

CANNABIS LEGALIZATION: NEXT STEPS FOR YOUR CITY OR TOWNSHIP

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CANNABIS LEGALIZATION IN MINNESOTA

General Topics

- Creation of Office of Cannabis Management (“OCM”)
- Licensing by the OCM
- Regulation of Cannabis Businesses and Registration of Cannabis Retailers by Cities and Townships
- Status of THC Edibles and other Products Legalized in 2022
- Next Steps – Immediate and Future Action Items

CANNABIS LEGALIZATION IN MINNESOTA

Topics **NOT** Covered Today

- Impact upon Law Enforcement / Criminal Statutes
- Human Resources Questions / Concerns
- Grant Opportunities

OFFICE OF CANNABIS MANAGEMENT

- Establishment effective July 1st
- Director Appointment / Retention of Employees
- Expedited Rulemaking
 - At least 30 days for comment
 - Unlike the customary rulemaking process, there is no opportunity for public hearing under the expedited process

OFFICE OF CANNABIS MANAGEMENT

Issuing Licenses

- 16 Categories of Licenses
- Cannabis microbusiness, mezzobusiness, cultivator, manufacturer, retailer, wholesaler, transporter, testing facility and event organizer
- Lower-potency hemp edible manufacturer and retailer
- Medical cannabis cultivator, processor, retailer or combination business

ROLE OF CITIES AND TOWNSHIPS IN LICENSING

- Definition of local government unit (“LGU”) includes statutory cities, charter cities and townships
- Limited Role in Licensing by the OCM
 - Within 30 days of receiving a copy of an application for a **cannabis business** license, the LGU must certify whether a proposed cannabis business complies with local zoning ordinances, state fire code and building code.

ROLE OF CITIES AND TOWNSHIPS IN LICENSING

- Limited Role in Licensing by the OCM
 - The LGU can provide the OCM with any additional information it believes is relevant to the OCM's decision on whether to issue a license.
 - The bill does not prohibit LGU's from enforcing other local ordinances (ex., public nuisance)

LOCAL CONTROL

- An LGU cannot prohibit establishment or operation of a **cannabis business** licensed under the bill. LGU's also cannot prohibit the possession, transportation or use of cannabis flower, cannabis products, lower-potency hemp edibles or hemp-derived consumer products.
- Interim Ordinance and Moratorium
 - If conducting a study of time, place, and manner restrictions for **cannabis businesses**, the LGU can adopt an interim ordinance and moratorium applicable to cannabis businesses that would be effective through January 1, 2025.
 - Before adopting the interim ordinance, the LGU must hold a public hearing.

LOCAL CONTROL

- Time, Place and Manner Restrictions and Model Ordinance
 - The bill allows LGU's to adopt "reasonable restrictions on 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."
 - The OCM is tasked with working with LGU's to develop model ordinances that includes these provisions, standardized forms and model policies and procedures for compliance checks (discussed below).

LOCAL CONTROL

- Time, Place and Manner Restrictions and Model Ordinance
 - The bill also allows regulation on distances from certain types of buildings/uses, likely through zoning regulations.
 - Specifically, prohibiting 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.

LOCAL CONTROL

- Registration of Retailers
 - Upon licensing, certain cannabis and hemp retailers must register with the LGU and subject to limited exceptions, the LGU must register the retailer and must renew the registration. Registration does include lower-potency hemp edible retailers.
 - The registration DOES NOT apply to other types of cannabis businesses / licenses.
 - Limited registration fees are available.
 - Before issuing a retail registration, the LGU may (not “shall”) conduct a “preliminary compliance check” to ensure that the cannabis business is in compliance with the applicable operation requirements and the limits on the types of products that may be sold.

LOCAL CONTROL

- Registration of Retailers
 - There is limited authority for LGU's to suspend a registration for up to 30 days.
 - The OCM will review the suspension and may order reinstatement, additional suspension, revocation or other licensed based penalties or enforcement action.
 - The LGU may reinstate the registration if it determines that the violation has been cured.
 - The LGU can impose civil penalties of up to \$2,000 for registration violations.

LOCAL CONTROL

- Additional Obligations Imposed upon LGU's with Registration
 - At least once per calendar year, the LGU is required to conduct compliance checks of every cannabis business and hemp business with a retail registration.
 - The checks must assess compliance with age verification requirements, the applicable operation requirements, and the applicable limits on the types of products being sold.
 - Checks may be performed by a law enforcement officer or another LGU employee.

LOCAL CONTROL

- Additional Obligations Imposed upon LGU's with Registration
 - The LGU is also required to “conduct unannounced age verification compliance checks at least once each calendar year.”
 - Similar to tobacco compliance checks.

LOCAL CONTROL

- Registration Opt Out
 - A county can issue a registration when the city or township has provided consent for the county to issue the registrations for that city or township.

LOCAL CANNABIS AID

- The State imposes a 10% tax upon sales, which is divided as follows:
 - 80% to the State's general fund; and
 - 20% to the local cannabis aid account, which is subsequently divided among cities based on total cannabis businesses in the city
- Local aid does not include townships.

THC EDIBLES

- Few significant changes to Minnesota Statutes, section 151.72, which legalized low potency, hemp THC edibles. However, changes were effective on May 31st, the day after the Governor signed the bill.
- The changes allow THC edibles to be sold at exclusive liquor stores the day after the bill is signed into law.
- The bill clarifies THC products can be sold for on-site consumption at locations with an on-sale liquor license under Minnesota Statutes, Chapter 340A.
- There are additional regulations with regard to display, labeling and testing.
- All individuals selling THC edibles must register with the Minnesota Department of Health on or before October 1, 2023. Selling without registration after that date is prohibited. Note that this is NOT the same registration process created for cannabis business and lower-potency hemp edible licenses.
- Minnesota Statutes, section 151.72 is repealed effective March 1, 2025.

NEXT STEPS - SHORT TERM - *THC EDIBLES VS. LOW-POTENCY HEMP EDIBLES*

- **THC Edibles (edible cannabinoid products)**
 - Sales authorized under Minn Stat 151.72
 - Sales may continue if seller registers with state by October 1, 2023
 - Will require a license to sell once state begins issuing licenses
 - Statute is repealed effective March 1, 2025 (effectively repealed when state starts issuing licenses)
- **Low-Potency Hemp Edibles**
 - THC edibles become low-potency hemp edibles upon state licensure
 - Apparent intent is to manage retail sales under new registration and licensing program established under new law

NEXT STEPS - SHORT TERM - *NEW INTERIM ORDINANCE*

ADOPT NEW CANNABIS BUSINESS INTERIM ORDINANCE (OR NOT)

- As part of the local control, an LGU conducting/authorizing a study 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.”
- Recognizes that LGUs will need time to study the issues associated with this new registration/licensing arrangement and to develop land use regulations associated with this new use
- A sample interim ordinance will be posted on our website

NEXT STEPS - SHORT TERM - *NEW INTERIM ORDINANCE*

- Provide at least 10 days published notice of a public hearing on the proposed interim ordinance.
- The notice may start in June, but we recommend you do not hold the hearing or adopt the interim ordinance until at least July 1st
- Follow usual procedure to adopt the ordinance and put it into effect
- The interim ordinance may place a moratorium prohibiting **cannabis businesses** until January 1, 2025 (Note that this **does not** impact THC edibles)

NEXT STEPS - SHORT TERM - *THC EDIBLE REGULATIONS*

THC EDIBLE REGULATIONS DURING THE TRANSITION TO STATE LICENSING (AND MAYBE BEYOND)

- The uncertainties associated with existing regulatory “situation” were not clarified in the bill and instead were allowed to continue as the state transitions to the new licensing scheme in late 2024 – early 2025
- The law treats hemp products and cannabis products separately
- THC edibles remain subject to previous law and, therefore, continue to be subject to local regulation
- Low-potency hemp edibles require registration and a license from the state to sell, but are not within the definition of a “cannabis business”

NEXT STEPS

- SHORT/LONG TERM -

HEMP BUSINESSES

Because low-potency hemp edibles are not a “cannabis business” **they are not subject to:**

- The language indicating a LGU “may not prohibit the establishment or operation of a cannabis business”
- New moratorium on cannabis businesses
- LGU cap on number of cannabis businesses
- LGU limitation on hours
- Not under the expressly allowed time, place, and manner regulations
- Not within the language saying the OCM must deny a license if the cannabis business does not meet local zoning and land use laws (though elsewhere the law says low-potency hemp retailers must comply with “state and local building, fire, and zoning codes, requirements, or regulations.”)

NEXT STEPS - SHORT TERM - *HEMP BUSINESSES*

- Low-potency hemp edible retailers **are** required to:
 - Obtain a license from the state
 - Are subject to local ordinances (Complaint process - “Nothing in this paragraph prohibits a local unit of government from enforcing a local ordinance.”)
- The extent to which an LGU can continue to regulate these retailers once they become low-potency hemp retailers is not clear
 - Except that it is fairly clear an LGU can no longer require a license

NEXT STEPS - SHORT TERM - *THC EDIBLE REGULATIONS*

- Most LGUs currently fall into one of three general groups:
 - (1) Remain under the moratorium they adopted last summer/fall;
 - (2) Adopted licensing regulations and are licensing THC edibles; or
 - (3) Elected not to regulate THC edibles
- LGUs currently not licensing THC edibles will need to decide whether it is “worth it” to adopt licensing regulations that will only be in effect for around 18 months

NEXT STEPS - SHORT TERM – *THC EDIBLE REGULATIONS*

No Existing Moratorium or Licensing Ordinance:

- An LGU may adopt an interim ordinance imposing a moratorium on the establishment of a THC edible business and on the sale of THC edibles under its police powers and Minn. Stat. 462.355
- The THC edibles moratorium is separate from the new moratorium on cannabis businesses
- Can be in effect for up to one year
- Conservative approach would be to indicate the ordinance will terminate once the state begins licensing lower-potency hemp edible retailers

NEXT STEPS - SHORT TERM – *THC EDIBLE REGULATIONS*

Existing Moratorium:

- Likely will expire mid to late summer (cannot be extended past one year).
- The LGU can just allow it to expire and do nothing. THC edible retailers who register with the state by October 1, 2023 will continue to sell under existing statute until issued a lower-potency hemp edible license.
- The LGU can adopt an ordinance regulating THC edibles to become effective on or before the moratorium expires (prohibition, zoning, cap on number of retailers, time, place and manner).
- Any licensing regulations will likely be preempted by the new license, but may wish to consider imposing zoning regulations on THC edibles (may need to update them when you eventually adopt zoning regulations on cannabis businesses)

NEXT STEPS - SHORT TERM – *THC EDIBLE REGULATIONS*

Currently Require Licenses:

- Can continue to require licenses until the state takes over licensing or March 1, 2025, whichever occurs first
 - Really no question that local licensing goes away once the state starts licensing low-potency hemp edibles
- Again, may want to consider adopting zoning regulations, but some/most LGUs will likely wait to adopt those regulations toward the end of the new moratorium period

NEXT STEPS - LONG TERM – *ZONING REGULATIONS*

- “A local unit of government may adopt **reasonable restrictions on 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.”
- The OCM “may not issue a license if a cannabis business does not meet local zoning and land use laws.”
- The OCM is required to work with LGUs to develop model ordinances
- The state is typically slow to develop model ordinances, but presumably they will be prepared and distributed to LGUs in time for them to develop and adopt their own ordinance before the interim ordinance expires on January 1, 2025

NEXT STEPS - LONG TERM – *ZONING REGULATIONS*

- Statutory Setback Distances – LGU may 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.
- This law does not define the listed facilities
- Note that the law does not allow the zoning regulations to “prohibit the establishment or operation of cannabis businesses”

NEXT STEPS - LONG TERM – *LIMIT NUMBER OF BUSINESSES*

- LGU Density: LGU's that issue cannabis retailer registrations 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** (ex. 13,000 = 2 businesses)
- County-Wide Density: IF the county where the LGU is located has one active registration for every 12,500 residents, an LGU is not obligated to register a cannabis business

NEXT STEPS - LONG TERM – *RETAIL REGISTRATION*

- An LGU needs to decide if it will opt out of requiring local registration
 - Opt out by giving consent to County to issue registrations
 - If Register: may collect registration fees, must conduct compliance check, and may impose limit on number of cannabis businesses (no application fee)
 - If Opt Out: no fees, not required to conduct compliance checks, cannot impose limit on number of cannabis businesses
- Registration only applies to certain retail establishments
- An LGU may suspend a registration for up to 30 days if it determines the business is not operating in accordance with the law. Must immediately give notice to OCM. OCM can override the suspension and order reinstatement or revoke the license

NEXT STEPS - LONG TERM – *HOURS OF OPERATION*

- An LGU may, by ordinance, further restrict the hours of operation for the sale of cannabis and hemp products.
- Statutory – Sales prohibited between 2:00 a.m. and 8:00 a.m. Monday through Saturday and between 2:00 a.m. and 10:00 a.m. on Sunday (allowed 8am-2am Monday-Saturday; 10am-2am Sunday)
- LGU Restriction – Sales prohibited for any period between 9:00 p.m. and 2:00 a.m. or between 8:00 a.m. and 10:00 a.m. Monday through Saturday (can limit to 10am-9pm M-Sat)

NEXT STEPS - LONG TERM – *CITY AS A RETAILER*

- If have a municipal liquor store, decide if you will sell THC edible and the lower-potency hemp edibles at the store
 - Need to register with the state by October 1, 2023
 - Will need to apply for and obtain a lower-potency hemp edibles license when they are available
- Decide if the city will open its own municipal cannabis store
 - No express authority for an exclusive municipal cannabis business
- ** Check with LMCIT on whether there is insurance coverage for selling these products at a liquor store or as part of a municipal cannabis business

NEXT STEPS

- ISSUES AND THINGS TO CONSIDER – *COMPLIANCE CHECKS*

- Should encourage OCM to develop checklists for compliance inspections focused on operations and types of products
- Underage sales compliance checks shouldn't be an issue as they are regularly conducted for tobacco and liquor
- An LGU may conduct a preliminary compliance check before registering a business, but it is not clear what is to be reviewed for a proposed business

NEXT STEPS

- ISSUES AND THINGS TO CONSIDER – *ADMINISTRATION*

- Need to be prepared to intake applications from OCM and determine if the proposed business complies with local zoning, state fire code, and building code and **respond to OCM within 30 days**
- Determine process for suspending retail registrations, notifying OCM, and for reinstating the registration
 - Due process considerations before suspending a registration
- Should consider process for submitting complaints to OCM, which is supposed to provide an expedited review process of LGU complaints

THANK YOU! QUESTIONS?



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