




MEMORANDUM

Date: June 28, 2024

Subject: Guidance re Provisional Licenses, Change of Location Requests, and Lottery Selection for Dispensary Licenses

Relevant authority: KRS 218B.130; 915 KAR 1:010E and 1:020E

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The Kentucky Medical Cannabis Program

Part 1: Issuance of a Provisional License and Changing Location

Prior to license issuance, if an eligible applicant selected through the lottery process needs to change their location for cannabis business activities due to a local government prohibiting all cannabis business operations within its territory as authorized by KRS 218B.130 or other circumstances, a provisional license may be issued to the eligible applicant upon timely payment of the applicable license fee. If a provisional license is issued, the provisional licensee shall have a maximum of 120 calendar days from issuance to request a change of location to an allowable county or city under KRS Chapter 218B and 915 KAR 1:020E. If the new location is approved by the program, a new license shall be issued that contains the cannabis business’s name, license number, physical location, issue date, and an expiration date which shall be one (1) year from the date of provisional license issuance. If the provisional licensee fails to request a location change within 120 calendar days from issuance or the request is denied, the provisional license shall be revoked and the license fee shall not be refunded.

When making the request to change location to an allowable county or city, the provisional licensee shall:

1. Submit its new physical address and the GPS coordinates for any cannabis business activities within a local government territory that has not prohibited cannabis business operations;
2. Provide the documentation required by 915 KAR 1:010E, Section 3(5)(d) (i.e., documentation that shows the applicant has the authority to use the location as a cannabis business for, at a minimum, the term of the license as well as a site plan); and
3. Confirm that the new physical address for cannabis business activities is not located within one thousand (1,000) feet of an existing elementary or secondary school or a daycare center.

The provisional licensee shall submit this information to the Kentucky Medical Cannabis Program through use of a form that will be available on the program’s website, kymedcan.ky.gov, under the “Businesses” tab. Instructions for how to submit the information will be included on the form.

Please note that provisional licenses cannot be sold or transferred to another individual or entity and do not authorize a provisional licensee to begin any cannabis business activities.

Part 2: Information regarding Local Government Opt-Outs

For the purposes of KRS 218B.130, “local government” means a city, county, urban county government, consolidated local government, charter county government, or unified local government. The language of KRS 218B.130 allows a local government to prohibit all cannabis business operations within its territory through the passage of an ordinance or by ballot question. KRS 218B.130 also authorizes the legislative body of a city located within a county, consolidated local government, charter county government, or unified local government that has prohibited all cannabis business operations to approve cannabis business operations within the city through the passage of an ordinance or by ballot question.

The purpose of this section is to provide guidance to prospective applicants for cannabis business licenses in the event a local government prohibits cannabis business operations within its territory prior to January 1, 2025.

If a local government prohibits cannabis business operations within its territory through passage of an ordinance or by ballot question prior to January 1, 2025, and an eligible applicant selected for a cannabis business license had identified a location within that territory during the application process, the eligible applicant may decline the license or follow the provisional license process outlined above. If a local government prohibits cannabis business operations within its territory following license issuance, 915 KAR 1:020E, Section 5(2)(e) allows a licensee to make a written request to the program to change its cannabis business location in accordance with 915 KAR 1:020E, Section 9.

Please note that a license will not be revoked solely on the basis that the licensee is located within a territory where the local government decided to prohibit cannabis business operations prior to January 1, 2025. The licensee will have the opportunity to change location due to a local government prohibition, as discussed above.

When submitting a new physical address for a dispensary, eligible applicants or licensees are subject to the applicable geographic restrictions contained in 915 KAR 1:020E, Section 3(3) and (4), as well as the lottery draw procedures outlined in Part 3 below. Cultivator, processor, producer, and safety compliance facility licensees are not subject to regional restrictions within the commonwealth under 915 KAR 1:020E.

Pursuant to KRS 218B.130 as amended by 2024 House Bill 829, a local government electing to prohibit cannabis business operations **“shall notify the Cabinet in writing of its decision to prohibit cannabis business operations within five (5) days after passage of such an ordinance or after the results of a ballot question to prohibit cannabis business operations are certified.”**

The program has provided a list on its website of local governments that informed the Cabinet for Health and Family Services in writing of their decision to prohibit cannabis business operations in accordance with the law. If a city within one of the local governments that has prohibited cannabis business operations decides to “opt back in”, the program will also provide a list of those cities that have allowed cannabis business operations as that information is received.

Part 3: Information regarding Lottery Drawings for Dispensary Licenses

The language of 915 KAR 1:020E, Section 3 provides that -- if the number of eligible applications exceeds the maximum number of licenses available within a cannabis business category following the close of an initial license application period -- the Kentucky Medical Cannabis Program shall conduct a lottery to issue the licenses for that cannabis business category. The purpose of this section is to explain how lottery drawings will be conducted for dispensary licenses, if needed.

Per 915 KAR 1:020E, Section 3(3), “[t]he cabinet shall issue at least four (4) dispensary licenses per medicinal cannabis region. For regions containing an urban-county government or a consolidated local government, the cabinet shall issue at least six (6) dispensary licenses, two (2) of which shall be issued to eligible cannabis businesses that physically locate their dispensary in the counties with an urban-county government or a consolidated local government. For all counties without an urban-county government or a consolidated local government, there shall be no more than one (1) dispensary per county.”

The program has partnered with the Kentucky Lottery Corporation (KLC) to conduct any needed drawings to select eligible applicants to receive cannabis business licenses. If drawings are required for dispensary licenses, there will be one (1) drawing for eligible applicants seeking to conduct business in Fayette County, one (1) drawing for eligible applicants seeking to conduct business in Jefferson County, and one (1) drawing per medicinal cannabis region established in 915 KAR 1:020E, Section 3. The drawing for Region 1 (Bluegrass) shall not contain eligible applicants seeking to locate in Fayette County and the drawing for Region 2 (Kentuckiana) shall not contain eligible applicants seeking to locate in Jefferson County because separate drawings will be conducted to select eligible applicants seeking to locate in Fayette and Jefferson Counties.

When conducting a drawing for a medicinal cannabis region where there can be no more than one (1) dispensary per county, the KLC will program its Origin Digital Drawing System to randomly, anonymously, and confidentially select and rank the four (4) eligible applicants to receive dispensary licenses for that region. If multiple eligible applicants selected in the drawing identified the same county to locate and conduct cannabis business activities, there will be an opportunity to change location to a different county or city that allows cannabis business activities within the same region as described below.

The following provides examples of the drawing review process using the Northeast Region:

Example 1: Order of selection from drawing:

1. Dispensary A (Montgomery County)
2. Dispensary B (Montgomery County)
3. Dispensary C (Rowan County)

4. Dispensary D (Rowan County)

Under this example, Dispensary A has the right to operate in Montgomery County because it was selected first. Since Dispensary B intended to locate in a county that has already been selected, Dispensary B will have the first opportunity to change its location to a different allowable county or city within the same region and not identified as the location of other eligible applicants selected in the drawing (i.e., Dispensary B cannot locate in Montgomery County or Rowan County). Dispensary C has the right to operate in Rowan County. Dispensary D will have the second opportunity to change its location to a different allowable county or city within the same region and not identified as the location of the other eligible applicants selected in the drawing (i.e., Dispensary D cannot locate in Montgomery County, Rowan County, or the county selected by Dispensary B).

Example 2: Order of selection from drawing:

1. Dispensary A (Bath County)
2. Dispensary B (Carter County)
3. Dispensary C (Fleming County)
4. Dispensary D (Bath County)

Under this example, Dispensary A has the right to operate in Bath County, Dispensary B has the right to operate in Carter County, and Dispensary C has the right to operate in Fleming County. Since Dispensary D intended to locate in a county that has already been selected, Dispensary D will have the opportunity to change its location to a different allowable county or city within the same region and not identified as the location of other eligible applicants selected in the drawing (i.e., Dispensary D cannot locate in Bath, Carter, or Fleming County).

In order to change locations under these circumstances, the eligible applicant must follow the provisional license process outlined above in Part 1.

Pursuant to 915 KAR 1:020, Section 3(11), if at the conclusion of the lottery selection process an eligible applicant declines the license or fails to pay its license fee within the required timeframe, the program may conduct supplemental license lotteries as needed until all available cannabis business licenses have been issued and initial license fees paid.

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Date: 6/28/2024

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 Kentucky Medical Cannabis Program
 Cabinet for Health and Family Services