ORDINANCE NO. 2011 - 07

AN ORDINANCE DETERMINING THAT THE CITY OF AVENAL WILL COMPLY WITH THE "VOLUNTARY" ALTERNATIVE REDEVELOPMENT PROGRAM PURSUANT TO PART 1.9 OF DIVISION 24 OF THE CALIFORNIA HEALTH AND SAFETY CODE IN ORDER TO PERMIT THE CONTINUED EXISTENCE AND OPERATION OF THE REDEVELOPMENT AGENCY OF THE CITY OF AVENAL.

WHEREAS, the City Council of the City of Avenal ("**City**") approved and adopted the Redevelopment Plan for the Avenal Redevelopment Project ("**Redevelopment Plan**") covering certain properties within the City (the "**Project Area**");

WHEREAS, the Redevelopment Agency of the City of Avenal ("**Agency**") is engaged in activities to execute and implement the Redevelopment Plan pursuant to the provisions of the California Community Redevelopment Law (Health and Safety Code § 33000, et seq.) ("**CRL**");

WHEREAS, since adoption of the Redevelopment Plan, the Agency has undertaken redevelopment projects in the Project Area to eliminate blight, to improve public facilities and infrastructure, to renovate and construct affordable housing, and to enter into partnerships with private industries to create jobs and expand the local economy;

WHEREAS, over the next few years, the Agency hopes to implement a variety of redevelopment projects and programs to continue to eliminate and prevent blight, stimulate and expand the Project Area's economic growth, create and develop local job opportunities and alleviate deficiencies in public infrastructure, to name a few;

WHEREAS, as part of the 2011-12 State budget bill, the California Legislature has recently enacted and the Governor on June 28, 2011 signed, companion bills AB 1X 26 and AB 1X 27, requiring that each redevelopment agency be dissolved unless the community that created it enacts an ordinance committing it to making certain payments;

WHEREAS, specifically, AB 1X 26 prohibits agencies from taking numerous

actions, effective immediately and purportedly retroactively, and additionally provides that agencies are deemed to be dissolved as of October 1, 2011;

WHEREAS, AB 1X 27 provides that a community may participate in an "Alternative Voluntary Redevelopment Program" in order to enable a redevelopment agency within that community to remain in existence and carry out the provisions of the CRL, by enacting an ordinance agreeing to comply with Part 1.9 of Division 24 of the Health and Safety Code;

WHEREAS, the Alternative Voluntary Redevelopment Program requires that the community agree by ordinance to remit specified annual amounts to the county auditor-controller;

WHEREAS, solely under the threat of dissolution pursuant to AB 1X 26, and upon the contingencies and reservations set forth herein, the City shall make the Fiscal Year 2011-2012 community remittance, currently estimated to be four hundred seventy-three thousand three hundred forty-five dollars ($ 473,345.00), as well as the subsequent annual community remittances as set forth in the CRL;

WHEREAS, the City reserves the right to appeal the California Director of Finance's determination of the Fiscal Year 2011-12 community remittance, as provided in Health and Safety Code Section 34194;

WHEREAS, City understands and believes that an action challenging the constitutionality of AB 1X 26 and AB 1X 27 will be filed on behalf of cities, counties and redevelopment agencies;

WHEREAS, while the City currently intends to make these community remittances, they shall be made under protest and without prejudice to the City's right to recover such amounts and interest thereon, to the extent there is a final determination that AB 1X 26 and AB 1X 27 are unconstitutional;

WHEREAS, the City reserves the right, regardless of any community remittance made pursuant to this ordinance, to challenge the legality of AB 1X 26 and AB 1X 27;

WHEREAS, to the extent a court of competent jurisdiction enjoins, restrains, or grants a stay on the effectiveness of the Alternative Voluntary Redevelopment

Program's payment obligation of AB 1X 26 and AB 1X 27, the City shall not be obligated to make any community remittance for the duration of such injunction, restraint, or stay; and

WHEREAS, all other legal prerequisites to the adoption of this ordinance have occurred.

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

Section 1. RECITALS. The recitals set forth above are true and correct and incorporated herein by reference.

Section 2. NAME. This ordinance shall be known and referred to as the "Alternative Redevelopment Program Ordinance".

Section 3. PARTICIPATION IN THE ALTERNATIVE REDEVELOPMENT PROGRAM. In accordance with Health and Safety Code Section 34193, and based on the Recitals set forth above, the City Council hereby determines that the City shall comply with the provisions of Part 1.9 of Division 24 of the Health and Safety Code, as enacted by AB 1X 27.

Section 4. PAYMENT UNDER PROTEST. Except as set forth in Section 5, below, the City Council hereby determines that the City shall make the community remittances set forth in Health and Safety Code section 34194 et seq.

Section 5. EFFECT OF STAY OR DETERMINATION OF INVALIDITY. City shall not make any community remittance in the event a court of competent jurisdiction either grants a stay on the enforcement of AB 1X 26 and AB 1X 27 or determines that AB 1X 26 and AB 1X 27 are unconstitutional and therefore invalid, and all appeals therefrom are exhausted or unsuccessful, or time for filing an appeal therefrom has lapsed. Any community remittance shall be made under protest and without prejudice to the City's right to recover such amount and interest thereon in the event that there is a final determination that AB 1X 26 and AB 1X 27 are unconstitutional. If there is a final determination that AB 1X 26 and AB 1X 27 are invalid, this ordinance shall be deemed to be null and void and of no further force or effect.

Section 6. IMPLEMENTATION. The City Council hereby authorizes and directs the City Manager to take any action and execute any documents necessary to implement this ordinance, including but not limited to notifying the Auditor-Controller of the County of Kings, the Controller of the State of California, and the California Department of Finance of the adoption of this ordinance and the City's agreement to comply with the provisions of Part 1.9 of Division 24 of the Health and Safety Code, as set forth in AB 1X 27, to the extent AB 1X 27 is lawful.

Section 7. ADDITIONAL UNDERSTANDINGS AND INTENT. It is the understanding and intent of the City Council that, once the Agency is again authorized to enter into agreements under the CRL, the City will enter into an agreement with the Agency as authorized pursuant to Section 34194.2, whereby the Agency will transfer annual portions of its tax increment to the City in amounts not to exceed the annual community remittance payments to enable the City, directly or indirectly, to make the annual remittance payments. The City Council does not intend, by enactment of this ordinance, to pledge any of its general fund revenues or assets to make the remittance payments.

Section 8. CEQA REVIEW. The City Council hereby finds, under Title 14 of the California Code of Regulations, section 15378(b)(4), that this ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") in that it is not a "project", but instead consists of the creation and continuation of a governmental funding mechanism for potential future projects and programs, and does not commit funds to any specific project or program. 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 9. 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 10. 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 11. 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 12. EFFECTIVE DATE. The foregoing ordinance shall take effect thirty (30) days from the date of the passage hereof. Prior to the expiration of fifteen (15) days from the passage hereof a certified copy of this ordinance shall be posted in the office of the City Clerk pursuant to Government Code section 36933(c)(1) and a summary shall be published once in the **Avenal Chimes**, a newspaper printed and published in the City of Avenal, State of California, together with the names of the Council members voting for and against the same.

THE FOREGOING ORDINANCE was passed and adopted by the City Council of the City of Avenal, State of California, on the **25TH** day of **AUGUST**, 2011, at a regular meeting of said Council duly and regularly convened on said day by the following vote:

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

HARLIN CASIDA, Mayor
CITY OF AVENAL

ATTEST:

PAMELA BONILLA, City Clerk,
CITY OF AVENAL

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