

ORDINANCE
ESTABLISHMENT OF MEDICAL MARIHUANA FACILITIES

AN ORDINANCE TO AUTHORIZE AND REGULATE THE ESTABLISHMENT OF MEDICAL MARIHUANA FACILITIES PURSUANT TO THE MEDICAL MARIHUANA LICENSING ACT BEING PUBLIC ACT 281 OF 2016.

THE CITY OF BENTON HARBOR ORDAINS:

LEGISLATIVE FINDINGS

The City of Benton Harbor, through its elected City Commission, recognizes that the state of Michigan has permitted by legislative action, the medical use of Marihuana, in the Michigan Medical Marihuana Act (the MMMA, being MCL333.26421 et seq.) and provided for licensing and regulation of medical marihuana growers, processors, provisioning centers, secure transporters and safety compliance facilities, in the Michigan Medical Marihuana Facilities Licensing Act (the MMMFA being, MCL333.27101 et seq.)

It is further recognized that the MMFLA provides that a municipal ordinance is a pre-requisite for State approval of any State license issued under MMFLA.

It is further recognized that, at the time of the enactment of this ordinance, Marihuana remains subject to criminal penalties under both federal and state law.

It is further recognized that while federal and state regulation of Marihuana may be pervasive, and local regulation of Marihuana subject to claim of preemption, the MMMFLA permits local control or regulation of certain aspects of the operation of a Medical Marihuana facility, but only if the City enacts an ordinance permitting some, or all, of the facilities also regulated by the MMMFLA.

SECTION 1 Purpose.

- A.** An Ordinance to implement the provisions of the Michigan Marihuana Facilities Act, Public Act 281 of 2016, which authorizes the licensing and regulation of commercial Medical Marihuana Facilities and afford the City the option whether or not to allow Commercial Medical Marihuana Facilities; to implement the provision of the MMMFLA (Public Act 281 of 2016; MCL333.27101, et seq.) with respect to local zoning and land use, to regulate Commercial Medical Marihuana Facilities by requiring a Permit and compliance with requirements as provided in this Ordinance, in order to maintain the public health safety and general welfare of the community at large; retain the character of neighborhoods; and mitigate potential impacts on surrounding properties and persons.
- B.** Nothing in this ordinance is intended to grant immunity from criminal or civil prosecution, penalty or sanction for cultivation, manufacture, possession, use sale, or distribution of marihuana, in any form that is not in compliance with the Michigan Medical Marihuana Act, initiated Law 1 of 2008, MCL 333.26421 et seq.; the Medical Marihuana Facilities Licensing Act, MCL333.27101 et seq.; the Marihuana Tracking Act, MCL333.27901 et seq.; and applicable rules promulgated by the State of Michigan.
- C.** As of the effective date of this ordinance, marihuana remains classified as a Schedule 1 controlled substance under the Federal Controlled Substances Act, 21 U.S.C. Sec. 801 et seq., which makes it unlawful to manufacture, distribute, or dispense marijuana. Nothing in this ordinance is intended to grant immunity from any criminal federal laws.
- D.** To provide for and limit, the location, type and number of facilities licensed under the MMMFLA within the City limits, without totally prohibiting the types of land uses otherwise permitted by the MMMFLA.

SECTION 2 Definitions.

For the purpose of this ordinance:

- A.** Any term defined by the Michigan Medical Marihuana Act, MCL333.26421 et seq., shall have the definition given in the Michigan Medical Marihuana Act.

- B. Any term defined by the Medical Marihuana Facilities Licensing Acts, MCL333.27101 et seq., shall have the definition given in the Medical Marihuana Facilities Licensing Act.
- C. Any term defined by the Marihuana Tracking Act, MCL333.27901 et seq., shall have the definition given in the Tracking Act.
- D. “Grower” means a licensee that is a commercial and/or agricultural entity located in this state that cultivates, dries, trims, or cures and packages marihuana for sale to a processor or provisioning center.
- E. “Licensee” means a person holding a state operating issued under the Medical Marihuana Facilities Licensing Act, MCL333.27101 et seq.
- F. “Marijuana” or “marihuana” means 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.
- G. “Marihuana facility” means enterprise at a specific location at which a licensee is licensed to operate under the Medical Marihuana Facilities Licensing Act, MCL333.27101 et seq., including a marihuana grower, marihuana processor, marihuana provisioning center, marihuana secure transporter, or marihuana safety compliance facility. The term does not include or apply to “primary caregiver” as that term is defined in the Michigan Medical Marihuana Act, MCL 333.26421 et seq.
- H. “Permit” means a current and valid Permit for a Commercial Medical Marihuana Facility issued under this Ordinance, which shall be granted to a Permit Holder only for and limited to a specific Permitted Premises and a permitted Property.
- I. “Permittee” means a person holding a City of Benton Harbor operating Permit issued under the provision of this Ordinance.
- J. “Permit Holder” means the Person that holds a current and valid Permit issued under this Ordinance.
- K. “Permitted Premises” means the particular building or buildings within which the Permit Holder will be authorized to conduct the Facility’s activities pursuant to the Permit.
- L. “Permitted Property” means the real property comprised of a lot, parcel or other designated unit of real property upon which the Permitted Premises is situated.
- M. “Person” means an individual, corporation, limited liability Company, partnership, limited liability partnership, limited liability limited partnership, or other legal entity.
- N. “Processor” means a 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.
- O. “Provisioning Center” means a 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. A noncommercial location used by 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 the purpose of this article.
- P. “Safety Compliance Facility” means a 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.
- Q. “Secure Transporter” means a licensee that is commercial entity located in this state that stores marihuana and transports marihuana facilities for a fee.
- R. “Co-location” means the aggregation of multiple licenses, or additional licenses of the same type, permitted under the MMMFLA and located on one or more lot of record owned by an existing MMMFLA licensee, approved for operation in the City of Benton Harbor.
- S. “Security Plan” means a plan for preventing unauthorized access to, or theft pilferage from an MMMFLA licensed facility, approved for operation in the City of Benton Harbor. The plan is subject to review and reasonable approval by the City Council, but shall include at a minimum the following components: (1) A seven (7) foot tall perimeter fence for all facilities except the provisioning center;(2) an exterior lighting system;(3) a building security system;(4) An on-site security guard; (5)An off-site official contact list;(6) Established hours of operation;(7) Appropriate signage- no signage of picture or name regarding marijuana; business name only. (8)A plan for facility Inspection by the City of Benton Harbor;(9)Such other conditions as may be suitable for the

particular license, or facility to be operated by the MMMFLA licensee. A security Plan must be approved with the City Manager with the advice of the Police Chief and Fire Chief.

SECTION 3 Authorization of Facilities and Fee.

A. The maximum number of each type of marihuana facility allowed in the City of Benton Harbor shall be as follows:

Facility	Number
Grower:	
Class A – 500 Marihuana Plants	3
Class B – 1000 Marihuana Plants	3
Class C – 1500 Marihuana Plants	4
Processor	7
Secure Transporter	3
Provisioning Center	2
Safety Compliance Facility	3

B. At least every year after adoption of this ordinance, City Commission shall review the maximum number of each type of marihuana facility allowed and determine whether this maximum should be changed. The review and its findings shall be recorded in the minutes of the relevant meeting of the City Commission.

C. A nonrefundable fee shall be paid by each marihuana facility permitted under this ordinance in an annual amount of not more than \$5,000.00 as set by resolution of the City of Benton Harbor City Commission.

SECTION 4. Requirements and Procedure for Issuing Permits.

A. No person shall operate a marihuana facility in the City of Benton Harbor without a valid marihuana facility permit issued by the City of Benton Harbor pursuant to the provisions of this ordinance. Application for each Medical Marihuana Facility required by this ordinance shall be made in writing to the City Clerk, and must be approved by the City Commission after receiving recommendation submitted by the Planning Commission and approved by the State of Michigan, prior to commencing operation. Upon the expiration of an existing Permit, a permit will be renewed by the City of Benton Harbor for one (1) year if (1) there are no uncured administrative and/legal violations in the prior year, including no taxes owed;(2) the applicant has paid the annual permit fee for the renewal period;(3) any stakeholder changes has been fully disclosed to the City of Benton Harbor; and (4) the applicant has paid and received renewal of its state license.

B. An application for a Medical Marihuana Facility Permit required by this Ordinance shall contain the following:

1. The appropriate non-refundable permit application fee in the amount determined by the City.
2. If the applicant is an individual, the applicant’s name date of birth, SSN, physical address including residential and any business address(s), attached to the individual, copy of government issued photo identification, email address, and one or more phone numbers including emergency contact information, and if applicable Federal EIN;
3. If the applicant is not an individual, the names date of birth, SSN’s, physical addresses, including residential and any business(s), copy of government issued identification, mail addresses, and one or more phone numbers of each stakeholder and general partners of the applicant, including designation of the highest ranking stakeholder and/or general partner as an emergency contact person, articles of incorporation, assumed name registration documents, Internal Revenue Service SS- 4,EIN confirmation letter(s), and a copy of the operating agreement of the applicant, if a limited liability company of the partnership agreement, if a partnership, or a copy of the by-laws or shareholder agreement, if a corporation;
4. The name and address of the proposed Medical Marihuana Facility and any additional contact information deemed necessary and requested by the City.
5. For the applicant, for each stakeholder and /or general partner of the applicant, an affirmation under oath as to whether they are at least 18 years of age and have never been indicted for, charged with, arrest for, or convicted of, pled guilty or nolo contendere to, forfeited bail concerning, or had expunged any

criminal offense, under the laws of any jurisdiction, either felony or controlled-substance-related misdemeanor not including traffic violations, regardless of whether the offense has been expunged, pardoned, reversed on appeal or otherwise, including the date, name and location of the court, arresting agency, and prosecuting agency, the case caption, the docket number, the offense, the disposition, and the location and length of incarceration.

6. Before hiring a prospective agent or employee of the applicant, the holder of a permit shall conduct a background check of the prospective employee. If the background check indicates a pending charge or conviction within the past ten (10) years for a controlled substance –related felony, the applicant shall not hire the prospective employee or agent without written permission from the City Commission.
7. A signed release authorizing the City of Benton Harbor Police Department to perform a criminal background check to ascertain whether the applicant, each stakeholder of the applicant, each managerial employee of the applicant met the criteria set forth in this Ordinance, the cost of which will be charged to the applicant;
8. The name, date of birth, physical address(residential and business address(s), copy of photo identification, and email address for any managerial employee or employee of the Medical Marihuana Facility, if other than the applicant;
9. An Affirmation under oath as whether the applicant or Stakeholder has ever applied for or has been granted any commercial license or certificate issued by a licensing authority in Michigan or any other jurisdiction that has denied, restricted, suspended, revoked, or not renew and a statement describing the facts and circumstances concerning the application, denial, restriction, suspension, revocation, or non-renewal, including the licensing authority, the date each action was taken, and the reason for each action;
10. One of the following: (a) proof of ownership of the entire premises wherein the Medical Marihuana Facility is to be operated; or(b) written consent from the property owner for use of the premises in a manner requiring a permit under this Ordinance along with a copy of the lease for the premises;
11. Proof of an adequate premise liability and casualty insurance policy in the amount not exceeding the requirements addressed in the Medical Marihuana Facilities Licensing Act or applicable State Laws, covering the Medical Marihuana Facility and naming the City as additional insured party, available for the payment of any damages arising out of an act of omission of the applicant or its stakeholders, agents, employees, or subcontractors;
12. A description of the security plan for the Medical Marihuana Facility, including, but not limited to, any lighting, alarms barriers, recording/monitoring devises, and/or security guard arrangements proposed for the facility and premises. The security plan must contain the specification details of each piece of security equipment;
13. A crisis response plan;
14. A floor plan of the Medical Marihuana Facility, as well as a scale diagram illustrating the property upon which the Medical Facility is to be operated, including all available parking spaces, and specifying which parking spaces, if any, are handicapped-accessible, and the location of the Material Safety Data sheets and any chemical storage;
15. A list of any chemicals being stored on the premises;
16. An affidavit that neither the applicant nor any Stakeholder of the applicant has not failed to pay any property taxes, special assessments, fines, fee or other financial obligations to the City;
17. An affidavit that the transfer of Marihuana to and from Medical Facilities shall be in compliance with the MMMA and the Medical Facilities Licensing Act or other applicable state laws;
18. A staffing plan;
19. Any proposed text or graphical materials to be shown on the exterior of the proposed Medical Marihuana Facility;
20. A patient education plan where applicable;

21. A business plan which contains but is not limited to the applicant's experience in operating other similarly permitted or licensed businesses and the applicant's general business management experience;
 22. A location area map of the Medical Marihuana Facility and surrounding area that identifies the relative locations and distances(closest property line to the subject Medical Marihuana Facility's building) to the subject Medical Marihuana Facility to the closest real property comprising a public or private elementary, vocational or secondary school; and church or a place of worship;
 23. A facility sanitation plan to protect against any Marihuana being ingested by any person or animal indicating how the waste will be stored and disposed of, and how any Marihuana will be rendered unusable upon disposal. Disposal by on-site burning or introduction in the sewerage system is prohibited;
 24. Certification letter from the bank showing that the applicant has liquid funds in the applicant's name in the amount needed to complete the Medical Marihuana Facility.
 25. As it relates to a Grower Facility, the following additional items shall be required:
 - a. A grower plan that includes a minimum description of the Grower methods to be used, including plans for the growing mediums, treatments and/or additives;
 - b. A production testing plan that includes at a minimum a description of how and when samples for laboratory testing by a state approved Safety Compliance Facility will be selected, what type of testing will be requested, and how the test results will be used;
 - c. An affidavit that all operations will be conducted in conformance with MMMA, the Medical Marihuana Facilities Licensing Act or other applicable State laws and such operations shall be cultivated on the premises at any one time more than permitted number of Marihuana Plants per Michigan Medical Marihuana Act, as amended, and the Medical Marihuana Facilities Licensing Act;
 - d. A chemical and pesticide storage plan that states the names of chemicals and pesticides to be used in the Grower and where and how the pesticides and other chemicals will be stored in the facility, along with plan for disposal of unused pesticides and chemicals;
 - e. All Growing must be performed within an Enclosed Locked Facility which may include indoor or in an enclosed greenhouse.
- C. Upon receipt of a completed Medical Marihuana Facility Permit application meeting the requirements of this ordinance and confirmation that the number of existing Permits does not exceed the maximum number established by this ordinance, the City Clerk shall refer a copy of the application to each of the following for their review and approval: the City Attorney or their designee, the Police Chief or her/his designee, the Fire Chief or his/her designee, the Building Inspector or his/or her designee, the Zoning Administrator or his/her designee and the City Treasurer or her/his designee. Once applications are verified by each department to be sufficiently complete, the City Clerk shall forward the applications to the Planning Commission for review and recommendation to the City Commission.
- D. No application shall be approved unless:
1. The Fire Chief or designee and the Building Inspector have inspected the plans of the proposed location for compliance with all laws for which they are charged with enforcement;
 2. The applicant, each stakeholder of the applicant, and the managerial employees and employees of the applicant, have passed a criminal background check conducted by the City of Benton Harbor Police Department;
 3. The Zoning Administrator has confirmed that the proposed location complies with the Zoning Ordinance;
 4. The City Treasurer or designee has confirmed that the applicant and each stakeholder of the applicant are not in default to the City;
 5. The City Attorney or designee has completed a detailed review of the Medical Marihuana Facility application for compliance with the applicable state laws and City Ordinances;
- E. If written approval is given by each individual or department identified in subsection 1-5, the City Clerk shall submit the application to the Planning Commission for recommendation to the City Commission for the issuing of a permit to the applicant. All permits issued are contingent upon the State of Michigan issuing a license for the operation under State law.

- F. Permittees shall report any other change in the information required by 4(B) above, to the City within ten (10) days of the change. Fees shall be set by Commission Resolution for any stakeholder added after the original application is filed.

SECTION 5. Permit Renewal

- A. A medical marihuana facility permit shall be valid for one year from the date of issuance, unless revoked as provided by law.
- B. A valid medical marihuana facility permit may be renewed on an annual basis by submitting a renewal application upon a form provided by the City of Benton Harbor and payment of the annual permit fee. Application to renew a marihuana facility permit shall be filed at least thirty (30) days prior to the date of its expiration.
- C. The renewal application for medical marihuana shall be subject to the same scrutiny and evaluation process as the inaugural permit application.

SECTION 6. Permit Application Evaluation.

- A. The City Commission shall assess all applications referred to it by the Planning Commission pursuant to Section 4 and Section 5.
- B. In its application deliberations, the City Commission shall assess each application in each of the following categories:
1. The applicant's experience in operating other similarly permitted or licensed business.
 2. Applicant's general business management experience.
 3. The applicant's general business reputation.
 4. The integrity, moral character, and reputation; personal and business probity; financial ability and experience; and responsibility or means to operate or maintain a Medical Marihuana Facility.
 5. The financial ability of the applicant to purchase and maintain adequate liability and casualty insurance.
 6. The sources and total amount of the applicant's capitalization to operate the proposed Medical Marihuana Facility.
 7. Whether the applicant or stakeholder has been indicted for, charged with, arrest for, or convicted of, pled guilty or nolo contendere to, forfeited bail concerning, or had expunged any relevant criminal offense under the laws of any jurisdiction, either felony or misdemeanor, not including traffic violations, regardless of whether the offense has been expunged ,pardon, reversed as appeal or otherwise.
 8. Past convictions of the applicant or stakeholder involving any of the following, but not limited to:
 - a. Gambling;
 - b. Prostitution;
 - c. Weapons;
 - d. Tax Evasion
 - e. Fraudulent Activity; and
 - f. Serious moral turpitude.
 9. A felony or misdemeanor of such nature that it may impair the ability of the applicant or stakeholder to operate a licensed business in a safe and competent manner.
 10. Whether the applicant or stakeholder or any business entity in which the applicant or stakeholder has had an ownership interest in has filed, or had filed against it, a proceeding for bankruptcy within the past seven (7) years.
 11. Whether the applicant or stakeholder has been served with a complaint or other notice filed with any public body regarding payment of any tax required under federal, state, or local law that has been delinquent for one (1) or more years.
 12. Whether the applicant or stakeholder has a history of noncompliance with any regulatory requirements in this state or any other jurisdiction.

13. As it relates to operation of a Provisioning Center, the applicant's type of service and product that will be offered and the overall theme and atmosphere of the proposed Provisioning Center.
- C. The City Commission shall assess each application within the aforementioned categories as described in Section 6(B)(1) through (13) and may issue a license to the applicant if an applicant has satisfactorily met all requirements.

SECTION 7. Permit Generally.

- A. To the extent permissible all information submitted in conjunction with an application for a Permit or Permit renewal required by this Ordinance is confidential and exempt from disclosure under the Michigan Freedom of Information Act, 1976 PA 442, MCL 15.231 et. seq.
- B. Permittees may transfer a permit issued under this Ordinance to a different location upon receiving written approval from the City. In order to receive approval to transfer a Permit location, the Permittee must make a written request to the City Clerk, indicating the current Permit location and the proposed Permit location. Upon receiving the written request, the City Clerk shall refer a copy of the written request to each of the following for their approval: The Fire Chief or designee, the Building Inspector, the Police Chief, the Zoning Administrator, the Planning Commission and the City Commission. No Permit transfer shall be approved unless each individual or department gives written approval that the Permittee and the proposed Permit location meet the standards identified in this Ordinance.
- C. Permittees may transfer a Permit issued under this Ordinance to a different individual or entity upon receiving written approval by the City Clerk. In order to request approval to transfer a permit to a different individual or entity, the Permittee must make a written request to the City Clerk, indicating the current Permittee and the proposed permittee. Upon receiving the written request, the City Clerk shall consider the request as a new application for a Permit and procedures set forth in Section 3, Section 4, Section 5, and Section 6 shall be followed.
- D. Permittee shall report any other change in the information required by this ordinance to the City Clerk within ten (10) business days of the change. Failure to do so may result in suspension or revocation of the Permit.

SECTION 8. Minimum Operational Standards of Provisioning Centers

The following minimum standards for Provisioning Centers shall apply:

- A. No Provisioning Center shall be open between the hours of 9:00p.m., and 7:00a.m.;
- B. Consumption of Marihuana shall be prohibited on the premises of a Provisioning Center, and a sign shall be posted on the premise of each Provisioning Center indicating that consumption is prohibited;
- C. Provisioning Centers shall continuously monitor the entire premise on which they are operated with surveillance systems that include security cameras. The video recordings shall be maintained in a secure, off-site locations for a period of 90 days;
- D. Unless permitted by the MMMA and Medical Facilities Licensing Act or applicable state law, public or common areas of the Provisioning Center must be separated from restricted or non-public areas of the provisioning center by a permanent and locked barrier. Unless permitted by the MMMA and Medical Marihuana Facilities Licensing Act or applicable state law, no Marihuana is permitted to be stored, displayed, or transferred in an area accessible to the general public;
- E. All Marihuana storage areas within Provisioning Center must be separated from any customer/patient areas by a permanent and locked barrier. Unless permitted by the MMMA and Medical Marihuana Facilities Licensing Act or applicable state law, no Marihuana is permitted to be stored in any area accessible by the general public or registered customer/patients. Marihuana may be displayed in sales area only if permitted by the MMMA or required by the Medical Marihuana Facilities Licensing Act and if required all displays to be in compliance with all federal, state and local laws and regulations;

- F. Any usable Marihuana remaining on the premises of the Provisioning Center while the Provisioning Center is not in operation shall be secured in a safe that is that is permanently affixed to the premises;
- G. Drive-through window on the premises of a Provisioning Center shall not be permitted;
- H. Provisioning Center shall not allow the sale, consumption, or use of alcohol or tobacco products on the premises;
- I. No Provisioning Center shall be operated in a manner creating noise, dust, vibration, glare, fumes, or odors detectable to normal senses beyond the boundaries of the building on which the Provisioning Center is operated;
- J. Permit and State License required by this ordinance shall be prominently displayed on the premises of a Provisioning Center;
- K. Disposal of Marihuana shall be accomplished in a manner that prevents its acquisition by any person who may not lawfully possess it and otherwise in non- conformance with local and state laws and regulations;
- L. All Marihuana delivered to a patient shall be packaged and labelled as provided by state laws;
- M. All registered patients must present both their Michigan Marihuana patient/caregiver identification card and a government issued photo identification prior to entering restricted/limited areas or non-public areas of the Provisioning Center;
- N. The premises shall be open, at all times to any Michigan Medical Marihuana Licensing Board investigators, agents auditors, without a warrant and without notice to the holder of a license, if evidence of compliance or noncompliance with the MMMA and Medical marihuana Facilities Licensing Act or applicable state laws is likely to be found and consistent with constitutional limitations, for the following purposes:
 - 1. To inspect and examine all premises of Medical marihuana Facility.
 - 2. To inspect, examine, and audit relevant records of the licensee and, if the holder of the license or any of the managerial employees or employees fails to cooperate with an investigation, impound, seize, assume physical control of, or summarily remove from the premises all books, ledgers, documents, writings, photocopies, correspondence, records, and videotapes, including electronically stored records, money receptacles, or equipment in which the records are stored.
 - 3. To inspect the person, and inspect or examine personal effects present in a Medical Marihuana Facility, of any holder of state operating license while that person is present in a Medical Marihuana Facility.
 - 4. To investigate alleged violations of the MMMA and Medical Marihuana Facilities Licensing Act or applicable state laws.
- O. It shall be prohibited to display any signs that are inconsistent with local laws or regulations or state law.
- P. It shall be prohibited to use advertising material that is misleading, deceptive, or false, or that is designed to appeal to minors.
- Q. It shall be prohibited to use the symbol or image of a Marihuana leaf in the exterior building signage.
- R. No licensed Provisioning Center shall place or maintain, or cause to be placed or maintained an advertisement of Marihuana in any form or through any medium within one thousand feet of the real property comprising a public or private elementary, vocational or secondary school.
- S. Certified laboratory testing results that meets the MMMA and Medical Marihuana Licensing Act or applicable state laws must be available to all Provisioning Center patients/customers upon request.
- T. All Provisioning Centers shall comply with all applicable requirements of the City of Benton Harbor Zoning Ordinance.
- U. Refraining from having direct contact with Marihuana if the person has or may have an illness, open lesion, including boils, sores or infected wounds, or any other abnormal source of microbial contamination, until the condition is corrected.

SECTION 9. Minimum Operational Standards of a Grower Facility

The following minimum standards for Grower Facilities shall apply:

- A. The grower facility shall comply at all times and in all circumstances with the Michigan Marihuana Act, the Medical Marihuana Facilities Licensing Act, and the general rules of the Department of Licensing and Regulatory Affairs, as they may be amended from time to time;
- B. The grower must manage its onsite odor by the installation of an operable filtration to ventilation and exhaust equipment and odors must otherwise be effectively confined to the interior of the building from which the odor is generated.
- C. The grower must present an approved Security Plan.
- D. Co-location and stacking of this license shall be permitted where the site is five (5) Acres or larger in size within the allowable zoning areas of Light Industrial, Agriculture and Commercial.
- E. Grower Facilities using artificial light for night time growing period must present a plan to contain all artificial light to the interior space of the facility.
- F. Grower Facilities shall be free from infestation by insects, rodents, birds, or vermin of any kind;
- G. Exterior signage or advertising identifying the facility as a Grower Facility shall be prohibited.
- H. All Grower Facilities shall comply with all applicable requirements of the City of Benton Harbor Zoning Ordinance.
- I. The portion of the structure storing any chemicals such as herbicides, pesticides, and fertilizers shall be subject to inspections at any time and approval by the City of Benton Harbor Fire Department to insure compliance with all applicable statutes, codes and ordinances;
- J. The dispensing of Marihuana at the Grower Facility shall be prohibited;
- K. All persons working in direct contact with Marihuana shall conform to hygienic practices while on duty, including but not limited to:
Maintaining adequate personal cleanliness;
- L. Marihuana that can support the rapid growth of undesirable microorganisms including but not limited to mold shall be held in a manner that prevents the growth of these microorganisms;
- M. Exterior signage or advertising identifying the facility as a Grower Facility shall be prohibited.
- N. No paraphernalia shall be visually displayed for Public viewing from outer premises.

SECTION 10. Minimum Operational Standards of a Safety Compliance Facility

The following minimum standards for Safety Compliance Facilities shall apply:

- A. The Safety Compliance Facility shall comply at all times and in all circumstances with the MMMA and Medical Marihuana Facilities Licensing Act or applicable State Laws, and the general rules of the Department of Licensing and Regulatory Affairs, as they may be amended from time to time. It is the responsibility of the owner to be aware of changes in the MMFLA. The City bears no responsibility for failure of the owner to be unaware of the changes in this act;
- B. The location at which a safety compliance facility tests medical marihuana and marihuana in-fused products is a permitted use in the following zoning districts: Light Industrial and Industrial as provided by and subject to the requirements of the Zoning Ordinance. The City will allow three (3) State approved and licensed safety compliance facilities.
- C. An Approved Security Plan
- D. Co-location of this license shall be permitted, up to, but not beyond, any applicable lot coverage limitations set forth in the City of Benton Harbor Zoning Ordinance.
- E. Any Safety Compliance Facility shall maintain a log book and/or data base which complies with the MMMA and Medical Marihuana Facilities Licensing Act or applicable state laws.
- F. All Marihuana shall be contained within the building in an enclosed, locked facility in accordance with the MMMA, as amended, and Medical Marihuana Facilities Licensing Act or applicable state laws.
- G. Consumption and/or use of Marihuana shall be prohibited at the Facility.
- H. Exterior signage or advertising identifying the facility as a Safety Compliance Facility shall be prohibited.

SECTION 11. Minimum Operational Standards of a Processor Facility

The following minimum Standards for Processor Facility shall apply:

- A. All activity related to the Processor Facility shall be done indoors;
- B. Consumption and /or use of Marihuana shall be prohibited at the Processor Facility;
- C. The odor must be managed by installation of an operable filtration to ventilation and exhaust equipment and odors must otherwise be effectively confined to the interior of the building from which the odor is generated;
- D. No marihuana shall be manufactured or processed in any manner that would create excessive noise beyond the interior of the structure if adjoining tenant may be disturbed by the said noise.
- E. An approved Security Plan.
- F. Co-location and of this license shall be permitted, up to but not beyond, any applicable lot coverage limitations.
- G. Processor Facilities shall be free from infestation by insects, rodents, birds, or vermin of any kind.
- H. Processor Facilities shall produce no products other than the useable Marihuana intended for human consumption.

SECTION 12. Minimum Operational Standards of a Secure Transporter

The following minimum standards for a Secure Transporter shall apply:

- A. The Secure Transporter shall comply at all times and in all circumstances with the Michigan Medical Marihuana Act, the Medical Marihuana Facilities Licensing Act, and the general rules of the Department of Licensing and Regulatory Affairs, as they may be amended from time to time;
- B. Consumption and /or use of Marihuana shall be prohibited at a storage facility of a Secure Transporter.
- C. A Secure Transporter licensee and each stakeholder shall not have interest in a Grower Processor, Provisioning Center or State Compliance Facility and shall not be a registered qualifying patient or registered primary caregiver.
- D. Must have an approved Security Plan.
- E. Co-location of this license shall be permitted, up to, but not beyond, any applicable lot coverage limitations set forth.
- F. A Secure Transporter shall also comply with the following:
 - 1. Each driver transporting marihuana must have a chauffer's license issued by the state.
 - 2. Each employee who has custody of marihuana money that is related to a marihuana transaction shall not have been convicted of or released from incarceration for a felony under the laws of this state, any other state, or the United States within the past five (5) years or have been convicted of a misdemeanor involving a controlled substance involving a controlled substance within the past five(5) years.
 - 3. Each vehicle shall be operated with a two- person crew with at least one individual remaining in the vehicle at all times during the transportation of marihuana.
 - 4. A route plan and manifest shall be entered into a statewide monitoring system, and a copy shall be carried in the transporting vehicle and presented to a law enforcement officer upon request.
 - 5. The marihuana shall be transported by one or more sealed containers and not be accessible while in transit.
 - 6. A secure Transporting vehicle shall not bear markings or other indication that it is carrying marihuana or marihuana infused product.

SECTION 13. Location of Grower Facility, Safety Compliance Facility, Processor Facility, and Secure Transporter

- A. No Grower Facility, Safety Compliance Facility, Processor Facility, or Secure Transporter Shall be located within One Thousand (1,000) feet of real property comprising of a public or private elementary, vocational, or secondary school.

SECTION 14. Location of Provisioning Center

- A. No Provisioning Center shall be located within:
 - 1. One Thousand (1,000) feet of real property comprising a public or private elementary, vocational, or secondary school; or
 - 2. Five hundred (500) feet of a church or a place of worship.

SECTION 15. Penalty and Discipline

- A. The City of Benton Harbor may require an applicant or holder of a permit for a Medical Marihuana Facility to produce documents, records, or any other material pertinent to the investigation of an application or alleged violation of this Ordinance. Failure to provide the required material may be ground for the application denial, Permit revocation, or discipline;
- B. Any person in violation of any provision of this ordinance or any provision of a permit issued under this Ordinance is responsible for misdemeanor, punishable by a fine of up to \$500.00 plus cost of prosecution, 90 days imprisonment, or both for each violation. This section is not intended to prevent enforcement of any provision of the State law by the City of Benton Harbor Police Department. A violator of this Ordinance shall also be subject to such additional sanctions, remedies and judicial orders as are authorized under Michigan law;
- C. All fines imposed under this Ordinance shall be paid within forty-five (45) days after the effective date of the order imposing the fine or as otherwise specified in the order
- D. The City Commission may temporarily suspend a Medical Marihuana Facility Permit without hearing if the City Commission finds that public safety or welfare requires emergency action. The City Commission shall cause the temporary suspension by issuing a Suspension Notice by majority vote of the members present and voting thereon in connection with institution of proceedings for a Hearing;
- E. If the City Commission temporarily suspends a Permit without a hearing within thirty (30) days after suspension Notice has been issued. The hearing shall be limited to the issues cited in the Suspension Notice.
- F. If the City Commission does not hold a hearing within thirty (30) days after the date of suspension was issued, then the suspended Permit shall be automatically reinstated and the suspension vacated.

SECTION 16. Applicability

The provision of this ordinance shall be applicable to all persons and facilities described herein, whether the operations or activities associated with a marihuana facility were established without authorization before the effective date of this ordinance.

SECTION 17. Enforcement

The Ordinance shall be enforced and administered by the City Manager, or such City official as may be designated from time to time.

SECTION 18. Effective Date

In the event that one or more sections, provisions, phrases or words of this Ordinance shall be found to be invalid by a court of competent jurisdiction, such holding shall not affect the validity or enforceability of the remaining sections, provisions, phrases or words of this Ordinance.

SECTION 19. Effective Date

This Ordinance shall become effective upon publication.