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MEMORANDUM

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: KEN ONDICH, PLANNING / COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: ADOPTION OF ORDINANCE#350 AMENDING INTERIM ORDINANCE #338
RELATING TO CANNABIS BUSINESSES WITHIN THE CITY OF NEW PRAGUE
DATE: JULY 18, 2024

At the July 15th, 2024 City Council meeting, Ordinance #350 was introduced that was an amendment to Interim Ordinance #338 which placed a moratorium on cannabis businesses operating within the City. Since July 15th, the ordinance has been posted on the City's website and on the hallway bulletin board as required by law.

During the July 15th, 2024 Council discussion, staff was also directed to research future cannabis business regulations within the City that may limit the total number of cannabis retailers to no more than two as well as providing distance buffers from cannabis businesses to daycares and schools. Staff will make sure to include these provisions within any cannabis business ordinance that is brought forth to the Council at a future date.

Attached to this memo is an adoption version of Ordinance #350 for the Council's consideration.

Recommendation

Staff would like the Council to conduct a second reading of Ordinance #350 at tonight's meeting and consider adoption.

CITY OF NEW PRAGUE
ORDINANCE NO. 350

**AN AMENDMENT TO INTERIM ORDINANCE #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 #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 #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 5th day of August, 2024.

Passed by the City Council this 5th day of August, 2024.

Duane J. Jirik, Mayor

ATTEST:

Joshua M. Tetzlaff, City Administrator

(SEAL)

Date of Publication: August 15th, 2024.