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SUBJECT: PA Act 16 – General Overview and Zoning

TO: Central Perkiomen Valley Regional Planning Commission

FROM: Jamie Magaziner, Community Planner, MCPC

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The Pennsylvania Medical Marijuana Act (MMA), or Act 16, was passed on April 17, 2016. The Act allows for the growing, processing, and dispensing of medical marijuana to patients with qualifying medical conditions. The MMA is being implemented by the PA Department of Health, who has published temporary regulations to initiate the Medical Marijuana Program under Act 16. Topics covered by the regulations include general provisions, growers/processors, dispensaries, permitting, Safe Harbor Letters for minors with a serious medical condition, laboratories, and the establishment of medical marijuana regions. The Act permits two types of medical marijuana uses: growing/processing facilities, and dispensaries (Act 16 §601).

Each community or group of communities in a multi-municipal comprehensive planning region must provide for these two uses. The Montgomery County Planning Commission is working with our municipalities to help them develop zoning ordinance language that will help to regulate these new uses in a manner which is most appropriate for that community. The following provides a brief overview of some of the important aspects of the new law and the temporary regulations that are available thus far:

1. Eligible patients must qualify as having a “serious medical condition” or be “terminally ill”. Examples of such medical conditions include: cancer, HIV/AIDS, multiple sclerosis, Parkinson’s disease, glaucoma, epilepsy, seizures, Crohn’s disease, post-traumatic stress disorder, autism, and sickle cell anemia (Act 16 §103; Title 28 §1141.21).
2. Permitted forms of marijuana are: pill, oil, topical applications, tinctures, or liquid (Act 16 §303.b.2; Title 28 §1151.28).
  - a. Plant material is not permitted, unless in the future it is recommended by the Medical Marijuana Advisory Board and approved by the Dept. of Health (Act 16 §303.b.3).
3. Permits for each type of facility will be issued across six regions, and these are consistent with the Dept. of Health’s existing districts. Montgomery County is in Region 1, the Department’s Southeast District, which also includes Berks, Bucks, Chester, Delaware, Lancaster, Philadelphia, and Schuylkill Counties.

4. Applications for grower/processor and dispensary permits are now posted online and will be accepted by the Dept. of Health from February 20-March 20, 2017. Phase I permits will include:
  - a. Up to 12 grower/processor permits
  - b. Up to 27 dispensary permits
  - c. A person can only be granted one grower/processor permit or one dispensary permit
5. Region 1 dispensary permit breakdown:
  - a. Berks, Bucks, Chester, Delaware, Lancaster Counties – 1 permit (each)
  - b. Montgomery County – 2 permits
  - c. Philadelphia County – 3 permits
6. Applicants may list two additional dispensary locations per permit application.
  - a. For Region 1, for each of the seven permits located outside of Philadelphia, a dispensary applicant may only identify a second or third dispensary location within Philadelphia.

### Act 16 Zoning

The Pennsylvania Department of Health has posted applications for grower/processor permits and dispensary permits on their website. The Department will accept applications between February 20 - March 20, 2017. Full implementation is expected by early 2018. We encourage Montgomery County municipalities to be proactive in adopting zoning amendments to provide for these facilities (growing/processing facilities, and dispensaries). The Montgomery County Planning Commission is currently assisting communities in developing zoning ordinance language.

The Medical Marijuana Act (§2107) and the associated temporary regulations (§1141.49) both contain the same language on zoning for medical marijuana facilities:

- 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;
- A **dispensary** shall meet the same municipal zoning and land use requirements as other *commercial facilities* that are located in the same zoning district.

The following summarizes our general recommendations on zoning for growing/processing facilities and dispensaries.

- Definitions:
  - We recommend that municipalities adopt the list of defined terms as they are written in the Department of Health's temporary regulations (§1141.21).
  - "Grower/processor"—A person, including a natural person, corporation, partnership, association, trust or other entity, or any combination thereof, which holds a permit from the department under this act to grow and process medical marijuana. The term does not include a health care medical marijuana organization under Chapter 19.
  - "Dispensary"—A person, including a natural person, corporation, partnership, association, trust or other entity, or any combination thereof, which holds a permit issued by the department to dispense medical marijuana. The term does not include a health care medical marijuana organization under Chapter 19.

- Location:
  - **Growing/processing facilities** should be located in industrial zoning districts. They 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 (§1141.49.a).
    - Medical marijuana may only be grown, stored, harvested or processed in an indoor, enclosed, secure facility which includes electronic locking systems, electronic surveillance and other features to be approved by the Dept. of Health (§1151.23.a).
  - **Dispensaries** will be permitted in **commercial** districts. They shall meet the same municipal zoning and land use requirements as other commercial facilities that are located in the same district (§1141.49.b).
    - Communities may wish to permit dispensaries only outside of the primary downtown or shopping district if more than one commercial district exists.
    - Good alternatives include a secondary downtown district or a more auto-oriented commercial district.
  - **Dispensaries** may not be located (§1161.2.b):
    - Within 1,000 feet of the property line of a public, private or parochial school, or a day-care center;
    - At the same site used for growing and processing marijuana;
    - In the same office space as a practitioner or other physician.
  - If **dispensaries** are not desirable in any existing commercial districts, they could be placed in **industrial districts** so long as other **commercial uses** are also permitted there.
- Standards
  - Zoning cannot place additional standards on medical marijuana facilities that are more restrictive than the standards that apply to other similar uses in the same district.