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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 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.

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>