



AGENDA ITEM
NO. **C-13**

COUNTY OF HUMBOLDT

For the meeting of: June 27, 2017

Date: June 12, 2017

To: Board of Supervisors

From: Kelly Sanders, Clerk/Recorder/Registrar of Voters *KS*

Subject: Resolution from the City of Rio Dell Requesting Consolidation of the Municipal Election with Humboldt County's Consolidated Districts Election on November 7, 2017, and Placing the Cannabis Business Tax Measure on the Ballot.

RECOMMENDATION(S):

That the Board of Supervisors approve the request for election consolidation with the condition that the City of Rio Dell reimburse the County of Humboldt for costs incurred pursuant to this request, and request that the clerk of the board forward the signed board order and copy of Rio Dell's resolution #1335-2017 to the Humboldt County Office of Elections.

SOURCE OF FUNDING: City of Rio Dell

DISCUSSION:

On May 16, 2017, the Rio Dell city council approved resolution 1335-2017 requesting the Board of Supervisors approve the consolidation of their municipal election with the Consolidated Districts Election to be held on November 7, 2017, in the County of Humboldt and calling for an election, and placing one measure on the ballot calling for submission to the voters a question relating to the establishment of a cannabis business tax.

Prepared by Judith Hedgpeth

CAO Approval *[Signature]*

REVIEW:

Auditor _____ County Counsel *[Signature]* Human Resources _____ Other _____

TYPE OF ITEM:

- Consent
- Departmental
- Public Hearing
- Other _____

PREVIOUS ACTION/REFERRAL:

Board Order No. _____

Meeting of: _____

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT

Upon motion of Supervisor *Sundberg* Seconded by Supervisor *Fennell*

Ayes *Sundberg, Fennell, Bass, Bohn*

Nays _____

Abstain _____

Absent *Wilson*

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: *June 27, 2017*

By: *[Signature]*
Kathy Hayes, Clerk of the Board

This item meets the Board of Supervisors' 2017 Strategic Framework by providing community-appropriate levels of service and building interjurisdictional and regional cooperation.

FINANCIAL IMPACT: No financial impact to the county as the City of Rio Dell shall reimburse the county for costs associated with their measure.

OTHER AGENCY INVOLVEMENT: City of Rio Dell

ALTERNATIVES TO STAFF RECOMMENDATIONS:

Board discretion

ATTACHMENTS:

Attachment 1: Cover letter

Attachment 2: Resolution 1335-2017

Attachment 3: Ordinance No. 354-2017

675 Wildwood Avenue
Rio Dell, Ca 95562



May 22, 2017

Kathy Hayes
Clerk of the Board
County of Humboldt
825 5th St.
Eureka, CA 95501

This letter is to request the Humboldt County Board of Supervisors authorize the County of Humboldt Elections Department to include Rio Dell in the November 7, 2017 General Election for a local business tax measure for commercial cannabis activity.

At the regular City Council meeting held on May 16, 2017, the City Council approved Resolution 1335-2017 submitting to the voters of the City of Rio Dell proposed Ordinance No. 354-2017 and requesting the County of Humboldt Elections Department to include Rio Dell in the November 7, 2017 General Election. I have enclosed copies of the ordinance and resolution.

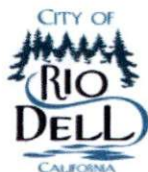
If any further information is needed I may be contacted at 764-3532.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Knopp", written over a horizontal line.

Kyle C. Knopp
City Manager
City of Rio Dell

RESOLUTION NO. 1335-2017



A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIO DELL SUBMITTING TO THE VOTERS AT THE GENERAL ELECTION ON NOVEMBER 7, 2017, A PROPOSED ORDINANCE ADDING SECTION 5.40 TO THE RIO DELL MUNICIPAL CODE AND CREATING A “CANNABIS” BUSINESS TAX OF UP TO FIVE DOLLARS (\$5.00) PER SQUARE FOOT OF SPACE UTILIZED FOR CERTAIN COMMERCIAL CANNABIS CULTIVATION ACTIVITY AND, FOR CERTAIN OTHER COMMERCIAL CANNABIS ACTIVITIES, A TAX RATE OF UP TO TEN PERCENT (10%) OF GROSS RECEIPTS; REQUESTING THE BOARD OF SUPERVISORS OF HUMBOLDT COUNTY TO CONSOLIDATE SAID ELECTION WITH THE STATEWIDE GENERAL ELECTION; AND DIRECTING THE CITY CLERK TO TAKE ANY AND ALL ACTIONS NECESSARY UNDER LAW TO PREPARE FOR AND CONDUCT THE ELECTION.

WHEREAS, on October 9, 2015, Governor Brown approved a package of three bills enacted by the legislature on September 11, 2015, i.e., SB 643, AB 243, and AB 266, providing for comprehensive, concurrent regulation and licensing by state and local governments of medical cannabis as an agricultural product, including its cultivation, processing, testing, manufacture, distribution, transportation, dispensing, and delivery; and

WHEREAS, on October 18, 2016, the City Council of the City of Rio Dell adopted an ordinance establishing Section 17.30.195, as later amended, of Title 17 of the Rio Dell Municipal Code regulating the commercial cultivation, processing, manufacturing and distribution of Cannabis for medical use within the City; and

WHEREAS, the City Council has considered potential impacts to City services that may result from permitting commercial cultivation, processing, manufacturing and distribution of Cannabis for medical use within the City and has determined that imposing a business tax on such businesses will help to alleviate and offset the impacts to City services; and

WHEREAS, under the proposed Ordinance, “cannabis cultivation businesses” will be taxed at a rate of up to five dollars (\$5.00) per square foot of space utilized in such business and “other cannabis businesses” will be taxed at a rate of up to ten percent of gross receipts; and

WHEREAS, accordingly, the City Council desires to add Chapter 5.40 to Title 5 of the Rio Dell Municipal Code and, therefore, by way of this Resolution, proposes the Ordinance to the qualified voters of the City for their approval and adoption; and

WHEREAS, the City Council has determined that all revenues received from the tax will be deposited in the general fund of the City to be expended for general fund purposes.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Rio Dell:

1. Recitals, The foregoing recitals are true and correct and are hereby incorporated by reference.

2. Call Election; Placement of Measure on the Ballot. Pursuant to California Constitution Article XIII C, Section 2; Government Code Section 53724; and Elections Code Section 9222, the City Council of the City of Rio Dell hereby calls an election at which it shall submit to the qualified voters of the City, a measure that, if approved, would adopt a business tax upon "commercial cannabis activity" as that term is defined in the proposed ordinance and at the rates imposed therein. This measure shall be designated by letter by the Humboldt County Registrar of Voters. Pursuant to Election Code Section 10400 *et seq.*, the election for this measure shall be consolidated with the established election to be conducted on November 7, 2017, and be held and conducted in the manner prescribed by Elections Code Section 10418.

3. Ballot Language. The question to be presented to the voters is as follows:

Shall the ordinance creating a new business tax of up to five dollars per square foot of space utilized for certain commercial cannabis cultivation activity and, for other commercial cannabis activity, a tax of up to ten percent of gross receipts be adopted, with all proceeds placed in the City's General Fund to be used for any governmental purpose? The tax imposed by this Ordinance is expected to generate \$980,000 in annual revenue and will continue in effect until later repealed.	YES	
	NO	

4. Proposed Ordinance. The ordinance authorizing the business tax to be approved by the voters pursuant to Sections 2 and 3 of the Resolution is as set forth in Attachment 1. The City Council hereby approves the ordinance, and form thereof, and its submission to the voters of the City at the November 7, 2017 election, subject to the approval of a majority of the voters voting on the measure at the election called by the adoption of this resolution. The entire text of the ordinance, attached hereto as Attachment 1, shall be included in the voters' pamphlet. The ordinance specifies that the rate of the business tax shall be up to five dollars (\$5.00) per square foot of space utilized in connection with certain commercial cannabis cultivation activity and up to ten percent (10%) of the gross receipts from certain other commercial cannabis activity within the City; it specifies that the tax shall be in effect until later repealed. The City shall collect the tax from persons and entities subject to the tax.

5. Publication of Measure. The City Clerk is hereby directed to cause notice of the measure to be published once in the official newspaper of the City of Rio Dell, in accordance with Section 12111 of the Elections Code and Section 6061 of the Government Code.

6. Request to Consolidate and Conduct Election and Canvass Returns.

- (a) Pursuant to the requirement of Section 10403 of the Elections Code, the Board of Supervisors of the County of Humboldt is hereby requested to consent and agree to the consolidation of a General Municipal Election with the Statewide General Election on Tuesday, November 7, 2017, for the purpose of placing the measure set forth in Sections 3 and 4 on the ballot.
- (b) The County of Humboldt Registrar of Voters is authorized to canvass the returns of the municipal election. The election shall be held in all respects as if there were only one election, and only one form of ballot shall be used.
- (c) The Board of Supervisors is requested to issue instructions to the Humboldt County registrar of voters take any and all steps necessary for the holding of the consolidated election.
- (d) The City of Rio Dell recognizes that additional costs will be incurred by the County of Humboldt by reason of this consolidation and agrees to reimburse the County for any costs.

7. Submission of Ballot Argument and Impartial Analysis.

- (a) The submission of ballot arguments for or against the measure shall be conducted pursuant to Election Code sections 9281 through 9287.
- (b) The last day for submission of direct arguments for or against the measure shall be by August 11, 2017.
- (c) Direct arguments shall not exceed three hundred (300) words and shall be signed by not more than five persons.
- (d) The City Attorney shall prepare an impartial analysis of the measure by August 28, 2017.

8. Effective Date. This Resolution shall become effective immediately upon its adoption and the City Clerk is directed to send certified copies of the Resolution to the Humboldt County Board of Supervisors and the Humboldt County Registrar of Voters.

9. CEQA. The approval of this resolution is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 *et seq.*, "CEQA," and 14 Cal. Code Reg. §§ 15000 *et seq.*, "CEQA Guidelines"). The business tax to be submitted to the voters is a general tax that can be used for any legitimate governmental purpose; it is not a commitment to any particular action. As such, under CEQA Guidelines section 15378(b)(4), the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. If revenue from the tax were used for a purpose that would have such effect, the City would undertake the required CEQA review for that particular project. Therefore, under CEQA Guidelines section 15060, review under CEQA is not required.


PASSED AND ADOPTED by the City Council of the City of Rio Dell, State of California, on April 4, 2017, by the following vote:

AYES: Wilson, Johnson, Garnes and Marks

NOES: None

ABSENT: Strahan


ABSTAIN: None



Frank Wilson, Mayor

ATTEST:

I, Karen Dunham, City Clerk for the City of Rio Dell, State of California, hereby certify the above and foregoing to be a full, true and correct copy of Resolution No. 1329-2017 approved and adopted by the City Council of the City of Rio Dell on April 4, 2017.



Karen Dunham, City Clerk

Ordinance No. 354-2017

ORDINANCE ADDING CHAPTER 5.40 TO TITLE 5 OF THE RIO DELL MUNICIPAL CODE AND CREATING A NEW BUSINESS TAX FOR COMMERCIAL CANNABIS BUSINESS

The people of the City of Rio Dell do ordain as follows:

Section 1. The Rio Dell Municipal Code is hereby amended to add sections as set forth below.

Section 2. Code Amendment. Title 5 of the Rio Dell Municipal Code is hereby amended adding Chapter 5.40 to read as follows:

Chapter 5.40 - CANNABIS BUSINESS TAX

Part 1 - Purpose and Definitions

5.40.010 - Purpose of chapter.

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

5.40.020 - Definitions.

Unless otherwise specified herein, the definitions set forth in this part shall govern the application and interpretation of this chapter.

5.40.030 - Business.

The term "business" shall include all activities engaged in or caused to be engaged in within 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.

5.40.040 - Business license.

"Business license" means the license issued by the City to the taxpayer upon completion of the business license application and payment of the tax prescribed by Chapter 5.05.

5.40.050 - Director.

"Director" means the Director of the Finance Department of the City or, if the Director of the Finance Department position is vacant or the Director is incapacitated or otherwise unavailable, such other person designated by the City Manager to administer this chapter.

5.40.060 - Employee.

"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 or room and board or as a volunteer.

5.40.070 - Engaged in business.

- A. "Engaged in business" means the commencing, conducting, operating, managing or carrying on of Commercial Cannabis Activity (as defined below) and the exercise of corporate or franchise powers, whether done as owner, or by means of an officer, agent, manager, employee, or otherwise, whether operating from a fixed location in the City or coming into the City from an outside location to engage in such activities.
- B. A person shall be deemed engaged in business within the City if:
 1. Such person or person's employee maintains a fixed place of business within the City for the benefit or partial benefit of such person;
 2. Such person or person's employee owns, rents, or leases real property within the City for business purposes;
 3. Such person or person's employee regularly maintains a stock of tangible personal property in the City for sale in the ordinary course of business;
 4. Such person or person's employee regularly conducts solicitation of business within the City;
 5. Such person or person's employee performs work or renders services in the City on a regular and continuous basis involving more than five working days per year; and
 6. Such person or person's employee utilizes the streets within the City in connection with the operation of motor vehicles for business purposes.

The foregoing specified activities shall not be a limitation on the meaning of engaged in business.

5.40.080 - Evidence of doing business.

Whenever any person shall, by use of signs, circulars, cards or any other advertising media, including the use of internet or telephone solicitation, represent that such person is engaged in business in the City, then these facts may be used as evidence that such person is engaged in business in the City.

5.40.090 - Gross receipts.

"Gross receipts," except as otherwise specifically provided, means the total amount actually received or receivable from all sales; the total amount or compensation actually received or receivable for the performance of any act or service, of 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 therefrom on 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:

- A. Cash discounts allowed and taken on sales;
- B. 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;
- C. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
- D. 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;
- E. Receipts from investments where the holder of the investment receives only interest and/or dividends, royalties, annuities and gains from the sale exchange of stock or securities solely for a person's own account, not derived in the ordinary course of a business;
- F. 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;
- G. Cash value of sales, trades or transactions between departments or units of the same business;
- H. Whenever 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;
- I. 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;
- J. 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 names and the addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustees.

"Gross receipts" subject to the business tax shall be that portion of gross receipts relating to business conducted within the City.

5.40.100 – Square foot.

The term "square foot" means the maximum amount of allowable canopy area for cannabis cultivation authorized by a City permit or license issued by the City to a person

engaged in business involving Commercial Cannabis Cultivation Activity, or by a state license in the absence of a City permit or license, not deducting for unutilized square footage.

5.40.110 - Cannabis.

The term "Cannabis" shall have the same meaning as that term is defined in Section 17.30.195(6) of the Rio Dell Municipal Code.

5.40.120 – Commercial Cannabis Activity.

The term “Commercial Cannabis Activity” means Commercial Cannabis Cultivation Activity, as that term is defined in Section 5.40.130, below, and/or Other Commercial Cannabis Activity, as that term is defined in Section 5.40.140, below.

5.40.130 – Commercial Cannabis Cultivation Activity.

The term “Commercial Cannabis Cultivation Activity” means activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of Cannabis in the City, by a person engaged in business. Without limiting the foregoing, a person is engaged in business involving Commercial Cannabis Cultivation Activity if he, she, or it is operating pursuant to a Type 1, Type 1A, Type 1B, Type 2, Type 2A, Type 2B, Type 3, Type 3A, Type 3B, and/or Type 4 license, as those license types are defined in Section 19300.7 of the California Business and Professions Code and/or Section 17.30.195 of this Code.

5.40.140 – Other Commercial Cannabis Activity.

The term "Other Commercial Cannabis Activity" means activity, other than Commercial Cannabis Cultivation Activity, involving transporting, distributing, manufacturing, testing, dispensing, wholesale, retail sales of Cannabis and any ancillary products in the City, or other commercial Cannabis activity the Council may permit or authorize in the future, by a person engaged in business. Without limiting the foregoing, a person is engaged in business involving Other Commercial Cannabis Activity if he, she, or it is operating pursuant to a Type 6, Type 7, Type 8, Type 10, Type 10A, Type 11, and/or Type 12 license, as those license types are defined in Section 19300.7 of the California Business and Professions Code and/or Section 17.30.195 of this Code.

5.40.150 - Cannabis business tax.

"Business tax" or "cannabis business tax" or "cannabis tax" shall mean the tax due for engaging in Commercial Cannabis Activity in the City.

5.40.160 - Person.

"Person" means, without limitation, any natural individual, organization, firm, trust, common law trust, estate, partnership of any kind, association, syndicate, club, joint stock company, joint venture, limited liability company, corporation (including foreign, domestic, and nonprofit), collective, cooperative, receiver, trustee, guardian, or other representative appointed by order of any court.

5.40.170 - Sale.

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

Part 2 - General Tax Provisions

5.40.200 - Other licenses, permits, taxes, fees or charges.

Nothing contained in this Chapter 5.40 shall be deemed to repeal, amend, be in lieu of, replace or in any way affect any requirements for any license or permit required by, under or by virtue of any provision of any other title or chapter of this Code or any other ordinance of the City or resolution of the City Council, 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 including or any other ordinance of the City or resolution of the City Council. Any references made or contained in any other title or chapter of this 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 this Code.

5.40.210 - Business tax certificate—Required.

- A. There are imposed upon all persons engaged in a business involving Commercial Cannabis Activity in the City taxes in the amounts prescribed in this chapter and Chapter 5.05. It shall be unlawful for any person, either for him or herself or for any other person, to commence, transact or carry on any Commercial Cannabis Activity in the City without first having procured a business license from the City under Chapter 5.05 and having paid the tax set forth therein, and without complying with any and all provisions contained in this chapter. The carrying on of any Commercial Cannabis Activity without complying with any and all provisions of this chapter and Chapter 5.05 shall constitute a separate violation of this chapter and Chapter 5.05 for each and every day that such activity is so carried on.
- B. The business license required to be obtained under Chapter 5.05 and the taxes required to be paid under this chapter and Chapter 5.05 are declared to be required pursuant to the taxing power of the City solely for the purpose of obtaining revenue and are not regulatory permit fees.

5.40.220 - Payment of tax does not authorize unlawful business.

- A. The payment of a business license tax required by this chapter, and its acceptance by the City, shall not entitle any person to carry on any Commercial Cannabis Activity unless the person has complied with all of the requirements of this Code and all other applicable laws, nor to carry on any such activity in any building or on any premises in the event that such building or premises are situated in a zone or locality in which the conduct of such Commercial Cannabis Activity is in violation of any law.
- 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 ordinance of the City.

5.40.230 - Application—Form and contents.

Every person required to have a business license under the provisions of Chapter 5.05 shall make application for the same, or for renewal of the same, to the Director. Such application shall be a written statement upon a form or forms provided by the Director and shall be signed by the applicant under penalty of perjury. The application shall set forth such information as may be required and as may be reasonably necessary to properly determine the amount of the tax to be paid by the applicant under Chapter 5.05, together with such other information as is required by the Director to enable the Director to administer the provisions of this chapter.

5.40.240 - Payment—Location.

The tax imposed under this chapter shall be paid to the Director in lawful money of the United States, at the office of the Director, or any other location designated by the Director. Lawful money shall mean any coin, currency or negotiable instrument, exchangeable for said coin or currency, which the United States Congress has declared to be a national legal tender.

5.40.250 - Amount of business tax owed.

A. Tax Rate for Commercial Cannabis Cultivation Activity.

1. In addition to the business tax imposed under Chapter 5.05 of this Code and the requirements set forth therein, every person engaged in business involving Commercial Cannabis Cultivation Activity in the City shall pay a business tax at a rate of up to five dollars (\$5.00) per Square Foot or at a rate of up to ten percent (10%) of Gross Receipts, as set and determined by the Council, in its discretion, by ordinance.
2. Notwithstanding the maximum tax rates imposed under Subsection A.1., above, the City Council may, in its discretion, at any time by ordinance, implement a lower tax rate for Commercial Cannabis Cultivation Activity or establish differing tax rates for different categories, including permit or license types, of Commercial Cannabis Cultivation Activity subject to the maximum rate. The City Council may, in its discretion, at any time by ordinance, increase any such tax rate(s) once per calendar year, provided that any such increase does not exceed one-fifth (1/5) of the maximum tax rate(s) established pursuant to Subsection A.1., above.
3. The initial tax rates imposed upon persons engaged in business involving Commercial Cannabis Cultivation Activity shall be as follows:
 - (i) Two Dollars (\$2.00) per Square Foot for persons issued a permit or license, other than a permit or license to operate a Nursery, to engage in greenhouse, mixed-light, and/or indoor cultivation of Cannabis, pursuant to Section 17.30.195 of the Code.
 - (ii) Two Percent (2%) of Gross Receipts for persons issued a permit or license to operate a Nursery, pursuant to Section 17.30.195 of the Code.

B. Tax rate for Other Commercial Cannabis Activity.

1. In addition to the business tax imposed under Chapter 5.05 of this Code and the requirements set forth therein, every person engaged in business involving Other Commercial Cannabis Activity in the City shall pay a business tax at a rate of up to ten

percent (10%) of Gross Receipts, as set and determined by the Council, in its discretion, by ordinance..

2. Notwithstanding the maximum tax rate of ten percent (10%) of Gross Receipts imposed under Subsection B.1., the City Council may, in its discretion, at any time by ordinance, implement a lower tax rate for Other Commercial Cannabis Activity or establish differing tax rates for different categories, including permit or license types, of Other Commercial Cannabis Activity, subject to the maximum rate of ten percent of Gross Receipts. The City Council may, in its discretion, at any time by ordinance, increase any such tax rate(s) once per calendar year, provided that any such increase does not exceed one-fifth (1/5th) of the maximum tax rate.
3. The initial tax rate imposed upon persons engaged in business involving Other Commercial Cannabis Activity shall be Two Percent (2%) of Gross Receipts.

5.40.260 - Payment—Time limits.

The business tax imposed by this chapter shall be due and payable as follows:

- A. Each person engaged in business involving Commercial Cannabis Activity 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 Director and remit to the Director the tax due. The tax due shall be no less than the quarterly installment due. Each person shall pay on or before the last day of the month following the close of each calendar quarter.
- B. If the business tax is owed is based on Square Foot, as defined in Section 5.40.100, the tax statement may include a request for adjustment of the tax due to square foot authorized but not utilized for cultivation, and/or crop loss, along with evidence substantiating the square footage utilized and/or crop loss. The decision to prorate or adjust the tax will be made at the sole discretion of the City. A fee may be adopted by the City Council and collected by the Director to pay for the cost of investigating, verifying, and opining on such request for adjustment of the tax.
- C. All tax statements shall be completed on forms prescribed by the Director.
- D. Tax statements and payments for all outstanding taxes owed the City are immediately due to the Director upon cessation of business for any reason.
- E. The Director may, at his or her discretion, establish shorter or longer report and payment periods for any taxpayer as the Director deems necessary to insure collection of the tax.
- F. The Director 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 collection of the tax.

5.40.270 - 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 paid on or before the due date specified in Section 5.40.260.

5.40.280 - Notice not required by City.

The Director is not required to send a delinquency or other notice or bill to any person subject to the provisions of this chapter and failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this chapter.

5.40.290 - Payment—Penalty for delinquency.

- A. Any person who fails or refuses to pay any business tax required to be paid pursuant to this chapter on or before the due date shall pay penalties and interest as follows:
 - 1. Original Delinquency. 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 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; and
 - 2. Continued Delinquency. An additional penalty equal to twenty-five percent (25%) of the amount of the tax if the tax remains unpaid for a period exceeding one (1) calendar month beyond the due date, plus interest on the unpaid tax calculated at the rate of one percent (1%) 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.
- B. Whenever a check is submitted in payment of a business tax and the check is subsequently returned unpaid by the bank upon which the check is drawn, and the check is not redeemed prior to the due date, the taxpayer will be liable for the tax amount due plus penalties and interest as provided for in this section plus any amount allowed under state law.
- C. The business tax due shall be that amount due and payable from the first date on which the person was engaged in business involving Commercial Cannabis Activity in the City, together with applicable penalties and interest calculated in accordance with subsection A. above.

5.40.300 - Waiver of penalties.

The Director may waive the first and second penalties of twenty-five percent (25%) each imposed upon any person if:

- A. The person provides evidence satisfactory to the Director that failure to pay timely was due to circumstances beyond the control of the person and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, and the person paid the delinquent business tax and accrued interest owed the City prior to applying to the Director for a waiver.

- B. The waiver provisions specified in this subsection shall not apply to interest accrued on the delinquent tax and a waiver shall be granted only once during any twenty-four-month period.

5.40.310 - Refunds—Credits.

- A. No refund shall be made of any tax collected pursuant to this chapter except as provided in Section 5.40.320.
- B. No refund of any tax collected pursuant to this chapter shall be made because of the discontinuation, dissolution or other termination of a business.
- C. Any person entitled to a refund of taxes paid pursuant to this chapter may elect in writing to have such refund applied as a credit against such person's business taxes for the next calendar month.

5.40.320 - Refunds and procedures.

- A. Whenever the amount of any business tax, penalty or interest has been overpaid, paid more than once, or has been erroneously or illegally 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 shall be presented to the Director within one year of the date of payment, and in the manner prescribed by Part 3 of Division 3.6 of Title 1 of the California Government Code (commencing with section 900 thereof) for the claims to which that part applies by its own terms, as those provisions now exist or shall hereafter be amended, and as further provided by this section.
- B. All claims shall be made in writing and verified under the penalty of perjury by the claimant or by his or her guardian, conservator, executor or administrator. All tax refund claims shall be filed on the refund claim form prescribed by the Director. In the event that the Director has not prescribed a form of claim, the tax refund claim shall contain:
 - 1. The information required by California Government Code Section 910; and
 - 2. The specific amount claimed to have been overpaid, paid more than once, or erroneously or illegally collected or received by the City; and
 - 3. The grounds upon which the claim is founded, with specificity sufficient to enable the Director and other responsible City officials to understand and evaluate the claim; and
 - 4. Documentation supporting the amount of the refund sought.

The foregoing reference to Government Code Section 910 shall not be construed to authorize a class claim, and no claim may be filed on behalf of a class of persons unless verified by every member of that class.

- C. The Director or the Director's authorized agent 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 therefor refuses to allow such examination of claimant's books and business records after request by the Director to do so.

- D. In the event that the business tax was erroneously paid and the error is attributable to the City, the entire amount of the tax erroneously paid shall be refunded to the claimant. If the error is attributable to the claimant, the City shall retain an administrative fee as set forth in a resolution of the City Council from the amount to be refunded to cover the City's expenses.
- E. The Director shall initiate a refund of any business tax which has been overpaid or erroneously collected whenever the overpayment or erroneous collection is uncovered by a City audit of business tax receipts. In the event that the business tax was erroneously paid and the error is attributable to the City, the entire amount of the tax erroneously paid shall be refunded to the claimant. If the error is attributable to the claimant, the City shall retain an administrative fee as set forth in a resolution of the City Council from the amount to be refunded to cover the City's expenses.
- F. In accordance with California Government Code sections 935(b) and 945.6, all claims shall be presented as provided in this section and acted upon by the City prior to the filing of any action on such claims and no such action may be maintained by a person who has not complied with the requirements of this section.
- G. Any action brought against the City upon any claim or demand shall conform to the requirements of Sections 940 through 949 of the California Government Code. Any action brought against any employee of the City shall conform with the requirements of section 950 through 951 of the California Government Code.

Part 3 - Exemptions

5.40.400 - Exemptions—Application—Issuance condition.

Any person desiring to claim exemption from the payment of the tax set forth in this chapter shall make application therefore upon forms prescribed by the Director and shall furnish such information and make such affidavits as may be required by the Director.

5.40.410 - Exemptions—General.

Except as may be otherwise specifically provided in this chapter, the terms hereof shall not be deemed or construed to apply to any person when imposition of the tax upon that person would violate the Constitution of the United States or that of the state of California or preemptive federal or state law.

5.40.420 - Exemptions—Occasional transactions.

- A. The provisions of this chapter shall not apply to persons having no fixed place of business within the City who come into the City for the purpose of transacting a specific item of business at the request of a specific patient, client or customer, provided that such person does not come into the City for the purpose of transacting business on more than five (5) days during any calendar year.
- B. For any person not having a fixed place of business within the City who comes into the City for the purpose of transacting business and who is not exempt as provided in subsection A. of this section, the business tax payable by such person may be apportioned by the Director in accordance with Section 5.40.520.

Part 4 - Administration and Enforcement

5.40.500 - Enforcement—Duties of Director and Chief of Police.

It shall be the duty of the Director to enforce each and all of the provisions of this chapter, and the Chief of Police shall render such assistance in the enforcement of this chapter as may from time to time be required by the Director.

5.40.510 - Rules and regulations.

For purposes of apportionment as may be required by law and for purposes of administration and enforcement of this chapter generally, the Director, with the concurrence of the City Attorney, may from time to time promulgate administrative rules and regulations.

5.40.520 - Apportionment.

- A. None of the tax provided for by this chapter shall be applied so 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 or the state of California.
- B. If any case where a business tax is believed by a taxpayer to place an undue burden upon interstate commerce or be violative of such constitutional clauses, the taxpayer may apply to the Director for an adjustment of the tax. It shall be the taxpayer's obligation to request in writing for an adjustment within one (1) year after the date of payment of the tax. If the taxpayer does not request in writing within one (1) year from the date of payment, then taxpayer shall be conclusively deemed to have waived any adjustment for that year.
- C. The taxpayer shall, by sworn statement and supporting testimony, show the method of business and the gross volume of business and such other information as the Director may deem necessary in order to determine the extent, if any, of such undue burden or violation. The Director shall then conduct an investigation, and shall fix as the tax for the taxpayer an amount that is reasonable and nondiscriminatory, or if the tax has already been paid, shall order a refund of the amount over and above the tax so fixed. In fixing the tax to be charged, the Director shall have the power to base the tax upon a percentage of gross receipts or any other measure which will assure that the tax assessed shall be uniform with that assessed on businesses of like nature, so long as the amount assessed does not exceed the tax as prescribed by this chapter.
- D. Should the Director determine that the gross receipt measure of tax to be the proper basis, the Director may require the taxpayer to submit a sworn statement of the gross receipts and pay the amount of tax as determined by the Director.

5.40.530 - Audit and examination of records and equipment.

The Director shall have the power to audit and examine all business property, books and records of persons engaged in business involving Commercial Cannabis Activity including both state and federal income tax returns, California sales tax returns, or other evidence documenting the square foot and/or gross receipts of persons engaged in business involving Commercial Cannabis Activity, and, where necessary, all equipment, of any person engaged in such a business in the City, for the purpose of ascertaining the amount of business tax, if any, required

to be paid by the provisions hereof, and for the purpose of verifying any statements or any item thereof when filed by any person pursuant to the provisions of this chapter. If such person, after written demand by the Director, refuses to make available for audit, examination or verification such books, business property, records or equipment as the Director requests, the Director may, after full consideration of all information within his or her knowledge concerning the Commercial Cannabis Activity and activities of the person so refusing, make an assessment in the manner provided in Sections 5.40.560 through 5.40.580 of any taxes estimated to be due.

5.40.540 - Tax deemed debt to City.

The amount of any tax, penalties and interest imposed by the provisions of this chapter shall be deemed a debt to the City and any person carrying on any Commercial Cannabis Activity without first having procured a business license shall be liable in an action in the name of the City in any court of competent jurisdiction for the amount of the tax, and penalties and interest imposed on such business.

5.40.550 - Deficiency determinations.

If the Director is not satisfied that any statement filed as required under the provisions of this chapter is correct, or that the amount of tax is correctly computed, he or she may compute and determine the amount to be paid and make a deficiency determination upon the basis of the facts contained in the statement or upon the basis of any information in his or her possession or that may come into his or her possession. 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 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 Sections 5.40.560 through 5.40.580.

5.40.560 - Tax assessment—Authorized when nonpayment—Fraud.

- A. Under any of the following circumstances, the Director may make and file a Notice of Assessment of the amount of tax owed by a person under this chapter:
 - 1. If the person has not filed any statement or return required under the provisions of this chapter;
 - 2. If the person has not paid any tax due under the provisions of this chapter;
 - 3. If the person has not, after demand by the Director, filed a corrected statement or return, or furnished to the Director adequate substantiation of the information contained in a statement or return already filed, or paid any additional amount of tax due under the provisions of this chapter;
 - 4. If the Director determines that the nonpayment of any business tax due under this chapter is due to fraud, a penalty of fifty percent of the amount of the tax shall be added thereto in addition to penalties and interest otherwise stated in this chapter.
- B. The notice of assessment shall separately set forth the amount of any tax known by the Director to be due or estimated by the Director, after consideration of all information within

the Director'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.

5.40.570 - Tax assessment—Notice requirements.

The Notice of Assessment shall be served upon the person either by handing it to him or her personally, 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 appearing on the face of the business license issued under Chapter 5.05 or to such other address as he or she shall register with the Director for the purpose of receiving notices provided under this chapter; or, should the person have no business license issued and should the person have no address registered with the Director 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.

5.40.580 - Tax assessment—Hearing—Application and determination.

Within ten days after the date of service the person may apply in writing to the Director for a hearing on the assessment. If application for a hearing before the City is not made within the time herein prescribed, the tax assessed by the Director shall become final and conclusive. Within thirty days of the receipt of any such application for hearing, the Director shall cause the matter to be set for hearing before him or her not later than thirty (30) days after the date of application, unless a later date is agreed to by the Director and the person requesting the hearing. Notice of such hearing shall be given by the Director to the person requesting such hearing not later than five (5) days prior to such hearing. At such hearing said applicant may appear and offer evidence why the assessment as made by the Director should not be confirmed and fixed as the tax due. After such hearing the Director shall determine and reassess the proper tax to be charged and shall give written notice to the person in the manner prescribed in Section 5.40.570 for giving notice of assessment.

5.40.590 - Conviction for chapter violation—Taxes not waived.

The conviction and punishment of any person for failure to pay the required tax shall not excuse or exempt such person from any civil action for the tax debt unpaid at the time of such conviction. 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.

5.40.600 - Violation deemed misdemeanor—Penalty.

Any person violating any of the provisions of this chapter or any regulation or rule passed in accordance herewith, or knowingly or intentionally misrepresenting to any officer or employee of the City any material fact in procuring the business license provided for in Chapter 5.05 shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than five hundred dollars (\$500.00) or by imprisonment for a period of not more than six (6) months, or by both such fine and imprisonment.

5.40.610 - Effect of state and federal reference/authorization.

Unless specifically provided otherwise, any reference to a State or Federal statute in this chapter shall mean such statute as it may be amended from time to time, provided that such

reference to a statute herein shall not include any amendment thereto, or to any change of interpretation thereto by a State or Federal agency or court of law with the duty to interpret such law, to the extent that such amendment or change of interpretation would, under California law, require voter approval of such amendment or interpretation, or to the extent that such change would result in a tax decrease. To the extent voter approval would otherwise be required or a tax decrease would result, the prior version of the statute (or interpretation) shall remain applicable; for any application or situation that would not require voter approval or result in a decrease of a tax, provisions of the amended statute (or new interpretation) shall be applicable to the maximum possible extent.

To the extent that the City's authorization to collect or impose any tax imposed under this chapter is expanded as a result of changes in state or federal law, no amendment or modification of this chapter shall be required to conform the tax to those changes, and the tax shall be imposed and collected to the full extent of the authorization up to the full amount of the tax imposed under this chapter.

5.40.620 - Subject to annual City audits.

The revenues from the tax imposed by this chapter shall be subject to the annual audit performed by the City's independent auditor of the City's municipal books, records, accounts and fiscal procedures.

5.40.630 - Remedies cumulative.

All remedies and penalties prescribed by this chapter or which are available under any other provision of law or equity, including, but not limited to, the California False Claims Act (Government Code section 12650 et seq.) and the California Unfair Practices Act (Business and Professions Code section 17070 et seq.), are cumulative. 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 of this chapter.

5.40.640 - Amendment or repeal.

Chapter 5.40 of the Rio Dell Municipal Code may be repealed or amended by the City Council without a vote of the people. However, as required by Article XIIC of the California Constitution, voter approval is required for any amendment provision that would increase the maximum rate of any tax levied pursuant to this chapter. The people of the City of Rio Dell affirm that 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 that is no higher than that set by this chapter, if the City Council has acted to reduce the rate of the tax;
- B. An action that 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 language of this chapter;
- C. The establishment of a class of person that is 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

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

5.40.650 – Severability.

Should any provision, section, paragraph, sentence or word of this ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences and words of this ordinance as hereby adopted shall remain in full force and effect.