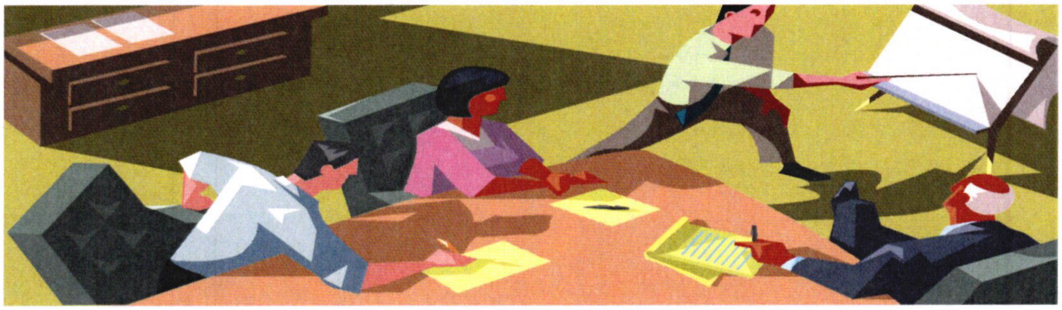
CONCURRENT MEETING
CITY COUNCIL/COMMUNITY REDEVELOPMENT AGENCY (CRA)/
RANCHO CORDOVA FINANCING CORPORATION (RCFC)

Special Meeting
Monday, July 12, 2010 – 10:00 a.m.

City Hall
Community Board Room
2729 Prospect Park Drive, Rancho Cordova



AGENDA ITEMS

Discussion of a Measure Regarding Marijuana Business Tax Being Placed on the November 2, 2010 Ballot.

PUBLIC COMMENT

At a special meeting, citizens wishing to address the Council for any matter on the agenda may do so at the time the matter is discussed. Note, under the provisions of the California Government Code, the City Council is prohibited from discussing or taking action on any unagendized item.

CLOSED SESSION

Conference with Legal Counsel – Anticipated Litigation Government Code 54956.9 (b) (one potential case).

ADJOURNMENT

CERTIFICATION OF AGENDA POSTING

City Clerk's Certificate of Posting of Agenda

I, Mindy Cuppy, City Clerk for the City of Rancho Cordova, declare that the foregoing agenda for the Monday, July 12, 2010 Special Meeting of the Rancho Cordova City Council was posted on Friday, July 9, 2010 at the office of the City of Rancho Cordova, 2729 Prospect Park Drive, Rancho Cordova, California, 95670 and was available for public review at that location. The agenda is also available on the city web site at www.cityofranchocordova.org.

Signed this 9th day of July 2010 at Rancho Cordova, California.

Mindy Cuppy

Mindy Cuppy, City Clerk

MEMORANDUM

DATE: July 12, 2010

TO: Honorable Mayor and Council Members

FROM: Donna Silva, Finance Director
Adam U. Lindgren, City Attorney

SUBJECT: **DISCUSSION REGARDING CANNABIS BUSINESS TAX AND CANNABIS CULTIVATION TAX MEASURE TO BE PLACED ON THE NOVEMBER 2, 2010 STATEWIDE GENERAL ELECTION BALLOT AND DISCUSSION OF A REGULATORY ORDINANCE ON THE CULTIVATION OF CANNABIS**

RECOMMENDATION

Receive staff report and provide staff with direction for further refinement of the cannabis business tax and cannabis cultivation tax measure, and a regulatory ordinance on the cultivation of cannabis.

RESULT OF RECOMMENDED ACTION

The City Council will have the opportunity to review and direct staff regarding the possibility of placing a cannabis business tax and cannabis cultivation tax measure on the ballot and of adopting a regulatory ordinance.

INTRODUCTION

At the July 6, 2010 Council meeting, the City Council directed staff to prepare a resolution placing a measure on the November 2, 2010 statewide general election ballot asking voters whether a tax on cannabis businesses shall be approved to be effective upon adoption of Proposition 19, adoption of any other State or Federal law allowing such businesses and imposed only if the City decides to permit the establishment of such businesses in the future. The Council also directed staff to include a tax on the cultivation of cannabis on such measure.

Attached to this staff report is a resolution that would place a measure on the November 2, 2010 statewide election ballot to impose a tax on cannabis businesses and a tax on the cultivation of cannabis. The current version of the cannabis business tax would impose a tax on for profit businesses based upon a percentage of a business's gross receipts, and for cannabis businesses that elect to obtain nonprofit status, the cannabis business tax would impose a tax that is based upon the square footage of the building housing the business. However, City staff are also in the process of exploring whether cannabis businesses may be taxed based each ounce of marijuana that they sell.

Finally, the cannabis cultivation tax measure would impose an annual flat rate tax upon the privilege of cultivation at a private residence.

The portion of the measure dealing with the cannabis business tax defines cannabis business as "any business, non-profit organization, or activity including, but not limited to, planting, cultivation, harvesting, transporting, manufacturing, compounding, converting, processing, preparing storing, packaging, testing, wholesale and/or retail sales of marijuana, any part of the plant Cannabis satvia L. or any of its derivatives, except cultivation or harvesting that is solely incidental to residential use." This definition of cannabis business is intentionally broad so as to capture all types of business activities associated with marijuana, and is in line with cannabis businesses contemplated by Proposition 19.

The portion of the measure dealing with the cannabis cultivation tax, only applies to the cultivation of cannabis plants for personal consumption, on private property by the owner, lawful occupant or other lawful resident or guest of the private property owner or lawful occupant.

In addition to the tax measure, City staff are also proposing that the City Council consider adoption of an ordinance that would regulate how marijuana may be cultivated for personal consumption upon private property. The draft regulatory ordinance attached to this staff report contemplates a complete ban on outdoor cultivation, however, staff are currently investigating whether such a ban would be permissible if Proposition 19 is passed by voters in November. The draft ordinance also limits cultivation to 25 square feet per residence which is in line with the square footage limitations contained in Proposition 19. However, the ordinance contains an exception to the 25 square foot limitation, for individuals that can demonstrate a medical need for cultivation of more marijuana. Such an exception is required to the recent California Supreme Court decision, *People v. Kelly*, which essentially eliminates the limitations on the quantity of marijuana that a patient or primary caregiver may legally possess or cultivate due to medical need. Staff is recommends adopting a regulatory ordinance on the cultivation of marijuana because it would be very helpful to the successful administration and collection of the cannabis cultivation tax.

DISCUSSION

Tax Rate Imposed

In imposing taxes, cities must have a rational basis for the amount of the tax imposed. Courts have interpreted this standard very broadly, in favor of cities, to allow significant latitude in determining tax rates applicable to businesses and activities.

In *City of Berkley v. Cukierman* (App. 1 Dist. 1993) 13 Cal.App.4th 1331, the court upheld City of Berkley's business license tax, which taxed hotels at a rate 6 times higher than other retail businesses. The tax at issue was $10.81 per $1,000 of gross receipts. Applying the rational basis test, the court held that the separate classification for hotels was justified because hotels are different from other businesses in that they impose greater municipal burdens. Thus, concluding that the business license tax was did not violate equal protection standards and upholding the tax.

In *Gutknecht v. City of Sausalito* (1974) 34 Cal.App.3d 269, the court upheld a tax rate increase on “take-out food” establishments, which was 420 times higher than that applicable to other taxpayers. Specifically, Sausalito's tax on “take-out food” establishment was increased from $2.50 to $52.50 per $1,000 of gross receipts. The court ruled that the tax rate passed constitutional muster in light of the extensive evidence in the record indicating that “take out food” businesses create substantial litter burden upon the City.

In addition, the court in *Park’n Fly of San Francisco, Inc. v. City of South San Francisco* (1987) 188 Cal.App.3d 1201, upheld a 4% of gross receipts business license tax on operators of commercial parking facilities. Although noting that South San Francisco’s ordinance resulted in dramatic increase in its business license tax rates, the court explained that evidence of tax increase alone, even enormous increase, is not sufficient to establish violation of equal protection.

Finally, in *City of Berkley v. Oakland Raiders* (1983) 143 Cal.App.3d 636, the court upheld Berkley’s professional sports events tax in the amount of 10% tax of all gross receipts. In reaching its conclusion, the court emphasized that “there is no requirement that the amount of tax be reasonable- merely that it not be confiscatory or prohibitory.”

In addition to the rational basis test, it should be noted that Section 11302(b) of Proposition 19 is ambiguous, but its reference to "similarly situated businesses" might arguably be read to limit the amount of the tax imposed to that imposed on similarly situated businesses. The City Attorney’s office will discuss an alternative and perhaps better reading to this section.

Based upon these standards and considerations, City staff are in the process of evaluating the tax rate that the City should impose upon cannabis businesses that may operate within the City in the future.. City staff is also in the process of reviewing other jurisdictions’ current or proposed tax rates for cannabis businesses. We found that the tax rates range from 1.8 percent of gross receipts to 10 percent of gross receipts. We are also in the process of exploring whether taxes on different products and services with higher tax rates may be appropriate for sale of marijuana.

With regard to cultivation of marijuana, City staff are proposing that the tax be a flat rate imposed annually upon individuals that cultivate marijuana at private residences. City staff are currently in the process of analyzing what would constitute an appropriate flat rate tax.

Authority of a City to Impose a Tax in an Amount "Not to Exceed ..."

Government Code Section 53739 of the Proposition 218 Omnibus Implementation Act provides, in pertinent part, that an ordinance presented for voter approval may state a range of rates or amounts and, if approved by the requisite number of votes, the governing board of the adopting local government may thereafter impose the tax, assessment or property-related fee or charge at any rate or amount that is less than or equal to the maximum amount authorized by the voter-approved ordinance. Phrasing the tax in the amount “not to exceed …” falls within the “range of rates or amounts”, authorized by Section 53739. The City staff are also exploring imposing a tax that includes a tax rate that may be exceeded.

Limits on Number of Cannabis Businesses Established

Proposition 19 does not explicitly allow local jurisdictions to limit the number of cannabis businesses that may be established in the City, should the City decide to allow such businesses in the future. However, the number of cannabis businesses established may be limited based upon applicable zoning laws. For example, cannabis businesses that seek to cultivate marijuana may only be permitted to do so in only certain agricultural or industrial zones of the City.

Regulation of Cultivation and Taxation of Marijuana

City staff are proposing to regulate and tax the cultivation of marijuana, in part to create a safer environment for police and code enforcement staff that encounter individuals cultivating marijuana in their homes. Code enforcement staff also continue to believe that a marijuana regulatory ordinance would support their efforts and including their work to implement the Strong Neighborhoods Program. Currently, without any regulation, police and code enforcement staff that encounter cultivation are not sure how to respond and often feel unsafe.

Authority of City to Place a Tax Measure on the Ballot that is Contingent on Another Measure Passing.

The City Attorney's office is continuing to research case law, statute, state law or Attorney General Opinions that authorize a local agency, such as the City, to place a tax measure on the ballot, which is contingent on and will only take effect if, another ballot measure is passed or adopted. Our research to date indicates that some courts have recognized the practice, but we have not yet identified a case in which this practice was specifically upheld. For example, in *District Election of Supervisors Committee for 5% et al. v. O'Connor et. al.* (1978) 78 Cal.App.3d 261, the issue in the case was whether the the process for amending city charters is governed exclusively by State's general laws or conflicting local charter provisions. In reaching its ruling, the court engaged in a thorough analysis of various Constitutional amendments, specifically, of Article XI. The court noted that Legislature's resolution repealing former Article XI and adding a revised version (at issue in the case), which was submitted to the electorate as a ballot measure was expressly conditioned upon enactment of another Assembly Bill, which by its terms was to become operative simultaneously with passage of the constitutional measure.

Last Day to Place Measure on Ballot

Pursuant to Elections Code Section 10403, the last day to submit a ballot measure to Sacramento County Elections Department for consolidation with the November 2, 2010 statewide general election is August 6, 2010. Elections officials with the County have indicated that the City may submit a ballot measure to be consolidated with the statewide general election without extra cost up until the August 6th deadline. Therefore, the City Council has several more weeks to work on these items.

Additional Issues

The current proposals under consideration involve a number of legal, financial and practical issues. The City Attorney's office is continuing to research a couple issues raised at the previous Council meeting, including examples of other similar taxes, the scope of possible preemption and other issues. Finally, it should be noted that the tax measure and regulatory ordinance attached to this staff report are very preliminary draft and should serve only to illustrate possible policy approaches. We anticipate that there may be substantial revisions based upon further research and discussions.

ATTACHMENTS

1. Working draft Resolution to Place Cannabis Business Tax and Cannabis Cultivation Tax on Ballot
2. Working draft Cannabis Business Tax and Cannabis Cultivation Tax Ordinance
3. Working draft Marijuana Cultivation Regulatory Ordinance

1478681.5

WORKING DRAFT FOR ILLUSTRATIVE PURPOSES ONLY, NOT FOR INTRODUCTION OR ADOPTION

CITY OF RANCHO CORDOVA

RESOLUTION NO. __-2010

A RESOLUTION OF THE CITY OF RANCHO CORDOVA ESTABLISHING NOVEMBER 2, 2010, AS THE DATE FOR AN ELECTION ON A PROPOSED BALLOT MEASURE SEEKING VOTER APPROVAL OF A TAX ON CANNABIS BUSINESSES AND A TAX ON CANNABIS CULTIVATION , ESTABLISHING POLICIES AND PROCEDURES IN CONNECTION WITH SUCH AN ELECTION, AND REQUESTING THAT THE COUNTY OF SACRAMENTO CONDUCT SUCH AN ELECTION

RECITALS

WHEREAS, if passed by the voters of the State of California on November 2, 2010, Proposition 19, also known as the Regulate, Control and Tax Cannabis Act of 2010, would legalize use of marijuana for personal consumption, authorize the establishment of commercial businesses that sell cannabis, allow local governments to regulate the commercial marijuana industry, and allow local governments to impose taxes and fees on marijuana related activities; and

WHEREAS, the City Council of the City of Rancho Cordova desires to impose a tax on cannabis businesses that may seek to operate within Rancho Cordova, in the event that Proposition 19 passes and the City allows establishment of such businesses of ___ of $1000 of gross receipts, or for such businesses that elect to obtain nonprofit status, $____.00 per square foot; and

WHEREAS, regardless of whether Proposition 19 is adopted by the voters, the City Council desires to impose a tax in the amount of _____ per year on the cultivation of marijuana in order to help mitigate the cost of City services, such as Police and Code Enforcement, in responding to the negative impacts cultivation of marijuana results in; and

WHEREAS, California Constitution Article XIIIC, Section 2(b), provides that no local government may impose a general tax unless and until that tax is submitted to the electorate and approved by a majority vote; and

WHEREAS, the proposed Cannabis Business Tax and the Cannabis Cultivation Tax are general taxes, the revenues of which would be used for general governmental purposes, and placed in the City's general fund for the usual expenses of the City; and

WHEREAS, California Constitution Article XIIIC, Section 2(b), requires that a measure proposing to impose a general tax must be consolidated with a city's general municipal election for members of the City Council; and

WHEREAS, November 2, 2010 is the date of the City's regular municipal election; and

WHEREAS, the City Council is authorized by California Elections Code Section 9222 to place measures before the voters; and

WHEREAS, the City Council desires to place the Cannabis Business Tax and the Cannabis Cultivation Tax, attached hereto as **Exhibit 1**, as a measure before the voters on the November 2, 2010 general election; and

WHEREAS, if approved by the voters of the City of Rancho Cordova on November 2, 2010, the Cannabis Business Tax imposed by the measure, Chapter 3.80, would only take effect if Proposition 19 is adopted by the voters of the State of California, and would only be imposed if the City allows for the establishment of cannabis businesses within Rancho Cordova; and

WHEREAS, if approved by the voters of the City of Rancho Cordova on November 2, 2010, the Cannabis Cultivation Tax imposed by the measure, Chapter 3.85, would take effect regardless of whether Proposition 19 is adopted by the voters of the State of California; and

WHEREAS, the City Council desires that the proposed measure be consolidated with the November 2, 2010 regularly scheduled general election, be held on the same date, and that within the City, the polling places and election officers of the two elections be the same, and that the County Election Department of the County of Sacramento canvass the returns of the general election and that the election be held in all respects as if there were only one election.

NOW, THEREFORE, IT IS HEREBY RESOLVED, the City Council of the City of Rancho Cordova does ordain as follows:

1. **Placement of Measure on the Ballot.** Pursuant to California Elections Code Section 9222, the City Council hereby resolves that the ballot for the November 2, 2010 election shall include a measure that, if approved, would impose a tax on cannabis businesses that seek to operate within the City of Rancho Cordova to be effective only upon adoption of Proposition 19, the "Regulate, Control and Tax Cannabis Act of 2010" also before voters at the November 2, 2010 statewide general election and would impose a tax on the cultivation of marijuana regardless of whether the voters adopt Proposition 19; and

(a) Ballot Language.

The ballot language for the measure shall be as follows:

CANNABIS TAX MEASURE. Shall an ordinance be adopted to require cannabis businesses operating within the City to pay the City a tax in the amount of X of $1000 of gross receipts, or, X per square foot for non-profits, and requiring individuals cultivating cannabis to pay a tax in the

amount of X per year to preserve funding for general municipal services such as public safety and code enforcement? [NEED TO EDIT] ☐Yes ☐ No

2. **Proposed Ordinance.** The ordinance authorizing the Cannabis Business Tax and the Cannabis Cultivation Tax is to be approved by the voters pursuant to Section 1 is as set forth in **Exhibit 1** hereto. The City Council hereby approves the submission of the ordinance to the voters of the City at the November 2, 2010, election. The City requests that County of Sacramento print **Exhibit 1** in its entirety with the election materials.

3. **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 Rancho Cordova, in accordance with Section 12111 of the Elections Code and Section 6061 of the Government Code.

4. **Request to Consolidate and Conduct Election and Canvass Returns**.

(a) Pursuant to the requirements of Section 10403 of the Elections Code, the Board of Supervisors of the County of Sacramento is hereby requested to consent and agree to the consolidation of a General Municipal Election with the Statewide Election on Tuesday, November 2, 2010, for the purpose of placing the measure set forth in Section 1 on the ballot.

(b) The County of Sacramento Election Department is authorized to canvass the returns of the regularly scheduled General 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 County of Sacramento Election Department to take any and all steps necessary for the holding of the consolidated election.

(d) The City of Rancho Cordova recognizes that additional costs will be incurred by the County of Sacramento by reason of this consolidation and agrees to reimburse the County for any additional costs above and beyond those reimbursed by the State.

5. **Submission of Ballot Arguments and Impartial Analysis.**

(a) The last day for submission of direct arguments for or against the measure shall be by 5 p.m. on July 23, 2010.

(b) The last day for submission of rebuttal arguments for or against the measure shall be by 5 p.m. on July 30, 2010.

(c) Direct arguments shall not exceed three hundred words and shall be signed by not more than five persons.

(d) Rebuttal arguments shall not exceed two hundred fifty words and shall be signed by not more than five persons; those persons may be different persons that the persons who signed the direct arguments.

(e) The City Attorney shall prepare an impartial analysis of the measure by July 27, 2010.

(f) Pursuant to California Elections Code Section 9282, the Mayor is hereby authorized to prepare a written argument in favor of the proposed measure, not to exceed 300 words, on behalf of the City Council. At the Mayor's discretion, the argument may also be signed by members of the City Council or bona fide associations or by individual voters who are eligible to vote on the measure. In the event that an argument is filed against the measure, the Mayor is also authorized to prepare a rebuttal argument on behalf of the City Council, which may also be signed by members of the City Council or bona fide associations or by individual voters who are eligible to vote on the measure.

(g) Pursuant to California Elections Code Section 9285, when the City Clerk has selected the arguments for and against the measure, which will be printed and distributed to the voters, the City Clerk shall send copies of the argument in favor of the measure to the authors of the argument against, and copies of the argument against to the authors of the argument in favor. Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument, which it seeks to rebut.

6. Passage of the Resolution. Pursuant to California Government Code Section 53724(b), this Resolution, including the approval of the submission of the proposed Ordinance (attached as **Exhibit 1**) must be approved by a two-thirds vote of all members of the City Council.

7. Effective Date. This Resolution shall become effective immediately upon its passage and adoption, and the City Clerk is directed to send certified copies of this Resolution to the Sacramento Board of Supervisors, to the County Clerk-Recorder, and County of Sacramento Election Department.

8. CEQA. This Resolution is exempt from the California Environmental Quality Act (Public Resources Code §21000, "CEQA") pursuant to CEQA guidelines 15060, "Preliminary Review," subdivision (c)(2) in that it will not result in a direct or reasonably foreseeable indirect physical change in the environment; and 15378, "Project," subdivisions (2) and (4) of subdivision (b), in that this tax does not constitute a project under CEQA and therefore review under CEQA is not required.

PASSED AND ADOPTED this 12th day of July 2010, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

____
Ken Cooley, Mayor

ATTEST:

____
Mindy Cuppy, City Clerk

1474959.2

WORKING DRAFT FOR ILLUSTRATIVE PURPOSES ONLY, NOT FOR INTRODUCTION OR ADOPTION

ORDINANCE NO. __-2010

AN ORDINANCE OF THE CITY OF RANCHO CORDOVA ADDING CHAPTER 3.80 AND CHAPTER 3.85 TO THE RANCHO CORDOVA MUNICIPAL CODE WITH RESPECT TO A CANNABIS BUSINESS TAX AND A CANNABIS CULTIVATION TAX

WHEREAS, if passed by the voters of the State of California on November 2, 2010, Proposition 19, also known as the Regulate, Control and Tax Cannabis Act of 2010, would legalize use of marijuana for personal consumption, authorize the establishment of commercial businesses that sell cannabis, allow local governments to regulate the commercial marijuana industry, and allow local governments to impose taxes and fees on marijuana related activities; and

WHEREAS, the City Council of the City of Rancho Cordova desires to impose a tax on cannabis businesses that may seek to operate within Rancho Cordova, in the event that Proposition 19 passes and the City allows establishment of such businesses; and

WHEREAS, the tax on cannabis businesses that would be imposed shall be ___ per $1000 of gross receipts, or for such businesses that elect to obtain nonprofit status, $____ per square foot; and

WHEREAS, currently, State law allows individuals to cultivate marijuana for personal medical use as long as they have a prescription or authorization from their doctor; and

WHEREAS, regardless of whether Proposition 19 is adopted by the voters, the City Council desires to impose a tax in the amount of _____ per year on the cultivation of marijuana in order to help mitigate the cost of City services, such as Police and Code Enforcement, in responding to the negative impacts cultivation of marijuana results in; and

WHEREAS, cultivation of marijuana results in a generally undesirable odor and has the potential of increasing the possibility of home burglaries and robberies; and

WHEREAS, California Constitution Article XIIIC, Section 2(b), provides that no local government may impose a general tax unless and until that tax is submitted to the electorate and approved by a majority vote; and

WHEREAS, the proposed Cannabis Business Tax and Cannabis Cultivation Tax are general taxes, the revenues of which would be used for general governmental purposes, such as providing Code Enforcement and Police services, and placed in the City's general fund for the usual expenses of the City; and

WHEREAS, the taxes imposed by this ordinance are excise taxes on the privilege of conducting business and conducting in certain activities within the City. The taxes are not on real property, nor are they an other kind of tax on property or the ownership of property. They are not a transaction or sales tax on the sale of real property. The taxes are general taxes; and

WHEREAS, California Constitution Article XIIIC, Section 2(b), requires that a measure proposing to impose a general tax must be consolidated with a city's general municipal election for members of the City Council; and

WHEREAS, November 2, 2010 is the date of the City's regular municipal election; and

WHEREAS, if approved by the voters of the City of Rancho Cordova on November 2, 2010, the Cannabis Business Tax imposed by this ordinance, Chapter 3.80, would only take effect if Proposition 19 is adopted by the voters of the State of California, and would only be imposed if the City allows for the establishment of cannabis businesses within Rancho Cordova; and

WHEREAS, if approved by the voters of the City of Rancho Cordova on November 2, 2010, the Cannabis Cultivation Tax imposed by this ordinance, Chapter 3.85, would take effect regardless of whether Proposition 19 is adopted by the voters of the State of California.

THE PEOPLE OF THE CITY OF RANCHO CORDOVA DO ORDAIN AS FOLLOWS:

SECTION 1: Chapter 3.80, titled "Cannabis Business Tax," is hereby added to the Rancho Cordova Municipal Code to read as follows:

CHAPTER 3.80

CANNABIS BUSINESS TAX

3.80.010 Short Title.

This Chapter shall be known as the Rancho Cordova Cannabis Business Tax Ordinance.

3.80.020 Purpose and intent.

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

3.80.030 Definitions.

A. "Annual Gross Receipts" shall mean the Gross Receipts produced by the Cannabis Business during the twelve month period between issuance and renewal of the special business license for the Cannabis Business.

B. "Building" shall mean any structure having a roof supported by a columns or by walls and designed for the shelter or housing of any person, chattel or property of any kind. The word "Building" includes the word "Structure."

C. "Business Improvements" shall mean square footage used, on a regular basis, for the operation of a nonprofit organization as defined in Article XIII, Section 26 of the California Constitution, regardless of whether it is owned or leased.

D. "Cannabis Business" shall mean any business, nonprofit organization, or activity including, but not limited to, planting, cultivation, harvesting, transporting, manufacturing, compounding, converting, processing, preparing storing, packaging, testing, wholesale and/or retail sales of marijuana, any part of the plant Cannabis satvia L. or any of its derivatives, except cultivation or harvesting that is solely incidental to residential use.

E. "Discontinued, dissolved or otherwise terminated" shall mean the date the Cannabis Business is no longer in operation as described in the special business license for operation of a Cannabis Business issued to the Cannabis Business by the City pursuant to Title 4 of this Code. The Finance Director, using all evidence, including evidence provided by the Cannabis Business Licensee, shall make the determination as to whether a Cannabis Business has been discontinued, dissolved or otherwise terminated.

F. "Gross Receipts" shall mean the total of the amounts actually received or receivable from sales and the total amounts actually received or receivable for the performance of any act or service for which a charge is made or credit allowed, whether or not such act or service is done as a part of or in conjunction with the sale of materials, goods, wares, or merchandise. Included in gross receipts shall be all receipts, cash, credits and property of any kind without deduction of the cost of the property sold, the cost of the materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever. Excluded from "gross receipts" are the following:

1. Cash discounts allowed and taken on sales;
2. Credit allowed on property accepted as part of the purchase price and which property may later be sold;
3. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
4. Such part of the sale price of property returned by purchases upon rescission of the contract of sale as is refunded either in cash or by credit.

G. "Licensee" shall mean a person who has been issued a special business license for operation of a Cannabis Business under Title 4 of this Code.

H. "Nonprofit Organization" shall mean any association, corporation or other entity that is exempt from taxation measured by income or gross receipts under Article XIII, Section 26 of the California Constitution, and that's purpose or involvement is with Cannabis sativa L. or its derivatives.

I. "Square foot" and "square footage" shall mean the horizontal areas of all floors, including usable basement and cellars, below the roof and within the outer surface of the main walls of buildings (or the center lines of party walls separating such building or portions thereof) or within lines drawn parallel to and two feet within the roof line of any building or portion thereof without walls (which includes square footage of all porches), and including pedestrian access walkways or corridors, but excluding the following:

1. Areas used for off-street parking spaces or loading berths and driveways and maneuvering aisles relating thereto.

2. Areas which are outdoor or semi-outdoor areas included as part of the building to provide a pleasant and health environment for the occupants thereof and the neighborhood in which the building is located. This exempted area is limited to stoops, balconies and to natural ground areas, terraces, pools and patios which are landscaped and developed for active or passive recreational use, and which are accessible for use by occupants of the building.

3. Arcades, porticoes, and similar open areas which are located at or near street level, which are accessible to the general public, and which are not designed or used as sales, display, storage, service or production areas.

J. "Structure" shall mean anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.

3.80.040 Payment of tax.

In addition to any requirements imposed by Title 4 of this Code, each Licensee operating a Cannabis Business shall pay the following taxes:

A. Every for profit Cannabis Business shall pay an annual tax of ____________per thousand dollars of Gross Receipts.

B. Every Nonprofit Organization Cannabis Business, including all of its ancillary locations regardless of the number of square feet it occupies, shall pay an annual tax of _____________ per square foot on all Business Improvements occupied by the Cannabis Business. For purposes of this Section, all of the square feet of Business Improvements owned, rented, leased or otherwise occupied or used by the a Cannabis Business within the City shall be accumulated.

3.80.050 Declaration Statement Required.

A. <u>For Profit.</u> At the time of payment of the taxes imposed by this Chapter, each for profit Cannabis Business Licensee shall file with the City Finance Department a statement, under oath, showing the true and correct amount of Annual Gross Receipts derived from the Cannabis Business allowed by the special business license issued to the Licensee. A signed declaration shall be attached to the statement included therein, which shall be in substantially the same form as: “I hereby declare under penalty of perjury that the foregoing is true and correct.” Pursuant to Section 3.80.070 of this Chapter, the City shall have the right to audit the matters reported in the statement to determine the accuracy of the figures contained therein.

B. Nonprofit Organization. At the time of payment of the taxes imposed by this Chapter, each Nonprofit Organization Cannabis Business Licensee shall file with the City Finance Department a statement, under oath, setting forth the then applicable factor or factors that constitute the measure of tax, including square footage calculations, together with such other information as is required by the Finance Director to enable it to administer the provisions of this Chapter. A signed declaration shall be attached to the statement included therein, which shall be in substantially the same form as: “I hereby declare under penalty of perjury that the foregoing is true and correct.” Pursuant to Section 3.80.070 of this Chapter, the City shall have the right to audit the matters reported in the statement to determine the accuracy of the information and calculations contained therein.

3.80.060 Payment – Timing.

A. All taxes imposed by this Chapter on a Cannabis Business whether it is a Nonprofit Organization or a for profit business shall be paid to the City’s Finance Department at the same time that the Licensee renews his or her special business license. Payment of taxes imposed by this Chapter shall be in the correct amount of taxes due and owing in accordance with Section 3.80.040 of this Chapter. Such sums correctly reflecting taxes shall be accepted by the City, subject, however, to the City’s right to conduct an audit pursuant to Section 3.80.070 of this Chapter.

B. In the case of a Cannabis Business which is discontinued, dissolved or otherwise terminated before the expiration of a tax period, the due date for any taxes accrued and owing to the City under the provisions of this Chapter shall be the date of the discontinuance, dissolvent or termination of the Cannabis Business.

C. Tax payments not received before the deadline for renewal of the special business license will be subject to a late fee of one and one half percent (1.5%) per month of the amount past due, plus all reasonable collection fees and costs.

3.80.070 Audit of Declaration Statement and Payment.

A. The City shall have the right to audit the matters referred to in the declaration statement and to determine the correctness of the figures set forth in such statement and the amount payable to the City pursuant to the provisions of Section 3.80.040.

B. The books, records and accounts of any Licensee may be inspected and audited by the City.

C. Such an inspection and audit may be performed by the Finance Director, a qualified accountant or City official who shall be selected by the Finance Director.

D. To facilitate such audits, the Licensee shall keep complete records of all transactions related to the receipt or disbursement of funds arising out of or related to Cannabis Business operations during the preceding three-year period. All such records shall be made available to the City for audit at the Licensee's place of doing business during normal business hours after reasonable prior notice.

E. Any failure or refusal of any Licensee to make and file a declaration statement within the required time period, or to pay such sums by way of taxes when the same are due and payable in accordance with the provisions of this Chapter, or to permit such inspection of such books, records and accounts of such Licensee shall be and constitute full and sufficient grounds for suspension or revocation of any special business license for operation of a Cannabis Business.

3.80.080 Notice Not Required by City.

The City 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, interest or penalty due under the provisions of this Chapter.

3.80.090 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 Licensee carrying on any business without having paid the tax under this Chapter to the City shall be liable to 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.

3.80.100 Deficiency Determinations.

A. If the Finance Director is not satisfied that a declaration statement filed, as required under the provisions of this Chapter, is correct, or that the amount of tax is correctly computed, the Finance Director may compute and determine the amount to be paid and make a deficiency determination upon the basis of the facts contained in the declaration statement or upon the basis of any information in the City's possession or that may come into the City's possession.

B. The City may make more than one deficiency determinations of the amount of tax due for a period or periods.

C. In the case of a Cannabis Business which is discontinued, dissolved or otherwise terminated, 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.

D. Whenever a deficiency determination is made, the City shall provide a notice to the Licensee concerned in the same manner as notices of assessment are given under Section 3.80.120.

3.80.110 Tax Assessment; Nonpayment; Fraud.

A. Under any of the following circumstances, the Finance Director may make and give notice of an assessment of the amount of tax owed by a Cannabis Business under this Chapter:

1. If the Licensee has not filed any declaration statement required under the provisions of this Chapter;

2. If the Licensee has not paid any tax due under the provisions of this Chapter;

3. If the Licensee has not, after demand by the Finance Director, filed a corrected declaration statement or furnished to the Finance Director adequate substantiation of the information contained in a statement of revenue already filed, or paid any additional amount of tax due under the provisions of this Chapter.

B. The notice of assessment shall separately set forth the amount of any tax known or estimated by the Finance Director to be due, after full consideration of all information within his or her knowledge concerning the Cannabis Business activities of the person or Licensee assessed and shall include the amount of any penalties, costs or interest accrued on each amount to the date of the notice of assessment.

3.80.120 Tax Assessment; Notice Requirements.

The notice of assessment shall be served upon the Licensee either by personal service on the Licensee, or by depositing the notice in the United States mail, postage prepaid thereon, addressed to the Licensee at the address of the location of the business appearing on the face of the special business license(s) issued under Title 4 to the Licensee, or to such other address as the Licensee registers with the Finance Director for the purpose of receiving notices provided under this Chapter. For the purposes of this Section, service by mail is complete at the time of deposit in the United States mail.

3.80.130 Tax Assessment; Hearing.

A. Within ten (10) days after the date of service of a notice under Section 3.80.120 of this Chapter, the Licensee may apply in writing to the Finance Director for a hearing on the assessment.

B. If application for a hearing before the Finance Director is not made within the time herein prescribed, the tax assessed by the Finance Director shall become final and conclusive.

C. Within thirty (30) days of the receipt of any such application for hearing, the Finance 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 Finance Director and the Licensee requesting the hearing.

D. Notice of such hearing shall be given by the Finance Director to the Licensee requesting such hearing not later than five (5) days prior to such hearing. At such hearing, said Licensee may appear and offer evidence why the assessment as made by the Finance Director should not be confirmed and fixed as a tax.

E. After such hearing the Finance Director shall determine and reassess the proper tax to be charged and shall give written notice thereof to the Licensee in the manner prescribed in Section 3.80.120 for giving notice of assessment.

3.80.140 Conviction for Chapter Violation; Taxes Not Waived.

A. 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.

B. 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.

SECTION 2: Chapter 3.85, titled "Cannabis Cultivation Tax," is hereby added to the Rancho Cordova Municipal Code to read as follows:

CHAPTER 3.85

CANNABIS CULTIVATION TAX

3.85.010 Short Title.

This Chapter shall be known as the Rancho Cordova Cannabis Cultivation Tax Ordinance.

3.85.020 Purpose and Intent.

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

3.85.030 Definitions.

A. "Cultivation of Cannabis" or "Cannabis Cultivation" shall mean the activity of cultivating of cannabis plants for personal consumption, on private property by the owner, lawful occupant or other lawful resident or guest of the private property owner or lawful occupant. Cultivation of cannabis for commercial purposes falls within an activity of a "Cannabis Business" as defined and addressed under Chapter 3.80 of this Code.

B. "Cannabis Grower" shall mean the owner, lawful occupant or other lawful resident of a property where the individual, or his/her guest, is engaged in the cultivation of cannabis. For purposes of this Chapter, the owner, lawful occupant or other lawful resident of the private property where cannabis is being cultivated shall be responsible for all obligations of a Cannabis Grower under this Chapter if they permit another individual to engage in Cultivation of cannabis on such property.

3.85.040 Payment of Tax.

In addition to any other requirement imposed by Federal, State or local law, each Cannabis Grower engaged in the Cultivation of cannabis shall pay the City an excise tax of ____________year while engaging in the Cultivation of cannabis. This tax is based upon the voluntary action of the Cannabis Grower to engage in the Cultivation of cannabis.

3.85.050 Registration.

A. Cannabis Growers must fill out a registration form with the City's Finance Department before engaging in the Cultivation of cannabis. Among other information, the registration form will require the Cannabis Grower to provide their address and inform the City whether the Cannabis Grower is the property owner, lawful occupant or lawful resident of the property.

B. If the Cannabis Grower is not the owner of the property, the Cannabis Grower shall attach a signed declaration from the owner of the property indicating that the Cannabis Grower has permission to Cultivate Cannabis on the property. Such declaration shall include with the following statement: "I hereby declare under penalty of perjury that the foregoing is true and correct."

3.85.060 Payment – Timing.

A. First payment of the Cannabis Cultivation Tax imposed by Section 3.85.040 shall be made at the same time the Cannabis Grower registers with the City pursuant to Section 6.85.050. All subsequent annual payments shall be due on that date's anniversary.

B. Tax payments not received before the deadline imposed under this Section will be subject to a late fee of one and one half percent (1.5%) per month of the amount past due, plus all reasonable collection fees and costs.

3.85.070 Termination of the Cultivation of Cannabis Activities

A Cannabis Growers will only be responsible for paying the tax imposed under this Chapter while engaging in the Cultivation of cannabis. Once the Cannabis Grower completely terminates all Cultivation of cannabis activities, it shall be the Cannabis Grower's responsibility to inform the Finance Department of such termination in order to avoid future tax obligations. The Cannabis Grower shall provide the City's Finance Department a written declaration containing the following statement: "I hereby declare under penalty of perjury that I have ceased all cannabis cultivation activities."

B. If requested by the City, the Cannabis Grower will allow City representatives to inspect the property, or portion of the property, previously used for the cultivation of cannabis in order to verify that the cultivation has ceased.

C. Once the City receives the Cannabis Grower's declaration under this Section and determines that the cultivation of cannabis has been terminated, the Cannabis Grower shall not be responsible for making any future cannabis cultivation Tax payments until such individual reengages in cannabis cultivation activities.

D. The termination of cannabis cultivation activities shall not relieve the Cannabis Grower from paying any taxes and fees owed to the City by Cannabis Grower prior to termination under this Chapter.

3.85.080 Notice Not Required by City.

The City 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, interest or penalty due under the provisions of this Chapter.

3.85.090 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 Cannabis Grower engaged in the cultivation of cannabis without having paid the tax under this Chapter to the City shall be liable to 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 individual.

3.85.100 Tax Assessment; Nonpayment; Fraud.

A. The Finance Director may make and give notice of an assessment of the amount of tax owed by a Cannabis Grower if the Cannabis Grower does not pay any tax due under the provisions of this Chapter on the annual date such taxes are due.

B. The notice of assessment shall separately set forth the amount of any tax due.

3.85.110 Tax Assessment; Notice Requirements.

The notice of assessment shall be served upon the Cannabis Grower either by personal service, or by a deposit of the notice in the United States mail, postage prepaid thereon, addressed to the Cannabis Grower at the address of the location of the private property appearing on the face of the registration form under Section 3.85.050. For the purposes of this Section, a service by mail is complete at the time of deposit in the United States mail.

3.85.120 Tax Assessment; Hearing.

A. Within ten (10) days after the date of service of a notice of assessment under Section 3.85.110 of this Chapter, the Cannabis Grower may apply in writing to the Finance Director for a hearing on the assessment.

B. If application for a hearing before the Finance Director is not made within the time herein prescribed, the tax assessed by the Finance Director shall become final and conclusive.

C. Within thirty (30) days of the receipt of any such application for hearing, the Finance 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 Finance Director and the Cannabis Grower requesting the hearing.

D. Notice of such hearing shall be given by the Finance Director to the Cannabis Grower not later than five (5) days prior to such hearing. At such hearing, said Cannabis Grower may appear and offer evidence why the assessment as made by the Finance Director should not be confirmed and fixed as a tax.

E. After such hearing, the Finance Director shall determine and reassess the proper tax to be charged and shall give written notice thereof to the Cannabis Grower in the manner prescribed in Section 3.85.110.

3.85.130 Conviction for Chapter Violation; Taxes Not Waived.

A. 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.

B. 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.

SECTION 3. Effective Date of Chapter 3.80. Section 1 of this Ordinance, adding Chapter 3.80 to the Rancho Cordova Municipal Code, shall become effective immediately upon the date that this Ordinance is approved by the voters of the City of Rancho Cordova at the Election of November 2, 2010 as confirmed by the City Council's declaration of the vote, only in the event that Proposition 19 is adopted by voters of the State of California at the same election.

SECTION 4. Effective Date of Chapter 3.85. Section 2 of this Ordinance, adding Chapter 3.85 to the Rancho Cordova Municipal Code, shall become effective immediately upon the date that this Ordinance is approved by the voters of the City of Rancho Cordova at the Election of November 2, 2010 as confirmed by the City Council's declaration of the vote.

SECTION 5. Amendment or Repeal. Chapter 3.80 and Chapter 3.85 of the Municipal Code may be repealed or amended by the City Council without a vote of the people. However, as required by Chapter XIIIC of the California Constitution, voter approval is required for any amendment that would increase the rate of tax levied pursuant to this Ordinance. The People of the City of Rancho Cordova affirm that the following actions shall not constitute an increase of the rate of a tax:

1. The restoration of the rate of the tax to a rate that is no higher than that set by this Ordinance, if the City Council has acted to reduce the rate of the tax;

2. 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 Ordinance.

3. 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 Ordinance); and

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

SECTION 6. Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Ordinance shall nonetheless remain in full force and effect. The people hereby declares that they would have adopted each section, subsection, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable.

APPROVED by the following vote of the People of the City of Rancho Cordova on November 2, 2010.

ADOPTED by Declaration of the vote by the City Council of the City of Rancho Cordova on ___________, 2010:

AYES:

NOES:

ABSENT:

ABSTAIN:

____
Ken Cooley, Mayor

ATTEST:

____
Mindy Cuppy, City Clerk

APPROVED AS TO FORM:

____
Adam U. Lindgren, City Attorney

1478735.3

WORKING DRAFT FOR ILLUSTRATIVE PURPOSES ONLY, NOT FOR INTRODUCTION OR ADOPTION

CITY OF RANCHO CORDOVA

ORDINANCE NO. ____-2010

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA ADDING CHAPTER 6.90 TO THE MUNICIPAL CODE PERTAINING TO THE CULTIVATION OF MARIJUANA

RECITALS

WHEREAS, the City currently has no rules or regulations governing the cultivation of marijuana within the City limits; and

WHEREAS, the City Council of the City of Rancho Cordova ("City Council") has determined that the unregulated cultivation of marijuana within the City limits may create a threat to public health and safety; and

WHEREAS, the City Council wishes to establish rules and regulations governing the cultivation of marijuana within the City limits.

THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA DOES ORDAIN AS FOLLOWS:

Section 1. Legislative Findings. The City Council hereby finds as follows:

1. Outdoor marijuana cultivation has resulted in trespass and theft, which is sometimes accomplished through the use of force or intimidation of residents. In addition, outdoor marijuana cultivation can result in the following nuisance conditions: "green" or "skunky" marijuana odor, late-night comings-and-goings, and illegal activities such as cultivation and sale of marijuana and other drugs for commercial purposes.

2. Some residences with indoor marijuana cultivation create nuisance conditions in the surrounding neighborhood as they exhibit the following characteristics: "green" or "skunky" marijuana odor, house numbers removed, blacked-out windows, no residents, constant fan noise, late-night comings-and-goings, and illegal activities such as cultivation and sale of marijuana and other drugs for commercial purposes.

3. Many indoor marijuana cultivation conversions are completed without required building permits and inspections. This results in unsafe living conditions for residents and neighbors, and in unsafe conditions with high electrical loads on circuits that are not designed for such loads.

4. Indoor marijuana cultivation in multi-family housing developments is particularly dangerous if conversions to the building occur without required building permits.

In addition, because multifamily housing developments tend to include shared walls, floors, and ceilings the potential deleterious effects on the physical structure of the building and occupants health due to mold and water damage increase. There is also an increased risk of structural fires due to indoor cultivation of marijuana in multi-family projects.

5. Marijuana cultivation operations tend to increase the frequency of vandalism, home invasion robberies, threats to neighbors, and loss of a neighborly community.

6. Recent trends indicate a likely increase in the use of Rancho Cordova homes for marijuana cultivation.

7. It is the intent of this Ordinance to regulate the cultivation of marijuana in order to promote the health, safety, morals, and general welfare of the residents and businesses with the City.

Section 2: Amendment of Code. Chapter 6.90 entitled, "Marijuana Cultivation" is hereby added to the Rancho Cordova Municipal Code as follows:

TITLE 9, Chapter 6.90
MARIJUANA CULTIVATION

6.90.010 Purpose.
The purpose and intent of this Ordinance is to regulate the cultivation of marijuana that is grown in accordance with state law in order to promote the health, safety, morals, and general welfare of the residents and businesses within the City. It is not the intent of this ordinance to create conflict or inconsistency between this Ordinance and (1) the Constitutions of the United States or the State of California; (2) the Federal Controlled Substances Act; or (3) California law.

6.90.020 Definitions.
For purposes of this chapter, the following words shall have the following meaning, unless the context clearly indicates otherwise.

Abatement. The removal of marijuana plants and improvements that support marijuana cultivation which occupy an area or cubic feet in excess of the area and cubic feet that is allowed under this ordinance.

Cultivation. The planting, growing, harvesting, drying, or processing of marijuana plants, or any part thereof.

Fully enclosed and secure structure. A space within a building, greenhouse or other structure which has a complete roof enclosure supported by connecting walls extending from the ground to the roof, which is secure against unauthorized entry, provides complete visual screening, and which is accessible only through one or more lockable doors.

Indoors. Within a fully enclosed and secure structure.

Outdoor. Any location within the City of Rancho Cordova that is not within a fully enclosed and secure structure.

Parcel. Property assigned a separate parcel number by the Sacramento County Assessor.

Marijuana. The plant Cannabis satvia L. that is grown in accordance with state law.

6.90.030 Cultivation of Medical Marijuana.

A. Outdoor cultivation: It is hereby declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any parcel within any zoning district in the City of Rancho Cordova to cause or allow such parcel to be used for the outdoor cultivation of marijuana plants.

B. Indoor cultivation: It is hereby declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any parcel in the City of Rancho Cordova to cause or allow such parcel to be used for the cultivation of marijuana plants within a fully enclosed and secure structure on the parcel, except as outlined below in Sections 6.90.030(C) and 6.90.030(D).

C. Marijuana for Personal Use. Marijuana for personal use shall be cultivated within the City of Rancho Cordova in conformance with the following standards:

1. All marijuana shall be cultivated indoors.
2. Marijuana cultivation is permitted only on parcels with residential units. Marijuana cultivation is permitted only within a residential unit, a garage, or a self-contained outside accessory building that is secured, locked, and fully enclosed. The cultivation of marijuana within a residential unit in a multifamily structure shall require administrative review by the Planning Director and shall meet specific criteria, as set forth in a) through c) below:
    a. Inspection of the cultivation area by a building inspector to confirm that no health or safety concerns are present; and
    b. Written permission from the property owner; and
    c. The Building Official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to installation of fire suppression sprinklers.
3. Marijuana cultivation is prohibited on parcels adjacent to any school or public park.
4. The marijuana cultivation area shall not exceed 25 square feet per residence, exception is provided in subsection (D) of this section.
5. Marijuana cultivation shall occur only in a fully enclosed and secure structure.
6. Marijuana cultivation lighting shall not exceed 1200 watts.
7. The use of gas products (CO2, butane, etc.) for marijuana cultivation or processing is prohibited.
8. Marijuana cultivation for sale is prohibited.
9. From a public right of way, there shall be no exterior evidence of marijuana cultivation.
10. The residence shall maintain kitchen, bathrooms, and primary bedrooms for their intended use and these rooms shall not be used for marijuana cultivation.
11. Any marijuana cultivation area located within a residence shall not create a humidity or mold problem.

12. Individuals that are tenants shall obtain the written permission of the property owner for the cultivation of marijuana.
13. The marijuana cultivation area shall not adversely affect the health or safety of the nearby residents by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, and shall not be hazardous due to use or storage of materials, processes, products or wastes.

D. Marijuana Cultivation In Excess of 25 Square Feet. Any proposed marijuana cultivation by an individual that may exceed the cultivation area standard maximum of 25 square feet per residence shall require administrative review by the Planning Director and shall meet the criteria set forth above, as well as the additional criteria set forth in a) through d) below:

a) Documentation of medical need, such as a physician's recommendation; and
b) Inspection of the cultivation area by a building inspector to confirm that no health or safety concerns are present; and
c) The Building Official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to installation of fire suppression sprinklers. .

E. Public nuisance. It is hereby declared to be unlawful for any person owning, leasing, occupying, or having charge or possession of any parcel within the City of Rancho Cordova to create a public nuisance in the course of cultivating marijuana plants or any part thereof in any location. A public nuisance may be deemed to exist, if such activity produces:

1. Odors which are disturbing to people of normal sensitivity residing or present on adjacent or nearby property or areas open to the public;
2. Repeated responses (more than three times in a one year time period) to the parcel from law enforcement officers;
3. Repeated disruption (more than three times in a one year time period) to the free passage of persons or vehicles in the neighborhood;
4. Excessive noise which is disturbing to people of normal sensitivity on adjacent or nearby property or areas open to the public; or
5. Any other impacts on the neighborhood which are disruptive of normal activity in the area.

6.90.040 Enforcement.

A. The violation of this ordinance is hereby declared to be a public nuisance. Any person violating any provision of this Chapter shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed $1,000.00, by imprisonment in the County jail not to exceed six months, or by both a fine and imprisonment.

B. A violation of the ordinance may be abated by the City Attorney by the prosecution of a civil action for injunctive relief and by the abatement procedure set forth in Chapter 16.18 of the Municipal Code.

C. Abatement procedure. The Code Enforcement Officer and/or the Chief of Police, or his or her designee (hereafter, the "Enforcement Official"), are hereby authorized to order the abatement of any violation of this Chapter by following the abatement procedure as defined in the Chapter 16.18 of the Municipal Code. In addition, the Code Enforcement Officer may require the property owner or tenant to personally abate/remove all medical marijuana plants and improvements to the property that exceed the limits set by this ordinance.

6.90.050 Penalty for Violation

A. Cultivation of marijuana on parcels within the City that does not comply with this Chapter is subject to the penalties and enforcement as provided in Chapter 6.60 and Section 1.01.190 of the Municipal Code.

B. The remedies and penalties provided herein are cumulative, alternative and non-exclusive. The use of one does not prevent the use of any others and none of these penalties and remedies prevent the City from using any other remedy at law or in equity which may be available to enforce this section or to abate a public nuisance.

Section 3. Compliance with CEQA.
The City Council finds that this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment), 15061(b)(3) (there is no possibility the activity in question may have a significant effect on the environment). In addition to the foregoing general exemptions the following categorical exemptions apply, Sections 15308 (actions taken as authorized by local ordinance to assure protection of the environment), and 15321 (action by agency for enforcement of a law, general rule, standard, or objective administered or adopted by the agency, including by direct referral to the City Attorney as appropriate for judicial enforcement).

Section 4. Severability

If any provision of this ordinance, or the application thereof to any person or circumstance, is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid or unenforceable.

Section 5. Effective Date

Within fifteen (15) days after adoption, a Summary of this Ordinance shall be published once in the Grapevine Independent or the Sacramento Bee, a newspaper of general circulation printed and published in Sacramento County and circulated in the City of Rancho Cordova, in accordance with Government Code section 36933. This Ordinance shall take effect and be enforced thirty (30) days after its inception.

ADOPTED, THIS ___ day of ______________ 2010, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

____

Dan Skoglund, Mayor

ATTEST:

____
Mindy Cuppy, City Clerk

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