

ORDINANCE NUMBER 011921-1

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 January 5, 2020, 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.

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

- Marihuana Retailer allowed as "S" (Special Uses) in C-B, C-G, I-L & I-H Districts. Use Standard 3.3.12
- Marihuana Safety Compliance allowed as "S" (Special Uses) in C-G, I-L & I-H Districts. Use Standard 3.3.12.
- Marihuana Grower (Class A, B and C) allowed as "S" (Special Uses) in I-L & I-H Districts. Use Standard 3.3.12.
- Marihuana Processor allowed as "S" (Special Uses) in I-L & I-H Districts. Use Standard 3.3.12.
- Marihuana Secured Transporter allowed as "S" (Special Uses) in I-L & I-H Districts. Use Standard 3.3.12.
- Marihuana Microbusiness allowed as "S" (Special Uses) in I-L & I-H Districts. Use Standard 3.3.12.
- Designated Consumption Area allowed as "S" (Special Uses) in I-L, I-H & C-B Districts. Use Standard 3.3.12

ARTICLE 3. USE STANDARDS

§3.3. COMMERCIAL USES

3.3.12. Marihuana Establishments – All Types.

1. Marihuana as provided for in Michigan's Regulation and Taxation of Marihuana Act of 2018, which includes Marihuana grower, Marihuana processor, Marihuana Retail, Marihuana secure transporter, and Marihuana safety compliance and Marihuana microbusiness, 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 Marihuana establishment (grower, processor, retail, safety compliance facility, secure transporter or designated consumption area), shall be located within five hundred (500) feet of a pre-existing public or private school providing education in kindergarten, or any grades 1 through 12.
 - 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 establishment 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 Regulation and Taxation of Marihuana Act, MCL 333.27951, et al and 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 Marihuana *establishment* must be permitted by the City of Benton Harbor, or have the City of Benton Harbor 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 July 22, 2020.
 - 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 July 22, 2020, or the terms of the special use permit and approved site plan are not met.

- H. A marihuana establishment, 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 marijuana establishments 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 Recreational Marihuana /Adult Use Ordinance enacted July 22, 2020.
 - J. No marihuana establishment 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 marihuana facility is operated.
2. Marihuana growers (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 Recreational Marihuana Ordinance enacted July 22, 2020.
 - B. All marihuana 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 marihuana production, a partition wall from floor to ceiling shall separate the marihuana 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 marihuana production space and the remainder of the building.
 - D. Light cast by light fixtures inside any building used for marihuana production or processing shall not be visible outside the building from 7:00 p.m. to 7:00 a.m. the following day.
3. Retail establishments shall also be subject to the following standards:
- A. The minimum operational standards of Retail Establishments found in the City of Benton Harbor Recreational Marihuana Ordinance enacted July 22, 2020.
 - C. Marihuana and tobacco products shall not be smoked, ingested, or otherwise consumed in the establishment 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 Recreational Marihuana Ordinance enacted July 22, 2020.
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 Recreational Marihuana Ordinance enacted July 22, 2020.

ARTICLE 9. DEFINITIONS

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

Marihuana grower. A person licensed to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments.

Licensee. A person holding a state license issued under MRTMA and or MMFLA.

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.; the Marihuana Tracking Act, MCL 333.27901 et seq. and most recently in the Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951, et seq.

MRTMA or RTMA. Means the Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951, et seq, being Initiated Law 1 of 2018. Any term defined in MRTMA shall have the definition as provided in MRTMA or in the Marihuana Regulatory Agency that was filed with the Michigan Secretary of State on June 22, 2020.

Marihuana establishment. Means a marihuana grower, marihuana safety compliance facility, marihuana processor, marihuana microbusiness, marihuana retailer, marihuana secure transporter, or any other type of marihuana-related business licensed by the department authorized under MRTMA and the City.

Marihuana microbusiness. Means a person licensed to cultivate not more than 150 marijuana plants; process and package marihuana; and sell or otherwise transfer marihuana to individuals who are 21 years of age or older or to a marihuana safety compliance facility, but not to other marihuana establishments.

Marihuana processor. Means a person licensed to obtain marihuana from marihuana establishments; process and package marihuana; and sell or otherwise transfer marihuana to marihuana establishments.

Marihuana accessories. Means any equipment, product, material, or combination of equipment, products, or materials, which is specifically designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting inhaling, or otherwise introducing marihuana into the human body.

Marihuana-Infused Product. Means a topical formulation, tincture, beverage, edible substance, or similar product containing marihuana and other ingredients that are intended for human consumption.

Marihuana Retailer. Means a person licensed to obtain marihuana from marihuana establishments and to sell or otherwise transfer marihuana to marihuana establishments and to individuals who are 21 years of age or older.

Marihuana Safety Compliance. Means a person licensed to test marijuana including certification for potency and the presence of contaminants.

Marihuana Secure Transporter. Means a person licensed to obtain marihuana from marijuana establishments in order to transport marihuana to marihuana establishments.

Municipal license. Means a license issued by a municipality pursuant to section 16 of this act that allows a person to operate a marihuana establishment in that municipality.

Person. An individual, corporation, limited liability company, partnership, limited partnership of any type, trust, or other legal entity.

Designated Consumption Area. Means a commercial space that is licensed by the agency and authorized to permit adults 21 years of age and older to consume marihuana products at any location indicated on the state and local license issued under MRTMA and the City.

Unreasonable Impracticable. Means that the measures necessary to comply with the rules or ordinances adopted pursuant to this act subject licenses to unreasonable risk or require such high investment of money, time, or any other resource or asset that a reasonable prudent business person would not operate the marihuana establishment.

Equivalent licenses. Means any of the following held by a person:

(i) A marihuana grower license of any class issued under the Michigan regulation and taxation of marihuana act and a grower license, of any class, issued under the medical marihuana facilities licensing act.

(ii) A marihuana processor license issued under the Michigan regulation and taxation of marihuana act and a processor license issued under the medical marihuana facilities licensing act.

(iii) A marihuana retailer license issued under the Michigan regulation and taxation of marihuana act and a provisioning center license issued under the medical marihuana facilities licensing act.

(iv) A marihuana secure transporter license issued under the Michigan regulation and taxation of marihuana act and a secure transporter license issued under the medical marihuana facilities licensing act.

(v) A marihuana safety compliance facility license issued under the Michigan regulation and taxation of marihuana act and a safety compliance facility license issued under the medical marihuana facilities licensing act.

Same location. Means separate marihuana licenses that are issued to multiple marihuana businesses that are authorized to operate at a single property but with separate business suites, partitions, or addresses.

CERTIFICATE

We, the Mayor (Marcus Muhammad) and City Clerk (Kimberly Thompson) of the City of Benton Harbor, do hereby certify that the foregoing Ordinance was adopted at a regular meeting of the City Commission held on January 19, 2021.

ATTEST: Kimberly Thompson
Its Clerk

By: Marcus Muhammad
Its Mayor