



The purpose of this document is to provide direction on the Department of Health's anticipated treatment of medical cannabis establishment applications in relation to any municipality or county with ordinances pertaining to licensure of these establishments.

IM 26, now codified at SDCL Ch. 34-20G, places a considerable amount of authority with municipal and county governments regarding medical cannabis establishments and licensure of the same. Many cities and counties have enacted zoning and other ordinances dictating the issuance of licenses for a medical cannabis establishment.

The provisions of SDCL Ch. 34-20G empower municipal and county governments to regulate medical cannabis establishments in various areas. Local jurisdictions may limit the number of medical cannabis establishments within their jurisdiction, with the limitation that no local government may prohibit a dispensary. See SDCL 34-20G-56 & 34-20G-59. Additionally, local governments may enact ordinances governing the time, place, and manner in which establishments conduct business. See SDCL 34-20G-58. The provisions of SDCL Ch. 34-20G also contemplate licensure, permits, or registrations issued to medical cannabis facilities by local jurisdictions. See SDCL 34-20G-60.

The department has promulgated administrative rules pursuant to SDCL § 34-20G-72 instructing establishments on the process and criteria the state will use in reviewing medical cannabis establishment applications. See ARSD 44:90:03. Once the department receives a complete application for a medical cannabis establishment registration certificate, the department must approve or reject the application within 90 days. See SDCL 34-20G-55. An establishment application must contain a sworn statement from the municipality or county that the applicant is in compliance with the local government's zoning ordinances for medical cannabis establishments. See ARSD 44:90:03:10. If the municipality or county has not passed any such ordinances, then the application must contain a sworn statement from the local government to that effect. SDCL 34-20G-55(1)(d). An establishment application must also contain copies of any local license, permit, or registration required by a local jurisdiction. See ARSD 44:90:03:11. If the municipality or county has not passed any such ordinances requiring licensure, permits, or registration for medical cannabis establishments in that jurisdiction, the applicant must submit a certification that no such license, permit, or registration is required for the application.

The administrative rules also prescribe a timeline for the receipt of initial applications in ARSD 44:90:03:12. There are three potential scenarios for initial applications:

### **Scenario 1**

If a municipality or county has an ordinance in effect prior to October 1, 2021 that limits the number of medical cannabis establishments permitted in the municipality or county, initial applications must be submitted to the department by **November 1, 2021**. However, if a municipality or county has not yet made determinations on local license applications by November 1, the department will consider any timely application received from that

jurisdiction as incomplete due to the lack of a certification of compliance from the local government. This will allow the department to hold applications pending a certification from the municipality or county, which can be submitted once the municipality or county has finished the local government's process. Once the application is deemed complete, the department has 90-days to issue a registration certificate to a medical cannabis establishment. SDCL 34-20G-55.

### **Scenario 2**

If a municipality or county has an ordinance which goes into effect **on or after October 1, 2021** that limits the number of medical cannabis establishments permitted in the municipality or county, initial applications must be submitted to the department within 90-days of the effective date of the ordinance. However, if a municipality or county has not yet made determinations on local license applications prior to the expiration of the 90-day application deadline, the department will consider any timely application received from that jurisdiction as incomplete due to the lack of a certificate of compliance from the local government. As in Scenario 1, the department will hold applications pending local certification. Once the application is deemed complete, the department has 90-days to issue a registration certificate to a medical cannabis establishment. SDCL 34-20G-55.

### **Scenario 3**

If a municipality or county does not have an ordinance that limits the number of medical cannabis establishments permitted in the municipality or county, initial applications will be accepted on a rolling basis. However, as in Scenarios 1 and 2, the application will still be considered incomplete until a sworn statement of compliance with local zoning laws is completed by the local government. In addition, to complete the establishment application, the application must contain either a copy of any locally required licenses, permits, or registrations, or a certification from the local government that no ordinances requiring a local license, permit, or registration are in effect in the jurisdiction. Once the application is deemed complete, the department has 90-days to issue a registration certificate to a medical cannabis establishment. SDCL 34-20G-55.

As to logistics of when the applicant submits an initial application to the department or the local government, the department anticipates multiple options and there is no rule or law at the state level dictating where the applicant applies first. Therefore, it is plausible that an applicant may submit the application first to the local government, possibly receive a local license, and then apply to the department with the local license serving as the local government's endorsement of that applicant. See ARSD 44:90:03:15. Alternatively, the applicant may apply to the department first, receive a license, and then apply to the local government. Unless there is stated preference or an ordinance dictating the order of the applications, the applicant will not be mandated to apply to one before the other.

No matter what order the application is made, the application to the state must contain a certification of compliance from the local government. Therefore, even if an application is submitted to the state prior to being submitted to the local government, the local government will still have to certify compliance before the state will deem that application as complete.