

Zoning Hurdles for Budding Pennsylvania Cannabis Businesses

The Pennsylvania Medical Marijuana Act (Act 16) establishes three different categories of permits for operators: (1) grow/process permits, (2) dispensary permits, and (3) clinical registrant permits. A limited number of clinical registrants may be permitted in Pennsylvania, each with one grow/process facility and up to six dispensary locations.

Since the passage of Act 16, a number of local municipalities have adopted ordinances to regulate where grow/process facilities and dispensaries can be operated from a zoning standpoint. In some of these municipalities, local ordinances require a grow/process facility or dispensary to obtain approval by special exception, which requires the applicant to obtain approval from the local Zoning Hearing Board. Although a Zoning Hearing Board has no discretion to deny a zoning application if the applicant satisfies the requirements of the ordinance, the board is within its purview to attach reasonable conditions, or safeguards, on the grant of approval.

By contrast, other municipalities have decided to not adopt an ordinance and simply treat a dispensary as a retail use and a grow/process facility as a manufacturing use. In these municipalities an applicant can submit a permit application to operate a dispensary in a zoning district where retail uses are permitted by right, or to operate a grow/process facility in a zoning district where manufacturing uses are permitted by right. Finally, a number of municipalities have not addressed medical marijuana uses at all. These municipalities present the biggest challenge because of the lack of a set process to treat the application.

On June 29, 2017, the Pennsylvania Department of Health issued dispensary permits to 27 entities. In total, 52 locations in the state have been approved to operate as dispensaries, including 20 locations in the Southeastern region. But those locations do not include dispensaries that will be permitted as clinical registrants. Clinical registrants are created through a collaboration between academic medical centers and private vertically integrated medical marijuana organizations, and may operate up to six dispensary locations. The clinical registrant permit application has yet to be rolled out by the state. Applicants for clinical registrant permits are still pursuing suitable and compliant properties in local municipalities and should consider applicable local zoning procedures as they select locations.

Applicants should also be aware of the community environment in which they intend to locate their business. Applicants should anticipate concern from local residents about the use. Even if municipalities have passed ordinances to deal with grow/process facilities and dispensaries, residents have the ability to request party status to zoning proceedings and may oppose medical marijuana-related applications. In municipalities that have not adopted an ordinance or taken a formal position on the use, applicants for zoning approval or use permits should anticipate resistance from the municipal board of elected officials.

If you want to learn more about the issues discussed in this Alert, please contact a member of Cozen O'Connor's Cannabis Industry Team.



Robert M. Careless

**Vice Chair,
Zoning, Land
Use &
Development**

rcareless@cozen.com
Phone: (215) 665-4798
Fax: (215) 665-2013

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