

**REGULATION TO IMPLEMENT VMC § 5.94.050 WHICH
IMPOSES A REQUIREMENT THAT A MEDICAL
CANNABIS BUSINESS LICENSE BE APPROVED ONLY
IF THE MEDICAL CANNABIS BUSINESS HAS BEEN IN
EXISTENCE AND HELD A SELLER'S PERMIT FOR SIX
MONTHS**

Measure Z enacted Vista Municipal Code ("VMC") Chapter 5.94 in its entirety, and amended various Chapters within Title 18 of the Vista Municipal Code.

Authority; Background

VMC § 5.94.050.B lists the elements of a complete "application for a medical cannabis business or dispensary business license" and provides that:

- "16. Applicant's business must have been in existence for a minimum of six (6) contiguous months prior to the issuance of a business license under this Article.
17. Applicant must have a current Board of Equalization Seller's Permit that has been in existence for a minimum of six (6) contiguous months prior to the issuance of a business license under this Article."

Implementation of the Six-Month Rules Found in VMC § 5.94.050.B.16 and B.17

The public has asked and sought information on the following:

- Is the business license identified in VMC § 5.94.050.B.16 and B.17 a license issued under VMC Chapter 5.04 or VMC Chapter 5.94?
- How does an applicant satisfy the six-month rule?
- Can an applicant extend the review period for its application so it can satisfy the six-month rule?

1. *Is the Business License Identified in VMC § 5.94.050.B.16 and B.17 a License Issued Under VMC Chapter 5.04 or VMC Chapter 5.94?*

VMC § 5.94.050.B.16 and B.17 are particular to a business licenses issued "under this Article" – a term denoting Measure Z. Given that restriction, the identified "business license" is the license granted to a medical cannabis pursuant to Chapter 5.94, as enacted under Measure Z and reflected in a Notice of Completed Registration. For a fuller explanation, please see Exhibit A.

2. *How Does an Applicant Satisfy the Six-Month Rule?*

An applicant which is a nonprofit corporation passes the six-month test if:

- a. at least six contiguous¹ months separates the date the corporation was formed as reflected in the certified Articles of Incorporation supplied pursuant to VMC § 5.94.050.B.10 and the "Decision Date" which is the 30th calendar day following the City's receipt of the application (see, VMC § 5.94.070.A); and
- b. at least six contiguous months separates the issue date of the BOE Seller's Permit supplied pursuant to VMC § 5.94.050.B.17 and the Decision Date.

¹ An official suspension of a corporation will be treated as producing a break in its existence. Therefore, measuring "six (6) contiguous months" of existence will commence from the time the suspension lifted.

An applicant which is an unincorporated association passes the six-month test if:

- a. at least six contiguous months separates the date of the association was formed as reflected in the Articles of Association supplied pursuant to VMC § 5.94.050.B.11 and the Decision Date; and
- b. at least six contiguous months separates the issue date of the BOE Seller's Permit supplied pursuant to VMC § 5.94.050.B.17 and the Decision Date.

3. Can an Applicant Extend the Review Period for its Application so it can Satisfy the Six-Month Rule?


Ordinarily, the City must complete its substantive review of an application within 30 days. As a result, the City is forced to deny otherwise approvable applications if, as of the 30th day, the applicant cannot satisfy the six-month rule. See, VMC § 5.94.070.

However, VMC §5.94.070.A authorizes an applicant to request that the 30-day review period be "tolled" (i.e., suspended or extended) until the six-month rule can be satisfied. (For example, if a nonprofit obtained its Sellers Permit on September 1, 2018, the nonprofit could request that action its application be "tolled" until March 1, 2019 so that the six-month rule would be satisfied.) The City will honor this request if:

- a. the application included a copy of a current Seller's Permit;
- b. all other documents required for a complete application were filed as part of the application; and
- c. no other grounds exist under VMC § 5.94.070A or Chapter 5.94 to deny application.

An applicant's request for tolling must be presented in a signed letter included with the application or supplied to the City within fifteen days of submitting the application. If a tolling is lodged, the registration reserved for the applicant will count against the maximum number of applications and medical cannabis businesses eligible to be approved under Chapter 5.94.

APPROVED PER VMC § 5.94.170.B:



PATRICK JOHNSON, City Manager
January 7, 2019

EXHIBIT A

FULLER EXPLANATION

*Is the Business License Identified in VMC § 5.94.050.B.16 and B.17
a License Issued Under VMC Chapter 5.04 or VMC Chapter 5.94?*

Subparagraphs B.16 and B.17 reference the business license granted to a medical cannabis business pursuant to Chapter 5.94, not the generic tax-based license issued to all businesses operating in Vista pursuant to Chapter 5.04.²

The phrase "issuance of a business license under this Article" as used in subparagraphs B.16 and B.17, does not reference any previously existing business license, but only the business license issued "under this Article." Since the word "Article" unmistakably denotes Measure Z,³ the license described in subparagraphs B.16 and B.17 is the approval to operate a medical cannabis dispensary under Measure Z following a successful license application. The phrase "issuance of a business license under this Article" cannot refer to the license issued under Chapter 5.04 because that Chapter was enacted long before the Measure Z, and was not touched by Measure Z.

Subparagraphs B.16 and B.17 are contained in framework describing business license applications for medical cannabis businesses, and must be read accordingly. The subparagraphs are part of VMC § 5.94.050, entitled "Applications for Medical Cannabis Dispensary Business License." The subsections are also within paragraph "B" which describes the contents of an "application for a medical business or dispensary business license." When an applicant is successful, an applicant is "issued a medical cannabis business license" (VMC § 5.94.060.G) as evidenced by a "Notice of Completed Registration" (VMC § 5.94.060.H). Given this framing, subparagraphs B.16 and B.17 refer to the licensing approval for a medical cannabis business that results from VMC § 5.94.050 et seq., and which is evidenced by a Notice of Completed Registration.

² Chapter 5.04 is a taxing measure which imposes a business license tax on almost all Vista businesses, and issues a license each July 1 upon payment of the require tax.

³ The term "Article" means Measure Z (or more accurately, the related legislative enactments which were adopted with the passage of Measure Z, consisting of all or VMC Chapter 5.94 and amendments to multiple Chapters within Title 18 to the Vista Municipal Code), as the following indicates: (1) VMC § 5.94.060.A requires the City to create registration applications "within 15 days of the date of the adoption of this Article"; (2) VMC § 5.94.060.A requires the City to start accepting applications "within 30 calendar days of the adoption of this Article"; (3) VMC § 5.94.060.D requires submission of a registration application and payment of an associated fee "pursuant to this Article"; and (4) VMC § 5.94.060.G requires compliance with "Sec. 5.94.90 of this Article;". See also, VMC §§ 5.94.040, 5.94.060.F, and 5.94.070.A.3.