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**CITY OF BETHLEHEM**

**Department of Community and Economic Development**  
**Interoffice Memo**

**TO:** J. William Reynolds, President of Council  
Louise Kelchner, City Clerk

**FROM:** Darlene L. Heller, Director of Planning and Zoning

**RE:** Revised Zoning Amendment for Medical Marijuana

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On March 10 the Planning and Zoning Bureau forwarded to your office a draft of a Zoning Ordinance amendment addressing medical marijuana. The Planning Commission voted unanimously to forward the amendment at their March 9 meeting.

On April 18 our offices received an advisory letter from the Lehigh Valley Planning Commission on this amendment. They correctly note that the PA Medical Marijuana Act stipulates that requirements for grower/processor facilities cannot be more stringent than similar facilities within the same district. Section 3 of our draft ordinance, section 1322.03.h(c)(3), requires a separation distance of 1,000 feet between a grower/processor facility and a school or day care center. Although the separation distance is a requirement in the Act for medical marijuana dispensaries it is not a requirement for grower/processors. Therefore, as a precaution against any future appeal or challenge to this zoning ordinance amendment, our office is suggesting that the ordinance amendment move forward with the section requiring a separation distance for grower/processors removed.

We have attached the revised ordinance draft here. Our recommendation is that the May 2 hearing be held as scheduled. We will put the proposed amendment revision on the May 11 Planning Commission agenda for their consideration and comment. When the amendment is on city council's May 17 meeting agenda for first vote, you will already have the Planning Commission comments and response.

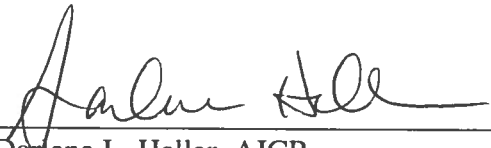
We can review this recommendation along with the full ordinance amendment at the May 2 hearing on this matter.

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**CC:** Mayor Donchez  
City Council Members  
A. Karner  
S. Borzak

City Solicitor  
J. Spirk  
T. Samuelson

**DATE:** 4-26-17

  
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Darlene L. Heller, AICP  
Director of Planning and Zoning

BILL NO.

ORDINANCE NO.

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF BETHLEHEM, PENNSYLVANIA, AS AMENDED, TO INCLUDE REGULATIONS FOR MEDICAL MARIJUANA, ADDING DEFINITIONS AND REGULATIONS.

THE COUNCIL OF THE CITY OF BETHLEHEM HEREBY ORDAINS AS FOLLOWS:

SECTION 1. Add New Sections 1302.73, 1302.74, 1302.75, 1302.76, 1302.77 and 1302.78 (and renumbering remaining definitions)

- A. 1302.73 Medical Marijuana. Marijuana for certified medical use as legally permitted by the Commonwealth of Pennsylvania with Act 16, as amended.
- B. 1302.74 Medical Marijuana Academic Clinic Research Center. An accredited medical school within this Commonwealth that operates or partners with an acute care hospital licensed within this Commonwealth.
- C. 1302.75 Medical Marijuana Act 16. Pennsylvania “Medical Marijuana Act” (Act of Apr. 17, 2016, P.L. 84, No. 16, a/k/a Act 2016-16, 35 P.S. § 10231.101 et seq, as amended. The related Pennsylvania Department of Health regulations can be found at 28 Pa.Code, Part IX, Chapters 1131 et seq.
- D. 1302.76 Medical Marijuana 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 Pennsylvania Department of Health (DOH) to dispense medical marijuana.
- E. 1302.77 Medical Marijuana 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 Pennsylvania Department of Health (DOH) to grow and process medical marijuana.
- F. 1302.78 Medical Marijuana Organization or Facility. A dispensary or a grower/processor of marijuana for medical purposes.

SECTION 2. That the current Section 1305.01.b be amended to read as follows, in part:

| TYPES OF USES<br>(See definitions in Section 1302)  | ZONING DISTRICTS |           |     |    |    |    |     |     |     |    |      |       |
|---|------------------|-----------|-----|----|----|----|-----|-----|-----|----|------|-------|
|   | CL               | CG<br>&CS | CB  | LI | IN | PI | CM  | I   | CMU | IR | IR-R | OMU   |
| <b>b. COMMERCIAL USES (Cont.)</b>   |                  |           |     |    |    |    |     |     |     |    |      |       |
| Custom Printing, Copying, Faxing, Mailing or Courier Service and similar services to businesses   | P                | P         | P   | P  | P  | P  | P   | P   | P   | P  | P    | P     |
| Dog Daycare   | P                | P         | N   | P  | P  | P  | P   | N   | P   | P  | P    | P     |
| Exercise Club   | P                | P         | P   | P  | P  | P  | P   | P   | P   | P  | P    | P     |
| Financial Institution (includes banks), with Drive-Through facilities allowed in the CB and CL district only if they use rear for vehicle entry and/or exit. See Drive-through facilities regulations in Section 1322.03. *** | P                | P         | P   | P  | P  | P  | P   | P   | P   | P  | P    | P     |
| Flea Market/ Auction House  | P                | P         | P   | N  | P  | N  | N   | N   | N   | P  | P    | N     |
| Funeral Home, without a crematorium (S. 1322)   | P                | P         | P   | N  | P  | N  | N   | P   | N   | P  | N    | N     |
| Funeral Home with a crematorium (S. 1322)   | N                | N         | N   | SE | P  | N  | N   | SE  | N   | N  | N    | N     |
| Gaming Facility, Licensed (S. 1322), other than small games of chance allowed under State law and the State Lottery   | N                | N         | N   | N  | N  | N  | N   | N   | N   | P  | N    | N     |
| Gas Station, which may occur with a retail store, and which may also include fueling of vehicles using hydrogen, natural gas or similar fuels (S. 1322)   | N                | P         | N   | N  | P  | N  | N   | N   | N   | SE | N    | P**** |
| Heliport (S. 1322)  | N                | N         | N   | P  | P  | P  | P   | P   | N   | P  | P    | N     |
| Hotel or Motel (S. 1322)  | N                | P         | P   | N  | P  | N  | P   | N   | N   | P  | P    | P     |
| Kennel (S. 1322)  | N                | N         | N   | P  | P  | N  | N   | N   | N   | N  | N    | N     |
| Laundromat  | P                | P         | P   | N  | P  | N  | N   | P   | N** | P  | P    | P     |
| Laundry, Commercial or Industrial   | N                | N         | N   | P  | P  | P  | N   | N   | N   | P  | P    | N     |
| Lumber Yard   | N                | N         | N   | P  | P  | N  | N   | N   | N   | P  | P    | N     |
| Medical Marijuana Academic Clinic Research Center (s.1322)  | N                | N         | N   | P  | P  | P  | P   | P   | P   | N  | N    | P     |
| Medical Marijuana Grower/Processor (S.1322)   | N                | N         | N   | P  | P  | P  | P   | N   | N   | N  | N    | N     |
| Medical Marijuana Dispensaries (S. 1322)  | N                | P         | N   | N  | N  | N  | N   | N   | N   | P  | N    | N     |
| Micro-brewery and/or Micro-distillery (in combination with a restaurant and/or tasting room)  | P                | P         | P   | N  | P  | N  | N   | N   | P   | P  | P    | P     |
| Motor Vehicle Racetrack, Outdoor  | N                | N         | N   | N  | SE | N  | N   | N   | N   | N  | N    | N     |
| Nightclub   | N                | SE        | SE* | N  | P  | N  | N   | N   | N   | P  | P    | P     |
| Office (May include medical clinics or labs)  | P                | P         | P   | P  | P  | P  | P   | P   | P   | P  | P    | P     |
| Pawn Shop (S. 1322)   | N                | SE        | N   | N  | N  | N  | N   | N   | N   | N  | N    | N     |
| Personal Services (includes tailoring, custom dress-making, haircutting/styling, travel agency, nail salon, dog grooming, dry-cleaning, shoe repair, "massage therapy, certified" and closely similar uses)                   | P                | P         | P   | N  | N  | N  | N** | N** | N   | P  | P    | P     |
| Planned Office Commercial Development in compliance with Section 1313 (which allows additional uses in the CMU District; S. 1322)   | N                | N         | N   | N  | N  | N  | N   | N   | P   | N  | N    | N     |
| Plant Nursery (other than a Retail Store)   | N                | P         | N   | P  | P  | P  | P   | P   | N   | P  | P    | N     |

\* = Nightclub cannot be located within 120 feet of a Residential District boundary line

\*\* = Personal services, restaurants or cafeterias without drive-through service, a Laundromat, a financial institution, and retail stores may be allowed as accessory uses in a hospital, medical office building, or college or university building provided they do not have their own exterior entrance and are primarily designed to serve students, staff or patients of the institution. See also the I-O Overlay District in Article 1312.

\*\*\* = In the OMU District, drive through facilities for a Financial Institution are limited to 2 lanes.

\*\*\*\*= Must front on a minor arterial street and must be within 450' of the property boundary line of a highway interchange.

P = Permitted by right use (zoning decision by Zoning Officer)

SE = Special exception use (zoning decision by Zoning Hearing Board)

N = Not permitted

(S. 1322) = See Additional Requirements in Section 1322

SECTION 3. Add new Section 1322.03.hh (and re-numbering remaining requirements), to read as follows:

1322.03.hh Medical Marijuana.

(a) Purpose. To establish a process and standards for the establishment, construction, and operations of various medical marijuana facilities in strict conformity with the Pennsylvania “Medical Marijuana Act” (Act of Apr. 17, 2016, P.L. 84, No. 16, a/k/a Act 2016-16, 35 P.S. § 10231.101 et seq, as amended) to allow for the integration of an allowed industry while providing for the protection of the public’s health, safety, morals, and general welfare.

(b) Medical Marijuana Academic Clinical Research Centers

1. Parking requirements will follow the parking schedule found in Article 1319 and 1319.01.a.26, Office or Public Building Off-Street Parking Regulations.
2. An academic clinical research center may only grow medical marijuana for the purpose of on-site clinical research and not for gifting, donating or sale, provided such activity occurs indoors within an enclosed secure building which includes electronic locking systems, electronic surveillance and other features required by the Pennsylvania Department of Health as required by Act 16, as amended and not within a trailer, cargo container, mobile or modular unit, mobile home, recreational vehicle or other motor vehicle.
3. There shall be no emission of dust, fumes, vapors, odors, or waste into the environment from any medical marijuana academic clinical research center and the facility shall comply with Article 1318.22, General Performance Standards
4. A buffer planting is required where a medical marijuana academic clinical research center adjoins a residential use or district in accordance with Article 1318.23.
5. The Applicant shall submit documentation showing compliance with Act 16, as amended, and all related regulations, including but not limited to licensure, upon demand of the Zoning Officer.
6. Failure to comply with the requirements of Act 16, as amended, and all related regulations shall constitute a violation of the Zoning Ordinance.

(c) Medical Marijuana Grower/Processor

1. A medical marijuana grower/processor may only grow medical marijuana indoors within an enclosed, secure building which includes electronic locking systems, electronic surveillance and other features required by the Pennsylvania Department of Health as required by Act 16, as amended and not within a trailer, cargo container, mobile or modular unit, mobile home, recreational vehicle or other motor vehicle.
2. There shall be no emission of dust, fumes, vapors, odors, or waste into the environment from any facility where medical marijuana growing, processing or testing occurs and the facility shall comply with Article 1318.22, General Performance Standards.
3. Grower/processors may not operate on the same site as a facility used for dispensing medical marijuana.
4. Any medical marijuana grower/processor facility lawfully operating shall not be rendered in violation of these provisions by the subsequent location of a public, private or parochial school, a charter school or a day-care center, provided the grower/processor use shall not have been, or thereafter become, abandoned in the manner provided by Section 1323.06.

5. Parking requirements will follow the parking schedule found in Article 1319 and 1319.01.a.19, Industrial or Manufacturing Establishment Off-Street Parking Regulations.
6. A buffer planting is required where a medical marijuana grower/processor adjoins a residential use or district in accordance with Article 1318.23.
7. Loading and off-loading areas within the structure are preferred. If an external loading dock arrangement is designed it should be from within a secure environment and in accordance with Article 1319.05.
8. The Applicant shall submit documentation showing compliance with Act 16, as amended, and all related regulations, including but not limited to licensure, upon demand of the Zoning Officer.
9. Failure to comply with the requirements of Act 16, as amended, and all related regulations shall constitute a violation of the Zoning Ordinance.

(d) Medical Marijuana Dispensary

1. A medical marijuana dispensary may only dispense medical marijuana indoors within an enclosed, secure building which includes electronic locking systems, electronic surveillance and other features required by the Pennsylvania Department of Health as required by Act 16, as amended and not within a trailer, cargo container, mobile or modular unit, mobile home, recreational vehicle or other motor vehicle.
2. A medical marijuana dispensary may not operate on the same site as a facility used for growing and processing medical marijuana.
3. There shall be no emission of dust, fumes, vapors, odors, or waste into the environment from any facility where medical marijuana growing, processing or testing occurs and the facility shall comply with Article 1318.22, General Performance Standards.
4. A medical marijuana dispensary shall:
  - a. Not have a drive-through service;
  - b. Not have outdoor seating areas;
  - c. Not have outdoor vending machines;
  - d. Prohibit the application and consumption of medical marijuana on the premises; and
  - e. Not offer direct or home delivery service.
5. A medical marijuana dispensary may not be located within 1,000 feet of the property line of a public, private or parochial school, a charter school or a day-care center, unless an adjustment or waiver of such prohibition shall have been approved by the Pennsylvania Department of Health and satisfactory proof thereof shall have been provided to the Zoning Officer. This distance shall be measured in a straight line from the closest property line in which the business is conducted or proposed to be conducted, to the closest property line of the protected use, regardless of the municipality in which it is located.
6. Any medical marijuana dispensary facility lawfully operating shall not be rendered in violation of these provisions by the subsequent location of a public, private or parochial school, a charter school or a day-care center, provided the dispensary use shall not have been, or thereafter become, abandoned in the manner provided by Section 1323.06.

- 7. Parking requirements will follow the parking schedule found in Article 1319 and 1319.01.a.18, Indoor Retail Business Off-Street Parking Regulations.
- 8. A buffer planting is required where a medical marijuana dispensary adjoins a residential use or district in accordance with Article 1318.23.
- 9. Loading and off-loading areas within the structure are preferred. If an external loading dock arrangement is designed it should be from within a secure environment, in accordance with Article 1319.05.
- 10. The Applicant shall submit documentation showing compliance with Act 16, as amended, and all related regulations, including but not limited to licensure, upon demand of the Zoning Officer.
- 11. Failure to comply with the requirements of Act 16, as amended, and all related regulations shall constitute a violation of the Zoning Ordinance.

SECTION 4. All Ordinances and parts of Ordinances inconsistent herewith are, and the same are hereby repealed.

Sponsored by \_\_\_\_\_  
\_\_\_\_\_

PASSED finally in Council on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
President of Council

ATTEST:

\_\_\_\_\_  
City Clerk

This Ordinance approved this            day of            , 2017

\_\_\_\_\_  
Mayor