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## MEMORANDUM

**TO:** Honorable Mayor and City Council  
Josh Tetzlaff, City Administrator

**FROM:** Joseph L. Sathe, City Attorney

**DATE:** July 11, 2024

**RE:** Consider Updating Cannabis Business Moratorium

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### Summary

The purpose of this memo is to address a change in the law which may create a need to amend the City's moratorium on cannabis businesses. There is a possibility that a change to the statutory definition of "Cannabis Business" could be understood/misunderstood to mean that businesses associated with the medical cannabis program and certain businesses authorized to begin growing cannabis prior to obtaining a full license ("Early Cultivators") are not subject to the moratorium.

There is a strong argument that the moratorium will still apply as originally intended, but to avoid a claim that it does not and to also provide clear communication to businesses, the enclosed language amending the current moratorium provides an option for the city to consider that will incorporate the general authority cities possess to adopt interim ordinances/moratoria rather than solely relying on the cannabis specific authority granted in the Cannabis Act. The amendment does not change the January 1, 2025 expiration date for the moratorium.

### Cannabis Business Definition Change

In 2023, HF 100 ("2023 Cannabis Act") allowed cities to enact moratoria on the operation of Cannabis Businesses, defined as a business needing one of the many licenses authorized under the 2023 Cannabis Act. In 2023, the only way to operate a business that deals with cannabis was to obtain a Cannabis Business license.

The statutory language authorizing the moratoria (Minn. Stat. 342.13 (e)) provides that a unit of local government may adopt an interim ordinance to "regulate, restrict, or prohibit the operation of a cannabis business within the jurisdiction or a portion thereof until January 1, 2025."

In 2024, HF 4757 ("2024 Cannabis Update") amended the definition of Cannabis Business and established a process for certain businesses to obtain a license preapproval intended to allow social equity applicants to begin certain business processes prior to obtaining a license (such as obtaining capital).

The enclosed table is provided as a reference showing the difference between the 2023 Cannabis Act and the 2024 Cannabis Update.

**Updates to the Moratorium**

With the changes to the definition of cannabis business there are now two categories of businesses associated with cannabis that can operate without a cannabis business license (medical cannabis businesses) or a license at all (license preapproval-Early Cultivator).

Therefore, the attached moratorium amendments are intended to confirm the city's intent to have the moratorium adopted in 2023 continue to apply to every type of business related to cannabis within the city as was the case when it was adopted. Adding the references to the authority cities use for interim ordinances normally is to avoid two claims:

1. A claim that the authority to impose a moratorium under Minn. Stat. 342.13 is tied to the statutory definition of cannabis business, which is defined as a licensed business and the 2024 Cannabis Update authorizes businesses without a license to operate under a license preapproval/Early Cultivator approval; and
2. A claim that the 2024 Cannabis Update removal of Medical Cannabis Businesses from the definition of Cannabis Business means that the moratorium no longer applies to those businesses.

The language in the attached draft can be amended to only cover businesses that the City wants subject to the moratorium (e.g., the language on Medical Cannabis Businesses can be removed).

**Timeline**

Businesses seeking to obtain a license preapproval need to apply and then be selected as part of a lottery. The first application window will begin on July 24 and end August 12. The Office of Cannabis Management (“OCM”) has not announced the date it will begin granting Early Cultivator approvals but it will likely will be after August 12. However, businesses may begin applying for the Early Cultivator prerequisite (the license preapproval) on July 24, 2024 and having the amendment in place earlier may help address any confusion and provide both staff and businesses with clear direction on the city’s intention.

**Conclusion**

Updating the City’s moratorium will clearly communicate to businesses that the City is considering license preapprovals, Early Cultivators, and Medical Cannabis Businesses as part of its potential regulations regarding businesses related to cannabis. The amendment also explicitly includes reference to the City’s general authority to enact a moratorium in case a court were to determine that license preapprovals, Early Cultivators, and Medical Cannabis Businesses are not subject to the current moratorium on Cannabis Businesses.

\*Kennedy & Graven is working on a revision to the OCM template ordinance for cannabis businesses, and staff will work from that revision to get an ordinance in place on or before January 1, 2025.

Does the council have interest in setting setbacks from Churches/Schools to cannabis businesses???

Table Showing Differences Between 2023 and 2024 Cannabis Businesses				
2023	2024			
<u>Cannabis Business</u>	<u>Cannabis Business</u>	<u>Medical Cannabis Business</u>	<u>License Preapproval</u>	<u>Early Cultivator</u>
<p>Minn. Stat. 342.01, Subd.14.</p> <p>"Cannabis business" means any of the following licensed under this chapter:</p> <p>(1) cannabis microbusiness;</p> <p>(2) cannabis mezzobusiness;</p> <p>(3) cannabis cultivator;</p> <p>(4) cannabis manufacturer;</p> <p>(5) cannabis retailer;</p> <p>(6) cannabis wholesaler;</p> <p>(7) cannabis transporter;</p> <p>(8) cannabis testing facility;</p> <p>(9) cannabis event organizer;</p> <p>(10) cannabis delivery service;</p> <p>(11) medical cannabis cultivator;</p> <p>(12) medical cannabis processor;</p> <p>(13) medical cannabis retailer;</p> <p>and</p> <p>(14) medical cannabis combination business.</p>	<p>Minn. Stat. 342.01, Subd.14.</p> <p>"Cannabis business" means any of the following licensed under this chapter:</p> <p>(1) cannabis microbusiness;</p> <p>(2) cannabis mezzobusiness;</p> <p>(3) cannabis cultivator;</p> <p>(4) cannabis manufacturer;</p> <p>(5) cannabis retailer;</p> <p>(6) cannabis wholesaler;</p> <p>(7) cannabis transporter;</p> <p>(8) cannabis testing facility;</p> <p>(9) cannabis event organizer;</p> <p>(10) cannabis delivery service; <u>and</u></p> <p><del>(11) medical cannabis cultivator;</del></p> <p><del>(12) medical cannabis processor;</del></p> <p><del>(13) medical cannabis retailer;</del></p> <p><u>and</u></p> <p><del>(14)</del><u>(11)</u> medical cannabis combination business.</p>	<p>The three businesses that were removed from the Cannabis Business definition in column 1 (the 2023 definition of Cannabis Business) are still licensed by the OCM but are not considered Cannabis Businesses since that term seem to now be reserved for businesses that are part of the recreational cannabis regulatory framework.</p> <p>Medical Cannabis Businesses, likely any other business, must adhere to the city’s general zoning and regulatory authority.</p>	<p>The OCM may issue a license preapproval to certain businesses to assist that business in obtaining legal control of property, receive zoning approval from the unit of local government, and raising capital for business operations.</p> <p>The license preapproval does not allow a person to engage in any activity that would require a license including purchasing, possess, cultivating, manufacturing, distributing, dispensing, or selling products.</p> <p>License preapprovals will be granted to entities who meet the requirements as a social equity applicant and will be granted based on a lottery system.</p> <p>The first window for license preapprovals will open on July 24 and close on August 12. The OCM has not announced when the first lottery will be held, but it should be soon after August 12.</p>	<p>If an entity has received a license preapproval for a business that will be able to grow cannabis (a cannabis microbusiness, cannabis mezzobusiness, or cannabis cultivator license) that business may apply for an approval to begin “early cultivation” without a full license.</p> <p>The entity must meet the following criteria:</p> <p>(1) has provided documentation in a form and manner prescribed by the Office of Cannabis Management from the applicable local unit of government that states the social equity applicant is in compliance with local zoning ordinances and state fire and building codes; and</p> <p>(2) complies with Minnesota Rules, parts 4770.0100 to 4770.4030. These are the current rules that apply to the Medical Marijuana Program</p>

CITY OF NEW PRAGUE  
ORDINANCE NO. 350

**AN AMENDMENT TO INTERIM ORDINANCE 2023-338 AUTHORIZING A STUDY  
AND IMPOSING A MORATORIUM ON THE OPERATION OF CANNABIS  
BUSINESSES WITHIN THE CITY OF NEW PRAGUE**

THE CITY COUNCIL OF THE CITY OF NEW PRAGUE ORDAINS:

**ARTICLE 1. Authority and Legislative Findings.**

- A. The Minnesota Legislature recently enacted, and the Governor signed, 2023 Minnesota Session Laws, Chapter 63 – H.F. No. 100 (the “Act”), which is comprehensive legislation relating to cannabis including, but not limited to, the establishment of the Office of Cannabis Management (“OCM”), legalizing and limiting the possession and use of cannabis and certain hemp products by adults, providing for the licensing, inspection, and regulation of cannabis and hemp businesses, taxing the sale of cannabis flower, cannabis products, and certain hemp products, establishing grant and loan programs, amending criminal penalties, providing for expungement of certain convictions, and providing for the temporary regulation of edible cannabinoid products.
- B. The Act provides local units of government certain authority related to cannabis businesses, including the authority to (1) require local registration of certain cannabis businesses operating retail establishments, (2) adopt reasonable restrictions on the time, place, and manner of the operation of cannabis businesses, provided that such restrictions do not prohibit the establishment or operation of a cannabis business, (3) limit the number of certain cannabis businesses based on the population of the community, and (4) prohibit the operation of a cannabis business within 1,000 feet of a school, or 500 feet of a day care, residential treatment facility, or an attraction within a public park that is regularly used by minors, including a playground or athletic field.
- C. The Act requires the OCM, which was established effective July 1, 2023, to work with local governments to develop model ordinances for reasonable restrictions on the time, place, and manner of the operation of cannabis businesses. The Act also requires the OCM to establish additional rules and regulations relating to the operation of cannabis businesses. The city of New Prague (the “City”) will benefit from reviewing and analyzing the OCM’s model ordinances, rules and regulations before making any decisions related to the regulation of cannabis businesses in the City.
- D. The Act (Minnesota Statutes, section 342.13(e)) expressly allows a local unit of government that is conducting studies or has authorized a study to be conducted or has held or scheduled a hearing for the purpose of considering adoption or amendment of reasonable restrictions on the time, place and manner of the operation of cannabis businesses to adopt an interim ordinance applicable to all or part of its jurisdiction for the purpose of protecting the planning process and the health, safety, and welfare of its citizens. The interim ordinance may regulate, restrict, or prohibit the operation of Cannabis Businesses within the jurisdiction or a portion thereof until January 1, 2025.

- E. Given the uncertainty regarding the model ordinances to be developed by the OCM and the broad scope of the changes to Minnesota law brought about by the Act, the City desires to adopt an interim ordinance for the purpose of protecting the planning process and the health, safety, and welfare of its citizens.
- F. The City desires to conduct a study for the purpose of considering the adoption or amendment of reasonable restrictions on the time, place and manner of the operation of cannabis businesses as well as the other regulations local units of government may adopt under the Act.
- G. On July 17, 2023, after providing at least 10 days published notice, the city council held a public hearing regarding the consideration and adoption of an interim ordinance (Interim Ordinance No. 2023-338) prohibiting the operation of Cannabis Businesses within the City until January 1, 2025.
- H. On May 24, the Governor signed HF 4757 amending the Act (“2024 Amendment”). The 2024 Amendment included two amendments to the Act. The first of those amendments creates a license preapproval for certain businesses that will authorize a business to begin certain processes without a cannabis business license under Minnesota Laws, chapter 121, section 148 (“license preapproval”), including in some instances allowing a business to begin cultivation without a license under Minnesota Laws chapter 121, section 151 (“early cultivation”). The second of those amendments removes medical cannabis business, medical cannabis processor, and medical cannabis retailer (“medical cannabis businesses”) from the definition of cannabis business in Minnesota Statutes 324.01, subdivision 14.
- I. The Legislature’s decision to change the definition of cannabis business in the 2024 Amendment does not preclude the City from having a moratorium on businesses related to cannabis that will be subject to city zoning and operational regulations and which are cannabis businesses; medical cannabis businesses; businesses with a license preapproval, including early cultivators; or other businesses that must confirm compliance with city regulations.
- J. To provide clear communication to businesses seeking to operate within the City and to create a clear record, the City Council desires to amend the interim ordinance to explicitly list and include license preapproval, early cultivation, and medical cannabis business in the businesses that are subject to the interim ordinance.
- K. The amendments to this Ordinance are intended to supplement and clarify Interim Ordinance 2023-338 to confirm that if a court of competent jurisdiction finds that license preapproval, early cultivators, or medical cannabis businesses are not subject to the authority granted to units of local government in Minnesota Statutes, section 342.13 (e) that these amendments invoke the authority granted under Minnesota Statutes, section 462.355, subdivision 4(a) “to regulate, restrict, or prohibit any use ... within

the jurisdiction or a portion thereof for a period not to exceed one year from the date it is effective” by enacting an interim ordinance.

- L. On August 5, 2024, after providing at least 10 days published notice, the City Council held a public hearing regarding the consideration and adoption of this clarification of and amendment to the interim ordinance prohibiting the operation of cannabis businesses within the City until January 1, 2025.

**ARTICLE II. Definitions.** For purposes of this Ordinance, the following terms shall have the meaning given them in this section.

- (A) “2024 Amendment” refers to 2024 Minnesota Session Laws, Chapter 121 (H.F. 4757).\_\_
- (B) “Act” means 2023 Minnesota Session Laws, Chapter 63 (H.F. No. 100).
- (C) “Cannabis Business” has the meaning given the term in Minnesota Statutes, section 342.01, subdivision 14. Cannabis business also includes medical cannabis businesses, early cultivators, and license preapprovals.
- (D) “City” means the City of New Prague.
- (E) “Early Cultivator” means a business authorized to begin cultivating/growing cannabis prior to receiving a license as provided under 2024 Minnesota Session Laws, chapter 121, section 151.
- (F) “Edible Cannabinoid Product” has the meaning given the term in Minnesota Statutes, section 151.72, subdivision 1(f).
- (G) “License Preapproval” means a business authorized to begin certain business operations related to cannabis under 2024 Minnesota Session Laws, chapter 121, section 148.
- (H) “Medical Cannabis Business” means medical cannabis business, medical cannabis processor, and medical cannabis retailers as defined in the Act and any business requiring a license or endorsement under Minnesota Statutes, Chapter 342.
- (I) “OCM” means the Office of Cannabis Management, established as set forth in Minnesota Statutes, section 342.02, subd. 1.
- (J) “Ordinance” means this interim ordinance, which is adopted pursuant to Minnesota Statutes, section 342.13(e).

**ARTICLE III. Study Authorized.** The City Council hereby authorizes and directs City Administrator to have City staff conduct a study regarding the adoption or amendment of reasonable restrictions on the time, place, and manner of the operation of Cannabis Businesses, as

well as other potential local regulations allowed under the Act, and report to the City Council on the potential regulation of Cannabis Businesses. The study must include a review of the model ordinances that OCM is directed to draft under Minnesota Statutes, section 342.13(d), an analysis of potential setback regulations allowed under Minnesota Statutes, section 342.13(c), and such other matters as staff may determine are relevant to the City Council’s consideration of this matter. The report shall include City staff’s recommendations on whether the City Council should adopt regulations and, if so, the recommended types of regulations.

**ARTICLE IV. Moratorium.** A moratorium is hereby imposed regarding the operation of a Cannabis Business within the City. During the term of this Ordinance, no business, person, or entity may establish or operate a Cannabis Business within the jurisdictional boundaries of the City. The City shall not accept, process, or act on any application, site plan, building permit, zoning request, or other approval, including any requested confirmation, certification, approval, or other request from the OCM or other governmental entity requesting City review of any application or proposal for a business proposing to engage in the operation of a Cannabis Business. The moratorium includes Early Cultivators, License Preapprovals, and Medical Cannabis Businesses to the extent they are considered to be outside of the definition of Cannabis Business.

**ARTICLE V. Violation.** During the term of the moratorium, it is a violation of this Ordinance for any business, person, or entity to establish or operate a cannabis business within the City.

**ARTICLE VI. Exceptions.** The moratorium imposed by this Ordinance does not apply to:

- (1) the continued operation of a business as part of the Medical Cannabis Program administered by the Minnesota Department of Health and the OCM that was lawfully operating within the City prior to July 1, 2023;
- (2) the lawful sale of Edible Cannabinoid Products, in compliance with Minnesota Statutes, section 151.72; or
- (3) sales of Edible Cannabinoid Products at an exclusive liquor store in accordance with Minnesota Statutes, section 340A.412, subdivision 14. Nothing in this Article exempts a business, person, or entity that is selling Edible Cannabinoid Products from having to comply with all requirements and prohibitions of applicable laws and ordinances.

**ARTICLE VII. Enforcement.** Violation of this Ordinance is a misdemeanor. The City may also enforce this Ordinance by mandamus, injunction, or other appropriate civil remedy in any court of competent jurisdiction. A violation of this Ordinance is also subject to the City’s general penalties prescribed in the City Code and may further result in the City reporting violations to the OCM, if relevant to OCM licensing. The City Council hereby authorizes City Administrator, in consultation with the City Attorney, to initiate any legal action deemed necessary to secure compliance with this Ordinance.

**ARTICLE VIII. Duration.** This Ordinance shall become effective on the first day of publication after adoption and shall remain in effect until January 1, 2025. This Ordinance may be repealed earlier upon the effective date of an ordinance adopting or amending reasonable restrictions on the

time, place and manner of the operation of a Cannabis Business within the City or by resolution of the City Council terminating this Ordinance prior to the expiration date.

**ARTICLE IX. Severability.** Every section, provision, and part of this Ordinance is declared severable from every other section, provision, and part. If any section, provision, or part of this Ordinance is held to be invalid by a court of competent jurisdiction, such judgment shall not invalidate any other section, provision, or part of this Ordinance.

Adopted this 5<sup>th</sup> day of August, 2024.

Passed by the City Council this 5<sup>th</sup> day of August, 2024.

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Duane J. Jirik, Mayor

ATTEST:

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Joshua M. Tetzlaff, City Administrator

(SEAL)

Date of Publication: August 15th, 2024.



CITY OF NEW PRAGUE  
ORDINANCE NO. 2024-350(Amending 338)

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Adopted this 5<sup>th</sup> day of August, 2024.

Passed by the City Council this 5<sup>th</sup> day of August, 2024.

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Duane J. Jirik, Mayor

ATTEST:

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Joshua Tetzlaff, City Administrator

(SEAL)

Date of Publication: July \_\_th, 2024.