

City Council Agenda Memo

From: Steve Britzman, City Attorney

Council Meeting: August 10, 2021

Subject: Authorized Number of Medical Cannabis Establishments Ordinance/Second Reading

Person Responsible: Steve Britzman, City Attorney

Summary:

Request Second Reading of an ordinance establishing the number of medical cannabis dispensaries and medical cannabis manufacturing, testing and cultivation facilities in the City of Brookings.

Background:

This Agenda item for the City Council is a proposed Ordinance which provides the City Council with the opportunity to limit the number of medical cannabis dispensaries and medical cannabis product manufacturing facilities, medical cannabis testing facilities and medical cultivation facilities in the City of Brookings.

Initiated Measure 26 (IM 26) is the name of the voter-initiated measure which authorized medical cannabis in South Dakota. It was approved by the voters and is effective as of July 1st. While there are 95 statutes which make up IM 26, there are probably 10 or fewer which relate to the role of a city in the licensing of medical cannabis. These 10 statutes are important because IM 26 provides that the Department of Health ultimately determines who receives a Registration Certificate to operate medical cannabis dispensary and medical cannabis product manufacturing facilities, medical cannabis testing facilities and medical cultivation facilities. These 4 types of cannabis businesses are referred both in the law and in this memo as “establishments”. Applicants for these establishments must submit to the Department of Health a lengthy application covering a number of areas described later in this memo. One of the decision criteria for the selection of the successful establishment is the input the Department of Health receives from a city which has established a licensing procedure. Without a municipal licensing procedure, the State will not have a mechanism to obtain the input from the city as to the city's preference for the successful establishment. Therefore, it is important to license establishments, in part, so the city has the requisite information about the proposed medical cannabis establishment so that appropriate input can be provided to the South Dakota Department of Health. The purpose of this ordinance is to allow the City Council to determine the number of both medical cannabis dispensaries, and to separately determine the number of other medical cannabis establishments, which are identified in Section 3 of the proposed ordinance, and include

medical cannabis product manufacturing facilities, medical cannabis testing facilities and medical cultivation facilities.

IM 26 only addresses medical cannabis, and this ordinance does not in any way address, license or limit the number of recreational cannabis establishments. Also, IM 26 provides that “no local government may prohibit a dispensary, either expressly or through the enactment of an ordinance that makes the operation of the dispensary impracticable in the jurisdiction.” Therefore, at least one dispensary would be required. My reading and the interpretation of several other City Attorneys is that a city can prohibit medical cannabis product manufacturing facilities, medical cannabis testing facilities and medical cultivation facilities, or can establish a limit of the number of these establishments which may be registered to operate in Brookings. A city could allow one or more of these establishments, or prohibit one or more and set a separate number for each of the four (4) types of medical cannabis establishments.

Changes to Ordinance since First Reading:

This ordinance remains unchanged, and the Council certainly is not required to adopt this ordinance since its only purpose is to establish limits of the number of cannabis establishments in Brookings. Council discussion at the first reading indicated some Council members may prefer limits while others may not prefer to establish limits on either dispensaries or upon other types of cannabis establishments. Bill Efting, a former city manager from Colorado who is providing consulting on the cannabis issues, will be available at next week’s study session to answer questions based on his experience as a city manager during the time medical and recreational cannabis laws were rolled out in Colorado.

Discussion:

A medical cannabis dispensary is defined by IM 26 as “an entity registered with the department [of Health] pursuant to [Chapter 34-20G] that acquires, possesses, stores, delivers, transfers, transports, sells, supplies, or dispenses cannabis, cannabis products, paraphernalia, or related supplies and educational materials to cardholders.” One might envision a medical cannabis dispensary as a pharmacy-like facility, though in Colorado, most medical cannabis dispensaries converted to recreational cannabis sales when recreational cannabis was legalized, based on information provided by our consultant Bill Efting.

The ordinance also defines the other three types of cannabis establishments.

A Cannabis product manufacturing facility is an entity registered with the department [of Health] that acquires, possesses, manufactures, delivers, transfers, transports, supplies, or sells cannabis products to a medical cannabis dispensary.

A Cannabis testing facility or testing facility is an independent entity registered with the department to analyze the safety and potency of cannabis.

A Cultivation facility is an entity registered with the department that acquires, possesses, cultivates, delivers, transfers, transports, supplies or sells cannabis and related supplies to a medical cannabis establishment.

Medical cannabis may only be sold to cardholders who have been issued valid registry identification cards by the Department of Health. A cardholder may be a qualifying patient or a designated caregiver of a qualifying patient. The Department of Health is required to issue valid registry cards to qualifying patients by November 18, 2021, and issue rules pertaining to medical cannabis by October 29, 2021. A rules hearing on these proposed rules is set for September 13, 2021 and I expect the results will be widely publicized. The draft rules were used to draft the accompanying medical cannabis dispensary licensing ordinance. A copy of the draft rules accompanies this Memo. The draft rules provide at Section 44:90:03:02 the operating procedures for all of the following types of medical cannabis establishments:

1. Cannabis cultivation facilities;
2. Cannabis testing facilities;
3. Cannabis product manufacturing facilities;
4. Dispensaries.

The proposed medical cannabis dispensary licensing ordinance only addresses dispensaries, with the other facilities to be the subject of a separate proposed licensing ordinance, which will be introduced at a subsequent meeting, but will be very similar to the dispensary licensing ordinance.

It is important to note that when the South Dakota Department of Health (the "Department") evaluates an application from a party who desires to operate a dispensary, as well as other types of establishments in Brookings, the Administrative Rules will require of the Applicant, the following:

1. A management plan identifying the individuals who will be in charge of day-to-day operations;
2. A site plan which in part provides sufficient detail for the Department to determine that the establishment is completely self-contained and does not have any access to any other cannabis establishment or other business;
3. Operating Days and hours;
4. A workplace safety plan covering state and federal workplace safety requirements;
5. Plans for compliance with all applicable safety standards contained in local ordinance;
6. A security plan indicating all doors, windows, gates, exterior lights, alarm sensors, cameras and how alarms and cameras will be monitored;
7. Any additional steps to ensure the safety of patrons and the community;
8. Plans for preventing the diversion of cannabis to non-cardholders;

9. Pre-employment screening procedures, including criminal background check; and
10. Processes for limiting access by unauthorized persons, including verification of identity for all vendors and contractors, issuance of a visitor badge, and closely monitoring all visitors.

Finally, IM 26 provides the following:

“If a local government has enacted a numerical limit on the number of medical cannabis establishments in the locality and a greater number of applicants seek registration, the department shall solicit and consider input from the local government as to its preference for registration”. SDCL 34-20G-56. Accordingly, with a licensing ordinance in place in Brookings and the number of dispensaries and other establishments limited to the number the City Council sets by this ordinance, the City will have the data and information to respond to the Department of Health should there be more Applicants for Medical Cannabis Dispensary and other establishment licenses than the number the City Council establishes for the City of Brookings.

Financial Consideration:

IM 26 only permits fees which are reasonable. The State charges \$5000 for a medical cannabis Registration Certificate, and the Department of Health has a comprehensive document submission process which likely justifies this fee. The City typically sets all fees by Resolution, so there are not intended to be any fees set by this proposed Ordinance, and therefore I believe licensing medical cannabis dispensaries and other establishments will have nominal financial impacts. We do intend to propose reasonable fees be a separate resolution to cover the costs of administering medical cannabis dispensaries, and fines for violations of the licensing ordinance.

Options and Recommendation:

The City Council has the following options:

1. Discuss, insert numerical limits and approve;
2. Table until a date following the Study Session;
3. Set the date for another reading to allow for more time to review.

Supporting Documentation:

Ordinance

IM 26

draft Administrative Rules pertaining to Medical Cannabis