than one hundred thousand dollars ($100,000) in value.

(3) Roofing projects that do not include tear-off of existing roof.

(4) Work for which only a plumbing, only an electrical, or only a mechanical permit is required.

(5) Seismic tie-down projects.

(6) Emergency demolition required to protect the public health and safety.

(b) While not required, it shall be encouraged, that at least twenty-five percent (25%) of all existing construction and demolition waste from exempt projects be diverted.

Section 8-9.07: Waste Management Plan

(a) Prior to starting the project, every applicant must submit a properly completed "Waste Management Plan" (**WMP**) to the WMP Compliance Official, in a form prescribed by that official, as a portion of the building or demolition permit process. The completed WMP must contain all of the following:

(1) The estimated volume or weight of project waste to be generated by material type;
(2) A determination of whether or not materials will be sorted on-site or mixed;
(3) The maximum volume or weight of such materials that can feasibly be diverted via reuse, recycling or salvage for future use or sale by material type;
(4) The vendor(s) that the applicant proposes to use to haul the materials;
(5) Facility(s) the materials will be hauled to, and their expected diversion rates (by volume or weight) for each material type; and
(6) Estimated volume or weight of construction and demolition waste that will be disposed.

(b) Because actual material weights are not available in this stage, estimates are used. In estimating the volume or weight of materials as identified in the WMP, the Applicant shall use the standardized conversion rates approved by the City for this purpose. Approval of the WMP as complete and accurate shall be a condition precedent to the issuance of any building or demolition permit. If the applicant calculates the projected feasible diversion rate as described above, and concludes that the projected diversion rate does not satisfy the applicable Diversion Requirement, the applicant must then submit information supporting the lower diversion rate. If this documentation is not included, the WMP shall be deemed incomplete.

(c) Approval: No building or demolition permit shall be issued for any Covered Project unless and until the WMP Compliance Official has approved the WMP. Approval shall not be required, however, where emergency demolition is required to protect public health or safety. The WMP Compliance Official shall only approve a WMP if he or she determines that all of the following conditions are satisfied:

(1) The WMP provides all of the information set forth in this section.
(2) The WMP indicates that at least fifty percent (50%) of all construction and demolition waste generated by the project (or the new diversion goal set in accordance with the Applicant's approved Diversion Exemption request) shall be diverted from disposal; and
(3) The Applicant has submitted all required fees, deposits and/or bonds for the project.

(d) Non-Approval: If the WMP Compliance Official determines that the WMP is incomplete or fails to indicate that at least fifty percent (50%), or the new diversion goal set in accordance with the Applicant's approved Diversion Exemption request (if applicable) of all construction and demolition waste generated by the project will be diverted from disposal, he or she shall either:

(1) Return the WMP to the Applicant marked "Disapproved", including a statement of reasons, and will notify the building department, which shall then immediately stop processing the building or demolition permit application; or
(2) Return the WMP to the Applicant marked "Further Explanation Required."

Section 8-9.08: Deposit Required

(a) As a condition precedent to the issuance of any permit for construction or demolition for a Covered Project, the Applicant shall post a deposit (cash, letter of credit, performance or surety bond, money order) in an amount to be determined by the Public Works Director and approved by the City Manager.

(b) The deposit shall be returned, without interest, in total or pro-rated, upon proof of satisfaction by the WMP Compliance Official that no less than the required percentage of construction and demolition waste tonnage generated by the Covered Project was diverted from disposal and has been recycled or reused or stored for later reuse or recycling. If a lesser percentage of construction and demolition waste tonnage than required is diverted, a proportionate share of the deposit shall be returned. The deposit shall be forfeited entirely or to the pro-rated extent that there was a failure to comply

with the requirements of this Chapter. The City may, by formal resolution, modify the amount of the required deposit.

Section 8-9.09: On-site Practices

(a) During the term of the Covered Project, the Applicant shall recycle and reuse the required percentage of waste, and keep records of the tonnage or other measurements approved by the City that can be converted to tonnage amounts. The WMP Compliance Official will evaluate and may monitor each Covered Project to determine the percentage of waste salvaged and recycled or reused from the Covered Project.

(b) For Covered Projects including both construction and demolition, diversion of materials shall be tracked and measured separately.

(c) To the maximum extent feasible, project waste shall be separated on-site if this practice increases diversion. For construction and/or demolition projects, on-site separation shall include salvageable materials (e.g., appliances, fixtures, plumbing, metals, etc.,) and dimensional lumber, wallboard, concrete and corrugated cardboard.

Section 8-9.10: Reporting

(a) Within fourteen (14) days after completion of the demolition phase of a Covered Project, and again within fourteen (14) days following the completion of the construction phase of a Covered Project, the Applicant/permitee shall, as a condition precedent to final inspection and to issuance of any certificate of occupancy or final approval of project, submit documentation to the WMP Compliance Official that proves compliance with the requirements of section 8-9.07 (Waste Management Plan) and section 8-9.04 (Diversion Requirement). The documentation shall consist of a final completed WMP showing actual waste tonnage data, supported by original or certified photocopies of receipts and weight tags or other records of measurement from recycling companies, deconstruction contractors, and/or landfill and disposal companies. Receipts and weight tags will be used to verify whether waste generated from the Covered Project has been or are to be recycled, reused, salvaged or disposed. The Applicant/permitee shall make reasonable efforts to ensure that all designated recyclable and reusable waste salvaged or disposed are measured and recorded using the most accurate method of measurement available.

(b) To the extent practical, all construction and demolition waste shall be weighed in compliance with all regulatory requirements for accuracy and maintenance. For construction and demolition waste for which weighing is not practical due to small size or other considerations, a volumetric measurement shall be used. For conversion of volumetric measurements to weight, the applicant shall use the standardized conversion rates approved by the City for this purpose.

(c) If a Covered Project involves both demolition and construction, the report and documentation for the demolition project must be submitted and approved by the WMP Compliance Official before issuance of a building permit for the construction phase of a Covered Project. Alternatively, the applicant may submit a letter stating that no waste or recyclable materials were generated from the Covered Project, in which case this statement shall be subject to verification by the WMP Compliance Official. Any deposit posted pursuant to section 8-9.08 (Deposit Required) shall be forfeited if the applicant does not meet the timely reporting requirements of this section

Section 8-9.11: Violations; Fines/Penalties

Any permitee, Applicant, contractor and owner whose Covered Project violates any provision of this Chapter shall be subject to the penalty provisions of Title 1, Chapter 2 of the Avenal Municipal Code.

Section 8-9.12: Appeals

(a) Any person aggrieved by the decision or determination of the WMP Compliance Officer may appeal the same pursuant to Title 1, Chapter 4 of the Avenal Municipal Code.

(b) Decisions and determinations subject to appeal under this section include decisions and determinations pertaining to the requirements under this Chapter, including but not necessarily be limited to:

(1) the granting or denial of an exemption;
(2) rejection of a Waste Management Plan;
(3) the amount or type of deposit required or released; and
(4) whether the applicant has acted in good faith.

Section 8-9.13: Option to Revise

(a) Beginning on July 1, 2012 the City will evaluate the requirements of this Chapter to determine its effectiveness in reducing the amount of construction and demolition waste disposed. In this determination, the City will consider issues such as the amount of construction and demolition waste disposed, volume of construction and demolition activity, markets for construction and demolition waste, and other barriers encountered by applicants.

(b) If the City determines the construction and demolition waste disposed had the potential for diversion, then the City may amend these provisions and implement the necessary measures to divert more construction and demolition waste.

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 sections 15060(c)(2) [the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment] and 15061(b)(3) [there is no possibility the activity in question may have a significant effect on the environment]. In addition to the foregoing general exemptions, the City Council further finds that the ordinance is categorically exempt from review under CEQA under the Class 8 categorical exemption [regulatory activity to assure the protection of the environment]. The City Manager is hereby directed to ensure that a Notice of Exemption is filed pursuant to CEQA Guidelines section 15062 [14 C.C.R. § 15062].

Section 4. 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 5. 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.

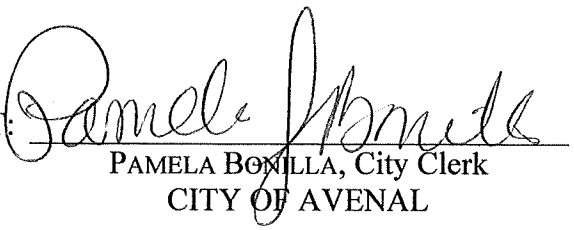
Section 6. CONSTRUCTION. The City Council intends this ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this ordinance shall be construed in light of that intent. To the extent the provisions of the Avenal Municipal Code as amended by this ordinance are substantially the same as provisions in the Avenal Municipal Code existing prior to the effectiveness of this ordinance, then those amended provisions shall be construed as continuations of the earlier provisions and not as new enactments.

Section 7. EFFECTIVE DATE. The foregoing ordinance shall take effect thirty (30) days from the date of the passage hereof. Prior to the expiration of fifteen (15) days from the passage hereof a certified copy of this ordinance shall be posted in the office of the City Clerk pursuant to Government Code section 36933(c)(1) and a summary shall be published once in the Avenal Chimes, a newspaper printed and published in the County of Tulare, State of California, together with the names of the Council members voting for and against the same.

THE FOREGOING ORDINANCE was passed and adopted by the City Council of the City of Avenal, State of California, on April 14 2011 at a regular meeting of said Council duly and regularly convened on said day by the following vote:

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

HARLIN CASIDA, Mayor
CITY OF AVENAL

ATTEST: 

PAMELA BONILLA, City Clerk
CITY OF AVENAL

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