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June 14, 2016

TO: Rio Dell City Council

FROM: Kyle Knopp, City Manager

SUBJECT: Introduction and First Reading of Ordinance No. 346-2016, Cannabis Business Tax (CBT), Creating Chapter 5.40 of Title V of the Rio Dell Municipal Code.

IT IS RECOMMENDED THAT THE CITY COUNCIL:

1. Introduce Ordinance No. 346-2016 establishing Chapter 5.4 of Title V of the Rio Dell Municipal Code relating to Cannabis Business Taxation.
2. Receive Staff's report regarding the recommended chapter; and
3. Open the public hearing, receive public input and deliberate; and
4. Continue the review and discussion of the proposed Ordinance to a future meeting.

BACKGROUND AND DISCUSSION

In November of 1996 California voters passed Proposition 215 making it legal for individuals to cultivate and possess marijuana in the state for medical purposes only, specifically with a recommendation from a licensed physician. Criticism of Proposition 215 has been steadily growing over the last 20 years as the State failed to create a regulatory framework to address the complex issues surrounding marijuana, some of which include: environmental impacts, product safety, prescription abuse, local control, transportation and taxation.

In October of 2015, Governor Jerry Brown signed the "Medical Marijuana Safety and Regulation Act" (MMRSA) into law. The Act was composed of three bills, AB 266 (Bonta), SB643 (McGuire) and AB 243 (Wood) which began creation of a substantive regulatory framework for medical cannabis in California. Among the many clarifications contained within MMRSA, the law clearly reinforces the ability to tax medical cannabis on a local level.

Under the legacy of Proposition 215, Rio Dell currently derives no direct revenue from the cultivation, processing or sale of Marijuana, for medical purposes or otherwise. However, the City still bears much of the costs associated with the "below-board" segments of the industry, particularly in enforcement. As a result of the passage of MMRSA and the City Council's consideration of land use changes as proposed in the Commercial Medical Marijuana Land Use

Ordinance (CMMLUO) an opportunity has arisen to address revenues from the cultivation, processing and sales of medical cannabis. This opportunity could present the City with major opportunities to tap a new revenue source from an "above-board" industry that would help strengthen local control and local finances.

The exact size and scope of this industry remains unclear. All revenue estimates at the State, County and City level remain based on a number of assumptions, and this will remain the case for several years until actual implementation proceeds, and the new regulations and market have a chance to settle. That being said, initial conservative analyses have shown that medical cannabis revenues would likely be a substantial boost to the City's stagnant revenues, possibly into the seven figure range for Rio Dell alone.

Regionally, the three counties of Humboldt, Trinity and Mendocino are the largest producers of marijuana in California, yet account for only approximately 240,000 citizens in a state of over 39,000,000 citizens. The region stands a good chance to become an export region for consumers across the state including those in Los Angeles, San Francisco, San Diego and more. Further branding and appellation projects could help secure the regions prominence. Revenue opportunities exist in cultivation and in dispensaries for the City, but much more significant opportunities exist in processing and value-added manufacturing of regional medical cannabis. Rio Dell is strategically located to potentially take advantage of this new emerging above-board market and our status as a municipality provides a competitive edge for potential investors. Cannabis cultivated in the unincorporated areas of the County could be processed here in Rio Dell before moving on to dispensaries across California. The possibilities deserve and are now receiving consideration.

On Tuesday May 24, 2016 the Council received a briefing on options related to the taxation of Cannabis. Many jurisdictions across the state are now reviewing their tax policies towards cannabis and some have had cannabis taxes on the books for years. While there are many options, the Vallejo model appeared to provide the greatest degree of flexibility and simplicity. The City attorney has used the Vallejo Ordinance as a model to draft the proposed ordinance attached to this agenda.

At the request of the Council, staff has contacted the School Superintendent to attend the meeting and provide input, if any.

A series of policy questions were posed to the Council to consider over the last three weeks. Staff has provided answers to the questions following the Vallejo Model.

- ▶ General Tax or Specific Tax?
 - Ordinance 346-2016 is a General Tax
- ▶ Type of Tax: Business Tax, Excise Tax, Square Foot Tax, or a mix?
 - The Ordinance encompasses all aspects of Cannabis (Cultivation, Manufacturing, Dispensing etc.) through a Business Tax.
- ▶ Flexibility of the tax?
 - The Ordinance is flexible up to a 10% maximum.

- ▶ What tax level?
 - The tax level would be set by future Ordinance, up to 10%.
- ▶ Duration of the tax?
 - The proposal contains no sunset provision.
- ▶ What are we taxing? “Medical Only” or “Medical and Recreational” or just “Cannabis”
 - The proposal covers “Cannabis” wherein subcategories can be established by ordinance and taxed at a rate up to 10%. For example, a category called “Medical Cannabis” could be created and taxed at 7% while a category called “Non-Medical” cannabis could be created and taxed at 10%.

ATTACHMENT:

DRAFT Ordinance No. 346-2016 – “Rio Dell Cannabis Business Tax (CBT)”, Creating Chapter 5.40 of the Rio Dell Municipal Code

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Chapter 5.40 - CANNABIS BUSINESS LICENSE TAX

Sections:

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.

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 such other director 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 a 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, 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;
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 cannabis 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. Transactions between a partnership and its partners;
- J. Receipts from services or sales in transactions between affiliated corporations. An affiliated corporation is a corporation:
 1. The voting and nonvoting stock of which is owned at least eighty percent by such other corporation with which such transaction is had, or
 2. Which owns at least eighty percent of the voting and nonvoting stock of such other corporation, or
 3. At least eighty percent of the voting and nonvoting stock of which is owned by a common parent corporation which also has such ownership of the corporation with which such transaction is had;
- K. 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 I. above;
- L. 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;
- M. 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 - Cannabis.

The term "cannabis" means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin.

5.40.110 - Cannabis business.

The term "cannabis business" means business activity including, but not limited to, planting, cultivation, harvesting, transporting, manufacturing, compounding, converting, processing, preparing, storing, packaging, wholesale, and/or retail sales of cannabis and any ancillary products in the city, whether or not carried on for gain or profit.

5.40.120 - Cannabis business tax.

"Business tax" or "cannabis business tax" or "cannabis tax" shall mean the tax due for engaging in cannabis business in the city.

5.40.130 - 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.

5.40.140 - 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 5.05 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 cannabis business 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 cannabis business 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 cannabis business 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 cannabis business 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 cannabis business unless the person has complied with all of the requirements of this code and all other applicable laws, nor to carry on any cannabis business 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 cannabis business 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. In addition to the business tax imposed under Chapter 5.05 of this code and the requirements set forth therein, every person engaged in cannabis business in the city shall pay a business tax at a rate of up to ten percent of gross receipts. The tax under this chapter shall not be imposed on cannabis businesses unless and until the city council, by ordinance, takes action to set a tax rate not to exceed ten percent of gross receipts.
- B. Notwithstanding the maximum tax rate of ten percent of gross receipts imposed under Subsection A., the city council may, in its discretion, at any time by ordinance, implement a lower tax rate for all cannabis businesses or establish differing tax rates for different categories of cannabis businesses, as defined in such ordinance, subject to the maximum rate of ten percent of gross receipts. The city council may, by ordinance, also increase any such tax rate from time to time, not to exceed the maximum tax rate of ten percent of gross receipts in accordance with subsection A. above.

5.40.260 - Payment—Time limits.

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

- A. Each person owing a tax under this chapter shall, on or before the last day of each calendar month, prepare and submit a tax return to the director of the total gross receipts and remit the amount of tax owed for that calendar month by the twentieth day of the following calendar month, and becomes delinquent thereafter. At the time the tax return is filed, the full amount of the tax owed for the preceding calendar month shall be remitted to the director.
- B. All tax returns shall be completed on forms provided by the director.
- C. Tax returns and payments for all outstanding taxes owed the city are immediately due the director upon cessation of business for any reason.

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 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 of the amount of the tax if the tax remains unpaid for a period exceeding one calendar month beyond the due date, plus interest on the unpaid tax calculated 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.

- 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 cannabis business 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 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—949 of the California Government Code. Any action brought against any employee of the city shall conform with the requirements of section 950—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 therefor 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 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 year after the date of payment of the tax. If the taxpayer does not request in writing within one 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 bases, 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 books and records of persons engaged in cannabis business including both state and federal income tax returns, California sales tax returns, or other evidence documenting the gross receipts of persons engaged in cannabis business, and, where necessary, all equipment, of any person engaged in cannabis 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, records or equipment as the director requests, the director may, after full consideration of all information within his or her knowledge concerning the cannabis business 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 cannabis business 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 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 give notice of an 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 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 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 or by imprisonment for a period of not more than six 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 XIII C of the California Constitution, voter approval is required for any amendment provision that would increase the 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.

If any provision of the ordinance is invalidated by any court of competent jurisdiction, the remaining provisions shall not be affected and shall continue in full force and effect.

