

675 Wildwood Avenue
Rio Dell, CA 95562
(707) 764-3532



For the Meeting of February 20, 2024

Consent Item; Public Hearing Item

To: City Council

From: Kevin Caldwell, Community Development Director

A handwritten signature in blue ink, appearing to be "K Caldwell", is written over the name Kevin Caldwell.

Through: Kyle Knopp, City Manager

Date: February 12, 2024, 2024

Subject: Text Amendments to the Rio Dell Municipal Code (RDMC) to establish a Cannabis Cultivation Tax Guarantee.

Recommendation:

That the City Council:

1. Allow staff to introduce Ordinance No. 404-2024 amending the Rio Dell Municipal Code (RDMC) to establish a Cannabis Cultivation Tax Guarantee; and
2. Receive comments from the public; and
3. Direct staff to make any recommended changes to the Ordinance; and
4. Continue the public hearing to the March 5, 2024 meeting for approval and adoption of Ordinance No. 404-2024.

Discussion:

Proposition 64, the Adult Use of Marijuana Act, was approved by California voters in November of 2016. It legalized the recreational use of marijuana in the state of California. In 2017 the City of Rio Dell was considering establishing commercial cannabis regulations to allow for cultivation and value-added (e.g., manufacturing, processing, distribution, and retail sales) businesses. At that time, the City Council was only interested in allowing cannabis activities if those activities provided some financial benefit to the City and its residents.

In November 2017 the City placed Measure X on the ballot. Measure X was designed to allow the City of Rio Dell to tax cannabis businesses at either a percentage of their gross revenue or by the square footage of their operations for cultivation. The intent was if Measure X was approved by the residents, the City would allow for commercial cannabis activities. Almost 81% of those who voted on the Measure, voted to tax cannabis activities. As such, the City developed and adopted the Commercial Cannabis Land Use Ordinance (CCLUO).

As the Council is aware the City currently taxes cultivators at \$2.00 per square foot. For the most part, the City's cultivators have paid their taxes except for Dinsmore Plateau Farms for the 2022 growing season. The City worked with the owners to reduce the tax amount by 50% to \$71,600 and waive the late fees resulting in a total reduction of \$89,500. Dinsmore Plateau Farms leased the operations to a new operator, New Earth Farms, for the 2023 growing season. Before the City would allow cultivation on the site, the City required that the outstanding tax amount of \$71,600 be paid in full, which it was.

Staff recently reached out to the new operator and was told that the 2023 crop had mold and fungus issues that impacted the overall production and he would not be farming in the 2024 season. Staff reminded the operator that he is still responsible for the taxes and requested that he provide the City with details surrounding the issues and challenges faced with the 2023 operation, including images and any supporting documentation he can provide, including crop loss figures. Once received, the City will review the information and provide an updated tax liability if deemed appropriate.

This situation highlighted the need to ensure that the City gets paid its cannabis taxes. A significant concern is the real possibility that a farmer can "grow and go" without paying

their cultivation taxes. Due to this concern and the instability of the outdoor cannabis market, staff is recommending that the City amend the City's Cannabis Tax regulations to establish a tax guarantee.

Attachment 1 includes a draft Ordinance which if approved and adopted would allow the City, at its sole discretion, to require either a surety bond, a deposit in escrow, or a letter of credit from a bank or other responsible financial institution authorized to do such business in the state.

Attachment 1: Ordinance No. 404-2024

ORDINANCE NO. 404-2024



**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIO DELL
APPROVING AMENDMENTS TO THE RIO DELL MUNICIPAL CODE TO ESTABLISH A
CANNABIS CULTIVATION TAX GUARANTEE.**

THE CITY COUNCIL OF THE CITY OF RIO DELL ORDAINS AS FOLLOWS:

WHEREAS the City established commercial cannabis regulations, Section 17.30.090 of the Rio Dell Municipal Code (RDMC); and

WHEREAS in 2017 approximately 81% of the voters of Rio Dell approved Measure X which requires the City to tax cannabis operators at either a percentage of their gross revenue or by the square footage of their operation; and

WHEREAS the City currently taxes cultivators at \$2.00 per square foot; and

WHEREAS for the most part, the City's cultivators have paid their taxes; and

WHEREAS Dinsmore Plateau Farms did not pay their cultivation taxes and late charges for the 2022 growing season; and

WHEREAS the City worked with the owners to reduce the tax amount by 50% to \$71,600 and waive the late fees resulting in a total reduction of \$89,500; and

WHEREAS Dinsmore Plateau Farms leased the operations to a new operator for the 2023 growing season; and

WHEREAS the new operator paid the outstanding balance of \$71,600 before the 2023 growing season; and

WHEREAS the new operator reported that they intended to cultivate 21,000 square feet; and

WHEREAS the 2023 operator recently informed the City that they are no longer involved with the Dinsmore Plateau Farms property; and

WHEREAS the City inquired about the taxes for the 2023 growing season and the operator reported that the crop had mold and fungus issues that impacted overall production; and

WHEREAS at this point the City hopes to work with the operator but is not expecting to receive the entire \$42,000 in taxes for the 2023 growing season; and

WHEREAS the City currently does not require security to ensure the payment of taxes; and

WHEREAS staff recommends to ensure that a cultivator performs its fiduciary responsibility to timely remit taxes, the cultivator shall provide a guarantee by one or more of the methods specified in this section in the amount of \$2.00 per square foot of cultivation as identified in the annual cultivation declaration. The requirement for a guarantee shall remain in force at the sole discretion of the City; and

WHEREAS staff recommends that the cultivators either provide a surety bond, a deposit in escrow, or a letter of credit from a bank or other responsible financial institution authorized to do such business in the state, a letter of credit in a form acceptable to the City attorney; and

WHEREAS the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a project that has the potential to cause a significant effect on the environment under Title 14 of the California Code of Regulations, Section 15061(b)(3).

NOW, THEREFORE, BE IT FURTHER RESOLVED that the City Council of the City of Rio Dell does hereby ordain as follows:

Section 1.

Article II of Title 5 of the Rio Dell Municipal Code is hereby amended to read in as follows:

5.40.260 Security for fiduciary performance.

(1) Surety Bond for Cultivation Activity

(a) The City at its sole discretion may require a surety bond for the payment of cultivation taxes, based on the annual cultivation declaration.

(b) Guarantee required. To ensure that a cultivator performs its fiduciary responsibility to timely remit taxes levied by this chapter, the cultivator shall provide a guarantee by one or more of the methods specified in this section in the amount of \$2.00 per square foot of cultivation as identified in the annual cultivation declaration. The requirement for a guarantee shall remain in force at the sole discretion of the City.

(c) Persons to provide guarantee. The guarantee required under this section shall be provided before March 1st of each year by the cultivator or by a personal guarantee from an owner(s), partner(s), member(s), officer(s), director(s), or responsible party(ies) of the cultivator, or any combination thereof.

(d) Methods. The cultivator shall include one or more of the following methods to guarantee the performance of its fiduciary responsibilities at the time of application for a certificate of registration:

(i) Surety bond. The cultivator may elect to provide a surety bond, as defined by section 995.120 of the Code of Civil Procedure, in an amount defined in subsection (a) of this section, from a company authorized to do such business in the state. The bond shall be in a form acceptable to the City attorney. The bond shall be payable to the City and shall be conditioned upon payment in full of the tax, including penalties and interest due and to become due and owing to the City by said cultivator during the effective period of the bond under the provisions of this chapter. The surety may terminate this bond, except as to any liability already incurred or accrued, and may do so upon giving the cultivator and the Finance Director written notice to that

effect. The surety shall provide written notice to the chief fiscal officer not less than 30 days before the expiration, non-renewal, lapse, termination, or other similar event affecting such surety bond. Thirty days after receipt by the Finance Director of such notice or upon a later date specified in the notice, or upon the filing and acceptance of a new bond, the existing bond shall terminate and be of no more force and effect, except as to any liabilities or indebtedness incurred or accrued thereunder as of the date of termination.

(ii) Deposit in escrow. The cultivator may elect to deposit a cash sum, in an amount defined in subsection (a) of this section, either with the City or in escrow with a responsible financial institution authorized to do such business in the state. In the case of an escrow account, the cultivator shall file with the City an escrow agreement, which includes the following terms:

Funds of the escrow account shall be held in trust until released by the City and may not be used or pledged by the cultivator as security in any matter during that period other than payment of the tax, penalties, and interest due and to become due and owing to the City under this chapter; and

In the case of a failure on the part of the cultivator to remit taxes due under this chapter by the required due date, the institution shall immediately make all funds in such account available to the City for use in satisfying those taxes due, along with any related penalties and interest as provided for in this chapter.

(iii) Letter of credit. The cultivator may elect to provide, from a bank or other responsible financial institution authorized to do such business in the state, a letter of credit in a form acceptable to the City attorney. Such letter shall be filed with the City and shall certify the following:

a. The financial institution irrevocably guarantees funds in an amount defined in subsection (a) of this section; and

b. In the case of failure on the part of the cultivator to remit taxes due under this chapter by the required due date, the financial institution shall pay to the City immediately and without further action such funds as are necessary to satisfy those taxes due, along with any related penalties and interest as provided for in this chapter, up to the limit of credit stated in the letter.

Section 2.

To accommodate the proposed amendments, changes to the RDMC section numbers shall be amended as follows:

5.40.260 ~~Payment – Time limits.~~ Security for fiduciary performance.

5.40.270 Payment – Time limits.

~~5.40.270~~ 5.40.280 Payment – When taxes deemed delinquent.

5.40.280 5.40.290 Notice not required by City.

~~5.40.290~~ 5.40.300 Payment – Penalty for delinquency.

~~5.40.300~~ 5.40.310 Waiver of penalties.

~~5.40.310~~ 5.40.320 Refunds – Credits.

~~5.40.320~~ 5.40.330 Refunds and procedures.

Section 3. 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.

Section 4. Limitation of Actions

Any action to challenge the validity or legality of any provision of this ordinance on any grounds shall be brought by court action commenced within ninety (90) days of the date of adoption of this ordinance.

Section 5. Effective Date

This ordinance becomes effective thirty (30) days after its approval and adoption.

I HEREBY CERTIFY that the forgoing Ordinance was duly introduced at a regular meeting of the City Council of the City of Rio Dell on February 20, 2024 and furthermore the forgoing Ordinance was passed, approved and adopted at a regular meeting of the City Council of the City of Rio Dell, held on March 5, 2024 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Debra Garnes, 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 Ordinance No. 404-2024 which was passed, approved and adopted at a regular meeting of the City Council of the City of Rio Dell, held on March 5, 2024.

Karen Dunham, City Clerk, City of Rio Dell