

ORDINANCE NUMBER _____

**AN ORDINANCE
AMENDING THE CITY OF BENTON HARBOR ZONING ORDINANCE;
ARTICLE 2-ZONING DISTRICTS; ARTICLE 3- USE STANDARDS; ARTICLE 7-
NONCONFORMITIES; ARTICLE 9- DEFINITIONS**

BE IT ORDAINED by the City Commission of the City of Benton Harbor, Berrien County Michigan that based upon the recommendation of the Planning Commission after its public hearing held on April, 23, 2018, that the City of Benton Harbor Zoning Ordinance is amended as follows:

ARTICLE 2. ZONING DISTRICTS

2.4.1. PERMITTED (PRINCIPAL) USE TABLE to be amended.

STRIKE “Medical marijuana clinics and sales” line from table as it is not compliant with Michigan and City Medical Marihuana Act.

ADD line(s) under Commercial Uses/Retail Sales and Service, Personal Service - Oriented:

- Provisioning Center Facility (Dispensaries) allowed as “S” (Special Uses) in C-B, C-D, I-L & I-H Districts. Use Standard 3.3.12
- Safety Compliance Facility allowed as “S” (Special Uses) in C-G, I-L & I-H Districts. Use Standard 3.3.12.
- Grow Facilities (Class A, B and C) allowed as “S” (Special Uses) in I-L & I-H Districts. Use Standard 3.3.12.
- Processor Facility allowed as “S” (Special Uses) in I-L & I-H Districts. Use Standard 3.3.12.
- Secured Transporter Facility allowed as “S” (Special Uses) in I-L & I-H Districts. Use Standard 3.3.12.

ARTICLE 3. USE STANDARDS

§3.3. COMMERCIAL USES

3.3.12. Medical Marihuana Facilities – All Types.

1. A medical marihuana grower, processor, provisioning center, secure transporter, and safety compliance facility, in accordance with the provisions of state law, may be permitted

through the issuance of a special use permit pursuant to Article 6, §6.5 in the specified districts, provided that:

- A. No medical marihuana grower, processor, provisioning center, safety compliance facility or secure transporter shall be located within one Thousand (1,000) feet of real property comprising a public elementary, vocational, or secondary school.
- B. In the consideration of granting a special use permit, the setback from residential uses and Districts should be evaluated as it relates to the surrounding areas.
- C. All applicable regulations of Articles 3 and 4, including but not limited to Accessory Buildings and Structures, Parking Requirements, Signs, Visual Screening Requirements, Building Height Regulations, and Yard, Setback and Lot Area Requirements shall be met by the special use permit applicant.
- D. Any uses or activities found by the state of Michigan or a court with jurisdiction to be unconstitutional or otherwise not permitted by state law may not be permitted by the City of Benton Harbor. In the event that a court with jurisdiction declares some of or all of this article invalid, then the City of Benton Harbor may suspend the acceptance of applications for special use permits pending the resolution of the legal issue in question.
- E. At the time of application for a special use permit the marihuana facility must be licensed by the State of Michigan, or have the license application concurrently in process, and then must be at all times in compliance with the laws of the State of Michigan including but not limited to the Michigan Medical Marihuana Act, MCL 333.26421 et seq.; the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq.; and the Marihuana Tracking Act, MCL 333.27901 et seq.; and all other applicable rules promulgated by the State of Michigan.
- F. At the time of application for a special use permit the medical marihuana *facility* must be permitted by the City of Benton Harbor, or have the City of Benton Harbor permit application concurrently in process with the special use permit and site plan approval when a site plan is required, and then must be at all times in compliance with the City of Benton Harbor Ordinance enacted December 21, 2017.
- G. The City of Benton Harbor may suspend or revoke a special use permit based on a finding that the provisions of the special use standards in this section, all other applicable provisions of this zoning ordinance, City of Benton Harbor Ordinance enacted December 21, 2017, or the terms of the special use permit and approved site plan are not met.
- H. A medical marihuana facility, or activities associated with the permitted and licensed growing, processing, testing, transporting, or sales of marihuana, may not be permitted as a home occupation or accessory use.

- I. Signage requirements for medical marijuana facilities, are as provided in the City of Benton Harbor Sign ordinance, being Article 4, §4.3 in the City of Benton Harbor Code of Ordinances, and in the City of Benton Harbor Medical Marijuana Facilities Ordinance enacted December 21, 2017.
 - J. No medical marijuana facility shall be operated in a manner creating noise, dust, vibration, glare, fumes, or odors detectable beyond the boundaries of the property on which the medical marijuana facility is operated.
2. Medical Marijuana Grower Facilities (A, B and C Growers) and Processors shall also be subject to the following standards:
 - A. The minimum operational standards of growers and processors found in the City of Benton Harbor Medical Marijuana Ordinance enacted December 21, 2017.
 - B. All marijuana growing and processing shall be located entirely within an enclosed, locked facility which shall include one or more completely enclosed buildings.
 - C. If only a portion of a building used for marijuana production, a partition wall from floor to ceiling shall separate the marijuana production space from the remainder of the building. A partition wall must include a door capable of being closed and locked from both sides for ingress and egress between the marijuana production space and the remainder of the building.
 - D. Light cast by light fixtures inside any building used for marijuana production or processing shall not be visible outside the building from 7:00 p.m. to 7:00 a.m. the following day.
 3. Provisioning Centers shall also be subject to the following standards:
 - A. The minimum operational standards of Provisioning Centers found in the City of Benton Harbor Medical Marijuana Ordinance enacted December 21, 2017.
 - B. All activities of a Provisioning Center, including all transfers of marijuana shall be conducted within the facility and out of public view. A provisioning center shall not have a walk -up window or a drive thru window service.
 - C. Marijuana and tobacco products shall not be smoked, ingested, or otherwise consumed in the facility or on the premises.
 - D. The exterior appearance of the structure shall remain compatible with the exterior appearance of structures already constructed or under construction within the immediate area, and shall be maintained so as to prevent blight or deterioration or substantial diminishment or impairment of property values within the zoning district.
 4. Secure Transporter shall also be subject to the following standards:

A. The minimum operational standards of Provisioning Centers found in the City of Benton Harbor Medical Marihuana Ordinance enacted December 21, 2017.

5. Safety Compliance Facility shall also be subject to the following standards:

A. The minimum operational standards of Safety Compliance Facilities found in the City of Benton Harbor Medical Marihuana Ordinance enacted December 21, 2017.

ARTICLE 7. NONCONFORMITIES

§7.3.6 Medical Marihuana Facilities.

No medical marihuana facility operating or purporting to operate prior to December 15, 2017, shall be deemed to have been a legally existing use nor shall the operation of such marihuana facility be deemed a legal nonconforming use under this ordinance.

ARTICLE 9. DEFINITIONS

(Definitions to be added to Article 9, where appropriate)

Grower. A Permittee/Licensee that is a commercial entity located in this state that cultivates, dries, trims, or cures and packages marihuana for sale to a processor or provisioning center.

Licensee. A person holding a state operating license issued under Michigan’s Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq.

Marijuana or Marihuana. That term as defined in the Public Health Code, MCL 333.1101 et seq.; the Michigan Medical Marihuana Act, MCL 333.26421 et seq.; the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq.; and the Marihuana Tracking Act, MCL 333.27901 et seq.

Marijuana/Marihuana Facility. Enterprise at a specific location at which a licensee is licensed to operate under the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq., including a marijuana grower, marijuana processor, marijuana provisioning center, marijuana secure transporter, or marijuana safety compliance facility. The term does not include or apply to a “primary caregiver” or “caregiver” as that term is defined in the Michigan Medical Marihuana Act, MCL 333.26421 et seq.

MMFLA. Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq., being PA 281 of 2016. Any term defined in the MMFLA shall have the definition given in the MMFLA.

MTA. Marihuana Tracking Act, MCL 333.27901 et seq., being PA 282 of 2016. Any term defined in the MTA shall have the definition given in the MTA.

Permit. A current and valid Permit for a Commercial Medical Marihuana Facility issued by the City of Benton Harbor, which shall be granted to a Permit Holder only for and limited to a specific Permitted Premises and a specific Permitted Property.

Permittee. A person holding a City of Benton Harbor operating Permit issued under the provisions of the City of Benton Harbor Medical Marihuana Ordinance enacted December 21, 2017.

Permit Holder. A Person that holds a current and valid Permit issued under the provisions of the City of Benton Harbor Medical Marihuana Ordinance enacted December 21, 2017.

Permitted Premises. A particular building or buildings within which the Permit Holder will be authorized to conduct the Facility's activities pursuant to the Permit.

Permitted Property. The real property comprised of a lot, parcel or other designated unit of real property upon which the Permitted Premises is situated.

Person. An individual, corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, or other legal entity.

Processor. A Permittee/Licensee that is a commercial entity located in Michigan that purchases marihuana from a grower and that extracts resin from the marihuana or creates a marihuana-infused product for sale and transfer in packaged form to a provisioning center.

Provisioning Center. A Permittee/Licensee that is a commercial entity located in Michigan that purchases marihuana from a grower or processor and sells, supplies, or provides marihuana to registered qualifying patients, directly or through the patients' registered primary caregivers. Provisioning center includes any commercial property where marihuana is sold at retail to registered qualifying patients or registered primary caregivers. A noncommercial location used by a primary caregiver to assist a qualifying patient connected to the caregiver to assist a qualifying patient connected to the caregiver in accordance with the Michigan medical Marihuana Act, MCL 333.26421 et seq., is not a provisioning center for purposes of this ordinance.

Safety Compliance Facility. A Permittee/Licensee that is a commercial entity that receives marihuana from a marihuana facility or registered primary caregiver, tests it for contaminants and for tetrahydrocannabinol and other cannabinoids, returns the test results, and may return the marihuana to the marihuana facility.

Secure Transporter. A Permittee/Licensee that is commercial entity located in this state that stores marihuana and transports marihuana between marihuana facilities for a fee.