Dean Johnson

From: MN_OCM_Cannabis Info <cannabis.info@state.mn.us>
Sent: Friday, September 27, 2024 3:29 PM
To: Dean Johnson
Subject: RE: Questions Regarding Local Government Cannabis Regulations

Flag Status: Flagged

Hi Dean,

Thank you for your patience as we looked into your inquiries.

The office has published guidance related to the retail registration process in the "A Guide for Local Governments on Adult-Use Cannabis" on pages 16 and 17. The guide is available on our website here: https://mn.gov/ocm/assets/Minnesota%20OCM%20LG%20Guide_tcm1202-627967.pdf.

This guide has been updated to include additional guidance related to the retail registration process, including the new Appendix B, the retail registration form and checklist. We also recommend reviewing Minnesota Statutes section 342.22, which is the statute governing the retail registration process.

The guide also includes information regarding the zoning certification process as detailed in Minnesota Statutes section 342.13 and 342.14. This process will be required once the rulemaking process is completed and licensing is able to begin. At that time, applicants with license preapproval will be able to submit their locations to the office for review, at which point statute requires the office will forward the completed application to the local government for review of zoning certification.

We are encouraging applicants for license preapproval to be in early conversations with the unit of local government where they are interested in operating their business in order to assess the steps required by the local government to secure zoning certification.

Currently, the office is reviewing applications for license preapproval but has not yet issued any license preapprovals or licenses. As the office prepares to issue license preapproval, the office will also be issuing additional guidance for potential applicants as well as local governments for the anticipated steps ahead once license preapprovals are issued and prior to rulemaking/issuing of licenses.
We recommend you consult with your local government attorney for specific legal advice.

Can cannabis events be restricted to be held at existing licensed cannabis businesses?

Chapter 342 does not include this restriction.
Minn. Stat. 342.13(c), states the authority of a local unit of government to adopt reasonable restrictions of the time, place, and manner of the operation of a cannabis business provided that such restrictions do not prohibit the establishment or operation of cannabis businesses. We recommend you consult with your local government attorney for specific legal advice.

Can cannabis events be restricted to brick-and-mortar facilities rather than "temporary structures, such as tents?"
Chapter 342 does not include this restriction.
Minn. Stat. 342.13(c), states the authority of a local unit of government to adopt reasonable restrictions of the time, place, and manner of the operation of a cannabis business provided that such restrictions do not prohibit the

establishment or operation of cannabis businesses. We recommend you consult with your local government attorney for specific legal advice.

Are cannabis event organizers registered locally? Or can any licensed event organizer from anywhere in the state apply for an event in any location?
Cannabis event organizers are not required to register locally and there is not a geographic requirement. It is important to note that the statute includes specific reference to the requirement for local approval before holding a cannabis event.

Can cities place a limit on the number of events held per year? Per Organizer?
Chapter 342 does not include a specific authority for a local unit of government to place a limit on events each year, however, it is important to note that the statute includes the requirement that applicants seeking an event organizer license must have local approval. Per Minnesota Statutes section 342.40, a cannabis event organizer must receive local approval, including obtaining any necessary permits or licenses issued by a local unit of government, before holding a cannabis event. And per Minnesota Statutes section 342.39, subdivision 2, proof of local approval for the event is required in an application for the cannabis event license.
Minn. Stat. 342.13(c), states the authority of a local unit of government to adopt reasonable restrictions of the time, place, and manner of the operation of a cannabis business provided that such restrictions do not prohibit the establishment or operation of cannabis businesses. We recommend you consult with your local government attorney for specific legal advice.

The microbusiness regulations allow the on-site consumption of edibles but not smoking flower or vaping concentrates. The temporary event regulations allow on-site consumption of edibles and smoking flower. It appears that cities can allow or prohibit on-site consumption at temporary events. Can cities allow some consumption, e.g., edibles, but not smoking or vaping?
Minnesota Statutes section 342.40, subdivision 8 includes the following specification for on-site consumption at a licensed cannabis event: "If approved by the local unit of government, a cannabis event may designate an area for consumption of adult-use cannabis flower, adult-use cannabis products, lower-potency hemp edibles, hemp-derived consumer products, or any combination of those items."
Minn. Stat. 342.13(c), states the authority of a local unit of government to adopt reasonable restrictions of the time, place, and manner of the operation of a cannabis business provided that such restrictions do not prohibit the establishment or operation of cannabis businesses. We recommend you consult with your local government attorney for specific legal advice.

Can a city <u>at any time</u> by ordinance change the number of allowable retail licenses from 1 per 12,500 population to say 3 or 5 city-wide? Or vice versa?
Minnesota Statutes section 342.13 includes the following:
"A local government unit that issues a cannabis retailer registration under section <u>342.22</u> may, by ordinance, limit the number of licensed cannabis retailers, cannabis mezzobusinesses with a retail operations endorsement, and cannabis microbusinesses with a retail operations endorsement to no fewer than one registration for every 12,500 residents."
If a city has not delegated their registration authority to the county, they may by ordinance limit registrations if they have met the 1 per 12,500 ratio as specified in statute.
We recommend you consult with your local government attorney for specific legal advice about this question.

Regards,

Andrew
Customer Service Specialist
Cannabis.info@state.mn.us

MINNESOTA
OFFICE OF CANNABIS MANAGEMENT

Visit OCM's Social Equity Verification Resource Page for answers to our most frequently received questions!

From: Dean Johnson <rscmn@spacestar.net>
Sent: Wednesday, September 18, 2024 4:26 PM
To: MN_OCM_Cannabis Info <cannabis.info@state.mn.us>
Subject: Questions Regarding Local Government Cannabis Regulations

Greetings

I am a consulting planner assisting the City of Columbus in developing city code amendments pertaining to cannabis management. The questions have arisen from my own review of the statutes and questions raised at joint meetings of the Planning Commission and City Council. I spoke with Josh Collins and he asked that I put all of my questions in writing and forward them to this address.

ISSUE #1 – 30 Days to Determine Local Zoning Compliance

M.S. 342.13 requires that a city must certify whether an application for a retail cannabis business forwarded by the Office of Cannabis Management (office) "complies with local zoning ordinances and, if applicable, whether the proposed business complies with the state fire code and building code." The office and local units of government shall develop standardized forms and procedures for the issuance of a retail registration. A local unit of government has 30 days to certify whether an application referred by the office complies with local zoning ordinances. The office may issue a license if the local unit of government does not provide the certification within 30 days. The office may not issue a license if the local unit of government informs the office that the cannabis business does not comply with local zoning and land use laws. There don't appear to be any license referrals or certifications for any of the "non-retail cannabis businesses," except in the process for final license authorization.

The issuance of a "retail registration" is pursuant to M.S. 342.22. Local retail registrations are required for a cannabis microbusiness, cannabis mezzobusiness, cannabis retailer, medical cannabis combination business, or lower-potency hemp edible retailer. Cities may charge a $500 retail registration fee and a 1st year annual renewal fee of $1000 to consider a retail registration. No other application fees are allowed.

The office website list of Frequently Asked Questions indicates that a license preapproval application does not require a site-specific location.

The office website list of Frequently Asked Questions also indicates "License preapproval issued by OCM is not a cannabis business license. An applicant with license preapproval is permitted to establish legal control of the site of the cannabis business, gain zoning or planning approval, and potentially raise capital for the business." [emphasis added]

M.S.342.22 indicates that a local unit of government must issue a retail registration to a cannabis retailer "that has a valid license or license preapproval issued by the office." [emphasis added]

M.S. 342.14 indicates that any business receiving a "license preapproval" has 18 months to apply for and receive a final authorization for a license. Subd. 6 (b) indicates the office shall forward a copy of the final license application to the local unit of government "with a form for certification as to whether a proposed cannabis business complies with local zoning ordinances and, if applicable, whether the proposed business complies with the state fire code and building code." There is no time limit in this section required for local certification of zoning compliance.

The Cannabis Draft Model Ordinance prepared by the office in June 2024 indicates that cities should select which zoning districts each of the cannabis businesses may be allowed. The model ordinance also indicates cities should specify which method of use approval each cannabis business may be categorized: permitted use, conditional use or interim use. The timeframe for issuing conditional or interim use permits is elongated by public hearing requirements.

M.S.15.99 establishes a minimum 15-day (business days) period to determine whether any zoning (or other) application received by the city (or other agency) includes a "written request containing all information required by law or by a previously adopted rule, ordinance, or policy of the agency, including the applicable application fee." Once an application is determined complete, the city or agency has 60 days to formally act upon the application. Upon written notice to the applicant, the 60-day deadline may be extended to 120 days.

M.S. 462.364 indicates "Inconsistent special laws or general laws of special application are superseded by Sections 462.351 to 462.364 (municipal planning legislation) to the extent of the inconsistency." Does this provision suggest all cannabis businesses must comply with existing land use and zoning regulations in cities?

Is there a specific provision in M.S. Chapter 342 that expressly overrides existing local government land use and zoning enabling legislation (other than personal cannabis rights and non-exclusionary cannabis business provisions) or other procedural statutes?

Ultimate Questions: When will the office and local units of government develop standardized forms and procedures for retail registration? Is the 30-day retail zoning compliance certification in M.S. 342.13 only a preliminary conclusion that the particular license referral is allowed in a particular zoning district, subject to subsequent local zoning applications and permitting for the specific use? Is the final license referral and certification referenced in M.S. 342.14 consistent with the provisions afforded local units of government under M.S. 15.99 and all permitting authority authorized in M.S. 462.351-364?

ISSUE #2 – Cannabis Event Clarifications

Can cannabis events be restricted to be held at existing licensed cannabis businesses?

Can cannabis events be restricted to brick-and-mortar facilities rather than "temporary structures, such as tents?"

Are cannabis event organizers registered locally? Or can any licensed event organizer from anywhere in the state apply for an event in any location?

Can cities place a limit on the number of events held per year? Per Organizer?

The microbusiness regulations allow the on-site consumption of edibles but not smoking flower or vaping concentrates. The temporary event regulations allow on-site consumption of edibles and smoking flower. It appears that cities can allow or prohibit on-site consumption at temporary events. Can cities allow some consumption, e.g., edibles, but not smoking or vaping?

ISSUE #3 – Clarification on the Number of Retail Licenses

Can a city at any time by ordinance change the number of allowable retail licenses from 1 per 12,500 population to say 3 or 5 city-wide? Or vice versa?

I look forward to hearing from you and thank you,

Dean Johnson
Resource Strategies Corporation
rscmn@spacestar.net
612-220-0606

Local Approval Process

Local governments play a critical role in the licensing process, serving as a near-final approval check on cannabis businesses nearing the awarding of a state license for operations. Once an applicant has been vetted by OCM and is selected for proceeding in the verification process, they are then required to receive the local government's certification of zoning compliance and/or local retail registration before operations may commence.

Local Certification of Zoning Compliance (342.13; 342.14)

Following OCM's vetting process, local governments must **certify** that the applicant with preliminary approval has achieved **compliance with local zoning ordinances** prior to the licensee receiving final approval from OCM to commence operations.

During the application and licensing process for cannabis businesses, OCM will notify a local government when an applicant intends to operate within their jurisdiction and request a certification as to whether a proposed cannabis business complies with local zoning ordinances, and if applicable, whether the proposed business complies with state fire code and building code.

According to Minnesota's cannabis law, a local unit of government has 30 days to respond to this request for certification of compliance. If a local government does not respond to OCM's request for certification of compliance within the 30 days, the cannabis law allows OCM to issue a license. OCM may not issue the final approval for a license if the local government has indicated they are not in compliance.

OCM will work with local governments to access the licensing software system to complete this zoning certification process.

Local Approval Process (cont.)

Local Retail Registration Process (342.22)

Once the licensing process begins, local government registration applies to cannabis retailers or other cannabis/hemp businesses seeking a retail endorsement. Local governments must issue a retail registration after verifying that:

- The business has a valid license or license preapproval issued by OCM.
- The business has paid a registration fee or renewal fee to the local government;
    - Initial registration fees collected by a local government may be $500 or half the amount of the applicable initial license fee, whichever is less, and renewal registration fees may be $1,000 or half the amount of the applicable renewal license fee, whichever is less.
- The business is found to be in compliance with Chapter 342 and local ordinances.
- If applicable, the business is current on all property taxes and assessments for the proposed retail location.

Local registrations may also be issued by counties if the respective local government transfers such authorities to the county.

Determining a Process for Limiting Retail Registrations

If a local government wishes to place a limitation on the number of retailers and microbusiness/mezzobusinesses with retail endorsements allowed within their locality (as long as there is at least one retail location per 12,500 residents, see Page 10), state law does not define the process for a local government's selection if there are more applicants than registrations available. A few options for this process include the use of a lottery, a first-come/first-serve model, a rolling basis, and others. Local governments should work with an attorney to determine their specific process for selection if they wish to limit the number of licensed cannabis retailers per 342.13. Local governments are not required to limit the number of licensed cannabis retailers.

Local Approval Process (cont.)

Local governments are permitted specific authorities for registration refusal and registration suspension, in addition to—and not in conflict with—OCM authorities.

Registration and Renewal Refusals

Local governments may refuse the registration and/or certification of a license renewal if the license is associated with an individual or business who no longer holds a valid license, has failed to pay the local registration or renewal fee, or has been found in noncompliance in connection with a preliminary or renewal compliance check.

Local Registration Suspension (342.22)

Local governments may suspend the local retail registration of a cannabis business or hemp business if the business is determined to not be operating in compliance with a local ordinance authorized by 342.13 or if the operation of the business poses an immediate threat to the health and safety of the public. The local government must immediately notify OCM of the suspension if it occurs. OCM will review the suspension and may reinstate the registration or take enforcement action.

Expedited Complaint Process (342.13)

Per state law, OCM will establish an expedited complaint process during the rulemaking process to receive, review, read, and respond to complaints made by a local unit of government about a cannabis business. Upon promulgation of rules, OCM will publish the complaint process.

At a minimum, the expedited complaint process shall require the office to provide an initial response to the complaint within seven days and perform any necessary inspections within 30 days. Within this process, if a local government notifies OCM that a cannabis business poses an immediate threat to the health or safety of the public, the office must respond within one business day.

Appendix B: Retail Registration Form and Checklist

MINNESOTA
OFFICE OF CANNABIS MANAGEMENT

Retail Registration Form and Checklist

Local Unit of Government:

Business Name:

Business Address:

Minnesota Cannabis Business License Number:

Registration Period

- ◯ Initial
- ◯ Renewal
- ◯ Cannabis Microbusiness ($0.00)
- ◯ Cannabis Microbusiness ($1000.00)
- ◯ Cannabis Mezzobusiness ($500.00)
- ◯ Cannabis Mezzobusiness ($1000.00)
- ◯ Cannabis Retailer ($500.00)
- ◯ Cannabis Retailer ($1000.00)

Is Applicant Current on All Property Tax and Assessments at Retail Location:

- ◯ Yes
- ◯ No

Preliminary Local Ordinance Compliance: ◯ Pass ◯ Fail

Notes:

The above named applicant having paid the appropriate fees, being current on all applicable tax obligations, and having passed a preliminary compliance review, is authorized to engage in retail cannabis sales in the above named jurisdiction.

Approved By:

Title:

Date: