

**City of West Branch
Ordinance No. 22-01 of 2022**

An ordinance to amend the City of West Branch Zoning Ordinance Section 2.2 (Specific Terms), Section 4.7 (Office Service District), Section 4.9 (General Business District), Section 4.10 (Industrial District), Section 4.11 (Full Table of Permitted & Special Land Uses), and Section 7.26 (Marihuana Facilities and Establishments).

The City of West Branch, Ogemaw County, Michigan ordains:

Section 1: Additions and deletions to the City of West Branch Zoning Ordinance Section 2.2 (Specific Terms), Section 4.7 (Office Service District), Section 4.9 (General Business District), Section 4.10 (Industrial District), Section 4.11 (Full Table of Permitted & Special Land Uses), and Section 7.26 (Marihuana Facilities and Establishments)

That the City of West Branch Zoning Ordinance, Section 2.2 (Specific Terms), is hereby amended to read as follows:

MARIHUANA: In addition to the following definitions, the City adopts all definitions contained in any of the State rules, regulations, statutes, and administrative code enacted for the purpose of regulating marihuana facilities and establishments.

- A. **DEPARTMENT**: The Department of Licensing and Regulatory Affairs or any successor agency.
- B. **ENCLOSED, LOCKED FACILITY**: That term as defined in Section 3 of Initiated Law 1 of 2008, as amended (Michigan Medical Marihuana Act, being MCL 333.26423).
- C. **MARIHUANA ESTABLISHMENT**: An enterprise at a specific location at which a licensee is licensed to operate under **Initiated Law 1 of 2018, Medical Regulation and Taxation of Marihuana Act**, MCL 333.27951 et seq.; including a marihuana grower, marihuana microbusiness, marihuana processor, marihuana retailer, marihuana secure transporter, or marihuana safety compliance facility.
 - 1. **MARIHUANA GROWER**: A person licensed to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments. For the purposes of this Ordinance, “marihuana grower” and “grower” may be used interchangeably.
 - 2. **MARIHUANA MICROBUSINESS**: A person licensed to cultivate not more than 150 marihuana 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.
 - 3. **MARIHUANA PROCESSOR**: A person licensed to obtain marihuana from marihuana establishments; process and package marihuana; and sell or otherwise transfer marihuana to

marihuana establishments. For the purposes of this Ordinance, “marihuana processor” and “processor” may be used interchangeably.

4. **MARIHUANA RETAILER**: 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.
 5. **MARIHUANA SECURE TRANSPORTER**: A person licensed to obtain marihuana from marihuana establishments in order to transport marihuana to marihuana establishments. For the purposes of this Ordinance, “marihuana secure transporter” and “secure transporter” may be used interchangeably.
 6. **MARIHUANA SAFETY COMPLIANCE FACILITY**: A person licensed to test marihuana, including certification for potency and the presence of contaminants. For the purposes of this Ordinance, “marihuana safety compliance facility” and “safety compliance facility” may be used interchangeably.
- D. **MARIHUANA FACILITY**: An enterprise at a specific location at which a licensee is licensed to operate under **2016 PA 281, Medical Marihuana Facilities Licensing Act**, MCL 333.27101 et seq.; including a grower, processor, provisioning center, secure transporter, or 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.
1. **GROWER**: A 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. For the purposes of this Ordinance, “marihuana grower” and “grower” may be used interchangeably.
 2. **PROCESSOR**: A licensee that is a commercial entity located in this state 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. For the purposes of this Ordinance, “marihuana processor” and “processor” may be used interchangeably.
 3. **PROVISIONING CENTER**: A licensee that is a commercial entity located in this state 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 through the department's marihuana registration process in accordance with the Michigan medical marihuana act is not a provisioning center for purposes of this act.
 4. **SAFETY COMPLIANCE FACILITY**: 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. For the purposes of this Ordinance, “marihuana safety compliance facility” and “safety compliance facility” may be used interchangeably.

- 5. **SECURE TRANSPORTER:** A license that is a commercial entity located in this state that stores marihuana and transports marihuana between marihuana facilities for a fee. For this Ordinance, “marihuana secure transporter” and “secure transporter” may be used interchangeably.
- E. **MARIHUANA:** That term as defined in Section 7106 of the Public Health Code, 1978 PA 368, MCL 333.7106.
- F. **MEDICAL USE:** The acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition.
- G. **PERSON:** An individual, corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, trust, or other legal entity.
- H. **PHYSICIAN:** An individual licensed as a physician under Part 170 of the Public Health Code, 1978 PA 368, MCL 333.17001—333.17084, or an osteopathic physician under Part 175 of the Public Health Code, 1978 PA 368, MCL 333.17501—333.17556.
- I. **PRIMARY CAREGIVER:** That term defined in Section 3 of Initiated Law 1 of 2008, as amended (Michigan Medical Marijuana Act, being MCL 333.26423) who is at least 21 years old and who has been registered by State Department of Licensing and Regulatory Affairs or any successor agency to assist with a Qualifying Patients’ use of medical marijuana.
- J. **PRIMARY CAREGIVER FACILITY:** A building in which the activities of a Primary Caregiver are conducted.
- K. **QUALIFYING PATIENT:** That term defined in Section 3 of Initiated Law 1 of 2008, as amended (Michigan Medical Marijuana Act, being MCL 333.26423) who has been diagnosed by a physician as having a debilitating medical condition as provided by the Michigan Medical Marijuana Act and who has obtained a duly issued registry identification card from the State Department of Licensing and Regulatory Affairs or any successor agency.
- L. **REGISTRY IDENTIFICATION CARD:** A document issued by the department that identifies a person as a registered qualifying patient or registered primary caregiver.

That the City of West Branch Zoning Ordinance, Section 4.7 (Office Service District), is hereby amended to read as follows:

TABLE OF PERMITTED USES & SPECIAL LAND USES	
P = Permitted by right	O-S
S = Permitted with a Special Use Permit <i>*supplemental development regulations</i>	
Commercial, Services & Retail	
Provisioning Center or Marihuana Retailer	S*
Marihuana Safety Compliance Facility	S*

That the City of West Branch Zoning Ordinance, Section 4.9 (General Business District), is hereby amended to read as follows:

TABLE OF PERMITTED USES & SPECIAL LAND USES	
<i>P</i> = Permitted by right <i>S</i> = Permitted with a Special Use Permit *supplemental development regulations	G-B
Commercial, Services & Retail	
<i>Provisioning Center or Marihuana Retailer</i>	S*

That the City of West Branch Zoning Ordinance, Section 4.10 (Industrial District), is hereby amended to read as follows:

TABLE OF PERMITTED USES & SPECIAL LAND USES	
<i>P</i> = Permitted by right <i>S</i> = Permitted with a Special Use Permit *supplemental development regulations	IND
Commercial, Services & Retail	
<i>Marihuana Grower (Class A, Class B, or Class C)</i>	S*
<i>Provisioning Center or Marihuana Retailer</i>	S*
<i>Marihuana Processor</i>	S*
<i>Marihuana Secure Transporter</i>	S*

That the City of West Branch Zoning Ordinance, Section 4.11 (Full Table of Permitted & Special Land Uses), is hereby amended to read as follows:

Table 4.11 - Full Table of Permitted Uses & Special Land Uses							
<i>P</i> = Permitted by right <i>S</i> = Permitted with a Special Use Permit *supplemental development regulations	R-1	R-M	MU	O-S	CBD	G-B	IND
Commercial, Services & Retail							
<i>Marihuana Grower (Class A, Class B, or Class C)</i>							S*
<i>Provisioning Center or Marihuana Retailer</i>				S*		S*	S*
<i>Marihuana Processor</i>							S*
<i>Marihuana Safety Compliance Facility</i>				S*			
<i>Marihuana Secure Transporter</i>							S*

That the City of West Branch Zoning Ordinance, Section 7.26 (Marihuana Facilities and Establishments), is hereby added to read as follows:

A. General Standards and Submission Requirements.

1. Marihuana facilities and establishments shall remain in compliance with the State of Michigan licensing requirements.

2. Marihuana facilities and establishments shall receive a license from the City prior to operating and shall continue to comply with the City of West Branch Marihuana Facility and Marihuana Establishment Licensing Ordinance No. 22-02.
3. The following shall be submitted in conjunction with the licensing application:
 - a. **Site Plan.** Site Plan pursuant to **Article 5** and **Article 6**.
 - (1) Site Plan should show public, private, and secured areas.
 - (2) For growers, the site plan must also show secured areas and any type of outdoor storage.

B. Standards.

1. **Compliance with State Regulations.** Each marihuana facility or establishment shall be operated in compliance with the laws and provisions of the State of Michigan.
2. **Location.** Each marihuana facility or establishment shall be operated only from the premises approved on the site plan. No marihuana facility or establishment shall be permitted to operate from a movable, mobile or transitory location, except for a permitted and licensed marihuana secure transporter when engaged in the lawful transport of marihuana.
3. **Co-Location.** A marihuana grower, marihuana processor and a marihuana retailer may operate from within a single facility operating pursuant to the **Medical Regulation and Taxation of Marihuana Act** and may operate from a location shared with a marihuana facility(s) operating pursuant to the **Medical Marihuana Facilities Licensing Act** and the rules of the State. Co-location may only occur if all uses are allowed in the zoning district in which the property is located.
4. **Indoor Operation Required.** All activities of marihuana facilities or establishments, including, without limitation, distribution, growth, cultivation, processing, transfer, or sale of marihuana, and all other related activity permitted under the permit holder's license or permit must occur indoors. The establishment operation and design shall minimize any impact to adjacent uses, including the control of any odor by maintaining and operating an air filtration system so that no abatable nuisance odor is detectable at the property line of the permitted premises. with the exception of secure transporters, the establishments operation and design shall minimize any impact to adjacent uses, including the control of odor by maintaining and operating an air filtration system as follows:
 - a. The building shall be equipped with an activated carbon filtration system for odor control to ensure that air leaving the building through an exhaust vent first passes through an activated carbon filter.
 - b. The filtration system shall be maintained in working order and shall be in use. The filters shall be changed a minimum of once every 365 days.
 - c. Doors and windows shall remain closed, except for the minimum length of time needed to allow people to ingress or egress the building.

- d. An alternative odor control system is permitted if the special land use permit applicant submits and the municipality accepts a report by a mechanical engineer licensed in the State of Michigan demonstrating that the alternative system will control odor as well or better than the activated carbon filtration system otherwise required. The municipality may hire an outside expert to review the alternative system design and advise as to its comparability and whether in the opinion of the expert it should be accepted.
5. **Separation Distances.** Marihuana facilities and establishments shall not be located within five hundred (500) feet of any building used for education, child care, park, or addiction treatment purposes (herein referred to as “eligible buildings”) whether or not those eligible buildings are in the City of West Branch. This measurement shall be the distance from any building in which the facility or establishment is operating and an eligible building on another lot or to the lot line of a park. These required separation distances cannot be waived except as allowed below:
- a. The application shall provide evidence that all eligible buildings within the separation distance area have been notified by the applicant of the intent to seek a waiver from the separation distance requirements. Failure to satisfy this requirement may be grounds to deny a proposed separation distance waiver.
 - b. If an objection is not filed by the owners or tenants of an eligible building, the Planning Commission may waive the required separation distance, at the public hearing, in accordance with the standards provided in subsection (c).
 - c. The Planning Commission may grant a reduction in the separation distances upon finding that granting the reduced separation distance:
 - (1) will not cause a substantially adverse effect on neighboring properties and will not produce nuisance conditions to occupants of nearby properties or impair quality of life.
 - (2) will not otherwise impair the public health, safety and general welfare of the residents.
 - (3) Will not damage the neighborhood character.
 - d. Prior to granting the waiver, signed statements shall be required from each impacted property owner (whose property contains an eligible building within five hundred (500) feet of the proposed facility) which indicate that each owner of the property is aware of and in agreement with the waiver. All owners listed in the City tax records shall sign the statement.

Section 2: Severability

If any clause, sentence, paragraph or part of this Ordinance shall for any reason be finally adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Ordinance but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment is rendered.

Section 3: Saving Clause

The City of West Branch Zoning Ordinance, except as herein or heretofore amended, shall remain in full force and effect. The amendments provided herein shall not abrogate or affect any offense or act committed or done, or any penalty or forfeiture incurred, or any pending fee, assessments, litigation, or prosecution of any right established, occurring prior to the effective date hereof.

Section 4: Effective Date

The ordinance changes shall take effect upon the expiration of seven days after the publication of the notice of adoption.

Mayor, City of West Branch

City of West Branch Clerk

I, Lori Ann Clover, Clerk for the City of West Branch, hereby certify that the foregoing is a true and correct copy of Ordinance No. 22-02 of 2022 of the City of West Branch, adopted by at a meeting of the City Council held on April 18, 2022.

A copy of the complete ordinance text may be inspected or purchased at the West Branch City Hall at 121 N. Fourth Street, West Branch, Michigan.

Adopted: April 18, 2022 Published: April 28th, 2022 Effective: May 5, 2022 subject to PA 110 of 2006 as amended