



Lehigh Valley Planning Commission

LIESEL DREISBACH
Chair

STEPHEN REPASCH
Vice Chair

JOHN DIACOBIANNIS
Treasurer

BECKY A. BRADLEY, AICP
Executive Director

MEMORANDUM

DATE: July 28, 2016; Revised August 3, 2016
TO: Lehigh Valley Planning Commission
FROM: Becky Bradley, AICP, Executive Director
CC: Staff
REGARDING: Land Use Implications of the Medical Marijuana Act

INTRODUCTION

Marijuana is included on Schedule I of the US Controlled Substances Act and is considered illegal under federal law. However, in 2013 the US Department of Justice issued guidance to federal prosecutors to largely abstain from action against a person who is in compliance with a state marijuana statute [Cole 2013]. Several states, including the District of Columbia, began enacting legislation legalizing marijuana on the heels of the Department of Justice memorandum. And, on April 17, 2016 the Pennsylvania Legislature enacted the Medical Marijuana Act [P.L. 84, No.16], making the Commonwealth the 25th state to legalize the substance.

The Pennsylvania Law authorizes “a program of access” for medical purposes only, and outlines basic criteria for the regulation of marijuana growing, processing and distribution, among other provisions, including licensing, taxation and enforcement.

The Pennsylvania Law has multiple potential land use and planning implications, as grower/processors and dispensaries are established. These implications will affect the Commonwealth both now and into the future and the purpose of this memorandum is to:

- educate communities and the public on the content of the Pennsylvania Medical Marijuana Act;
- convey municipal responsibility to accommodate medical marijuana organizations per Commonwealth law;
- initiate local planning conversation and associated action to meet the requirements both established and implied by the Pennsylvania Medical Marijuana Act and Pennsylvania Municipalities Planning Code; and
- provide a list of resources to communities and the public.

SUMMARY OF THE PENNSYLVANIA ACT

- The Pennsylvania Medical Marijuana Act was enacted on April 17, 2016 and is known as Act 16, Pennsylvania Law 84, No. 16
- The Pennsylvania Department of Health is responsible for implementing the program and has six months to issue *temporary* regulations [§301]
- An Advisory Board to the Pennsylvania Department of Health, containing law enforcement, medical experts and a patient advocate is established in the law [§1201(a)(1-9)]
- Only patients with specific medical conditions will qualify for medical cannabis. [§303§§1(b)(i)] Conditions include but, are not limited to, what is defined in the law as “Serious Medical Conditions” or “Terminal Illness”:
 - Cancer, HIV, Parkinson’s disease, glaucoma, multiple sclerosis, post-traumatic stress disorder, epilepsy, inflammatory bowel disease [§103]
- Usage limitations are outlined and limited to: pills, oils, gels, creams, ointments, tinctures, liquid, and non-whole plant forms of marijuana. Edibles cannot be sold by dispensaries however; medical facilities, such as hospitals and nursing homes, are allowed to mix the drug into food or drinks. [§303§§2(i-vi) & §304§§(c)]
- In May 2018 the Advisory Board must issue a report concerning access to dry leaf and plant cannabis, and the Pennsylvania Department of Health will have 12 months from the issuance of the report to promulgate associated rules [§1201§§j(4) & §1202]
- Patients must be in the care of a registered physician and the physician must have completed training on regulations, benefits and hazards of medical marijuana [§301§§(a)(6)]
- Two types of facilities, termed “Medical Marijuana Organizations” are authorized in the law:
 - Grower/Processors
 - Dispensaries [§601§§(1)(2)]
- The Pennsylvania Department of Health is generally tasked with issuing grower/processor and dispensary licenses based on the following:
 - Regional population
 - Number of patients suffering from serious medical conditions
 - Access to public transportation [§603§§(d)(1-5)]
- A minimum of three “regions” for grower/processor and dispensary licenses is required, though the Department of Health may establish more [§603§§(d)]
- Grower/Processor and dispensary regions may be adjusted every two years and changes published in the Pennsylvania Bulletin [§604]
- Geographic accessibility is intended to be within a 50 mile radius of patients prescribed the drug [1901§(d)]
- *Initially* 25 licenses for grower/processor will be made available through the Pennsylvania Department of Health [§616§§(1)]
 - Only one permit can be issued per grower/processor [§616§§(4)]
 - Grower/processors can only sell medical marijuana from a permitted dispensary [§616§§(7)]
- *Initially* 50 licenses for dispensary will be made available through the Pennsylvania Department of Health [§616§§(2)]

Land Use Implications of the Pennsylvania Medical Marijuana Act

- Each dispensary can operate *up to three* separate locations [§616§§(2)]
- Anti-trust provisions include limits on the number of dispensary permits that one person can have (no more than five) [§616§§(3)]
- Dispensaries can only obtain medical marijuana from permitted grower/processor [§616§§(6)]
- Five grower/processor and combined dispensary operations are allowed statewide [§616§§(5)]
- Permits for grower/processors and dispensaries require:
 - The applicant to possess “the ability to obtain in an expeditious manner sufficient land, buildings and equipment to properly grow, process or dispense marijuana.” [§603§§a.1(4)]
 - “It is in the public interest to grant the permit” for a grower/processor or dispensary [§603§§a.1(5)]
 - Principals and financial backers must be of “good moral character” and have the “financial fitness” to operate [§603§§a.1(6)]
 - Criminal background checks and fingerprints for company owners, financial backers, operators and employees
 - Transfer of background checks to the Pennsylvania State Police and fingerprints to the Federal Bureau of Investigation [§602§§a(4)]
 - Security, electronic tracking, recordkeeping and surveillance systems for all aspects of the business [§603§§a.1(7)]
 - Reports of the activities of grower/processors and dispensaries will be made available on the Pennsylvania Department of Health’s website and include quantity and cost information [§701§§d(1-5)]
 - Principals and employees of medical marijuana organizations are required to be trained within 90 days of employment [§301§§(a)(7)]
- Storage and transportation regulations are generally referenced, largely for security and tracking purposes [§703]
- Dispensaries are required to have a physician or pharmacist on site at all times during business hours [§801§§(b)]
- Medical Marijuana Organizations are allowed to relocate with the permission of the Pennsylvania Department of Health [§609]
- Dispensaries are prohibited from locating within 1000’ of a schools and day care centers [§802§§(a)(3)]
- ***Municipal zoning is preempted and the act requires that grower/processors and dispensaries ‘meet the same zoning and land use requirements as other industrial or commercial facilities that are located in the same zoning district.’*** [§2107§§(1)(2)]

MUNICIPAL REGULATORY RESPONSIBILITIES + CONSIDERATIONS

The Pennsylvania Municipalities Planning Code authorizes the local establishment of zoning to govern the use of land, size, height, bulk, location, erection, construction, repair, maintenance, alteration, razing, removal and use of structures, areas and dimensions of land and density of population and intensity of use, among other provisions (§603). However, the Pennsylvania Medical Marijuana Act includes specific language that preempts local zoning provisions [§2107§§(1)(2)].

Act 16 – Medical Marijuana Act of 2016 specifically preempts local zoning:

"Section 2107. Zoning.

The following apply:

(1) A grower/processor shall meet the same municipal zoning and land use requirements as other manufacturing, processing and production facilities that are located in the same zoning district.

(2) A dispensary shall meet the same municipal zoning and land use requirements as other commercial facilities that are located in the same zoning district."

Nevertheless, *every community* in the region or group of communities in a multi-municipal comprehensive plan with a shared use zoning ordinance will need to determine potential locations for both marijuana growing and processing facilities and dispensaries. The regulations as noted above must not exceed those outlined for manufacturing, processing and production facilities in the same zoning district for marijuana growing/processing operations. And, local zoning requirements for dispensaries cannot exceed the requirements for other commercial businesses in the same zoning district.

RECOMMENDATIONS FOR CONSISTENCY WITH THE MEDICAL MARIJUANA ACT

- Consider the allowable uses in local Commercial and Industrial Districts now and determine if you need to revise definitions or zoning district boundaries also, make sure that current uses are compatible with the addition of marijuana growers/processors and dispensaries.
- Utilize the definitions in Pennsylvania Act 16 – Medical Marijuana Act to develop amendments to municipal zoning ordinances to accommodate the required additions of marijuana grower/processors and dispensaries.
 - Definitions should refer to all aspects of the covered in the Medical Marijuana Law that related to zoning, including:
 - Caregiver
 - Certified Medical Use
 - Dispensary
 - Form of Medical Marijuana
 - Grower/Processor
 - Identification Card
 - Medical Marijuana
 - Medical Marijuana Organization
 - Registry.
 - Additional definitions can be added; however, care should be taken to make sure that these definitions do not conflict with any provisions of authorities granted by the Pennsylvania Municipalities Planning Code or the Medical Marijuana Act.
- Consider the potential ‘optimal’ location of grower/processor and dispensaries in commercial and industrial locations that best accommodate the intensity and hours of operation of these uses, including:
 - Location along public transit routes
 - Location along ‘main’ or higher order roadways (e.g. routes that can accommodate associated traffic volumes)
 - Location of dispensaries near hospitals, nursery homes, pharmacies and other health-related facilities, excluding drug and alcohol treatment facilities unless the dispensary is contained within a hospital or like medical treatment facility
 - Location of grower/processors near aquaponics, agroponic, food and beverage and other water intensive industrial uses where sewer and water capacity can support the farming of marijuana
 - Location in largely mixed-use areas in urban and suburban communities
 - And in areas of highest population density
 - Location near agricultural facilities of similar intensity in rural communities
- Consider adding performance standards to local zoning ordinances that address the potential land use impacts of marijuana grower/processor and dispensary operations. Make sure that these requirements DO NOT exceed those similar commercial and industrial uses to maintain conformance with the Pennsylvania Medical Marijuana Act. Consider:
 - Building size, height, bulk, massing
 - Building setbacks and planted buffers
 - Parking requirements

Land Use Implications of the Pennsylvania Medical Marijuana Act

- Lighting
- Facility Surveillance and security, including fencing and barbwire
- Infrastructure capacity, including roads, sewer and water
- Externalities such as, waste, fumes, smoke, odors
- Proximity to schools, day care centers, religious institutions and drug and alcohol treatment facilities
- Facility access
- Loading areas
- Assure that any zoning provisions that are adopted do not create undue regulatory hardship by adhering to timing, processing, advertising and other associated provisions of the Pennsylvania Municipalities Planning Code.
- When in doubt contact your municipal solicitor.

RESOURCES

- _____. Pennsylvania Medical Marijuana Act, Pennsylvania Law 84, No. 16. Pennsylvania General Assembly: Harrisburg, PA. April 17, 2016. Available at <http://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2016&sessInd=0&act=16>
- _____. "Model Medical Marijuana Ordinance." Tri-County Regional Planning Commission: Harrisburg, PA. Revised Draft July 27, 2016. Available at <http://www.tcrpc-pa.org/Documents/MedicalMarijuanaV4.pdf>.
- _____. Pennsylvania Municipalities Planning Code, Pennsylvania Law 805, No. 247. Pennsylvania General Assembly: Harrisburg, PA. Enacted and amended October 2015. Available at <http://www.newpa.com/download/pennsylvania-municipalities-planning-code-act-247-of-1968/#.V5oflvkrJD9>.
- Best, Allen. "Pot Report: Highs and Lows in the Wake of Legalization." *Planning Magazine*. American Planning Association: Chicago, IL. July 2015. Pages 24-29.
- Cole, James M. "Memorandum Regarding Marijuana Enforcement." US Department of Justice: Washington, DC. August 29, 2013. Available at tinyurl.com/zukglx4.
- Williams, Lynn A. "Practice Marijuana Land Use." *Zoning Practice*. American Planning Association: Chicago, IL. Issue 8, August 2016.