

## **CHAPTER 812**

### **AUTHORIZING AND REGULATING MEDICAL MARIJUANA FACILITIES**

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#### **CROSS REFERENCES**

Ordinance - 2017-7 (September 5, 2017)

Amended by Ordinance 2018-1 (January 3, 2018)

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#### **Section 801.01 Purpose**

- A. It is the intent of this ordinance to authorize the establishment of certain types of medical marijuana facilities in the City of Evert and provide for the adoption of reasonable restrictions to protect 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 person. It is the intent of this ordinance to help defray administrative and enforcement costs associated with the operation of a marijuana facility in the City of Evert through imposition of an annual, nonrefundable fee of not more than \$5,000 on each medical marijuana facility licensee. Authority for the enactment of these provisions is set forth in the Medical Marijuana Facilities Licensing Act, MCL 333.27101 et seq.

### **808.03 PERMITS**

Each Bed and Breakfast Inn shall apply for an annual permit. The application shall be made to the city Manager and shall be accompanied by an annual fee of \$100.00.

### **808.04 INSPECTIONS**

Each Bed and Breakfast Inn shall allow reasonable inspections upon notice, by all building, fire and police officials of the City of Evert, or their designees.

### **808.05 ATTENDANTS**

The owner of the Bed and Breakfast Inn, its manager or their agents shall be present on the premises at all times when guests are present.

### **808.06 GROUNDS FOR NON-RENEWAL OR CANCELLATION**

A violation of any City ordinance, state statute, or other law or regulation, by the owner, manager, agents or guests, shall be considered grounds for non-renewal or cancellation of the permit authorized under Section 808.03 of this Ordinance.

### **808.07 SEVERABILITY**

If any section, paragraph, clause, or part of this Ordinance is, for any reason, held invalid by any court of competent jurisdiction, or any agency, department, or commission, empowered by state law for such purposes, such decision shall not affect the validity of the remaining provisions of this Ordinance and the application of those provisions to any person or circumstances shall not be affected thereby.

### **808.08 EFFECTIVE DATE**

This Ordinance shall become effective 30 days after publication.

- B. Nothing in this ordinance is intended to grant immunity from criminal or civil prosecution, penalty, or sanction for the cultivation, manufacture, possession, use, sale, or distribution of marijuana, 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, MCL 333.27101 et seq.; the Marihuana Tracking Act, MCL 333.27901 et seq.; and all other applicable rules promulgated by the State of Michigan.
- C. As of the effective date of this ordinance, marijuana 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, or possess marijuana with intent to manufacture, distribute, or dispense marijuana. Nothing in this ordinance is intended to grant immunity from any criminal prosecution under federal laws.

#### **Section 812.02 Definitions**

For the purposes of this ordinance:

- A. Any term defined by the Michigan Medical Marihuana Act, MCL 333.26421 et seq., shall have the definition given in the Michigan Medical Marihuana Act.
- B. Any term defined by the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq., shall have the definition given in the Medical Marihuana Facilities Licensing Act.
- C. Any term defined by the Marihuana Tracking Act, MCL 333.27901 et seq., shall have the definition given in the Marihuana Tracking Act.
- D. "Grower" means 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.
- E. "Licensee" means a person holding a state operating license issued under the Medical Marihuana Facilities Licensing Act, MCL 333.27101 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. "Marijuana facility" means an enterprise at a specific location at which a licensee is licensed to operate under the Medical Marijuana 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 Marijuana Act, MCL 333.26421 et seq.
- H. "Person" means an individual, corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, trust, or other legal entity.
- I. "Processor" means a licensee that is a commercial entity located in Michigan that purchases marijuana from a grower and that extracts resin from the marijuana or creates a marijuana-infused product for sale and transfer in packaged form to a provisioning center.
- J. "Provisioning center" means a licensee that is a commercial entity located in Michigan that purchases marijuana from a grower or processor and sells, supplies, or provides marijuana to registered qualifying patients, directly or through the patients' registered primary caregivers. Provisioning center includes any commercial property where marijuana 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 a caregiver in accordance with the Michigan Medical Marijuana Act, MCL 333.26421 et seq., is not a provisioning center for purposes of this article.
- K. "Safety compliance facility" means a licensee that is a commercial entity that receives marijuana from a marijuana facility or registered primary caregiver, tests it for contaminants and for tetrahydrocannabinol and other cannabinoids, returns the test results, and may return the marijuana to the marijuana facility.
- L. "Secure transporter" means a licensee that is a commercial entity located in this state that stores marijuana and transports marijuana between marijuana facilities for a fee.

### **Section 812.03 Authorization of Facilities and Fee**

- A. The maximum number of each type of marijuana facility allowed in the City of Evart, shall be as follows.

<u>Facility</u>	<u>Number</u>
Grower	Four (4)
Processor	Four (4)
Secure transporter	Two (2)
Provisioning center	Two (2)
Safety compliance facility	Two (2)

Stacking shall be allowed, pursuant to the Rules under the Medical Marihuana Facilities Licensing Act, as defined in the act.

This Ordinance shall allow Co-location, pursuant to the rules under the Medical Marihuana Facilities Act, as defined in the act.

- B. At least every Five (5) years after adoption of this ordinance, the Evert City Council shall review the maximum number of each type of marijuana facility allowed and determine whether this maximum number should be changed. The review and its findings shall be recorded in the minutes of the relevant meeting of the Evert City Council.
- C. A nonrefundable fee shall be paid by each marijuana facility licensed under this ordinance in an annual amount of not more than \$5,000.00 as set by resolution of the Evert City Council.

**Section 812.04 Requirements and Procedure for Issuing License**

- A. No person shall operate a marijuana facility in the City of Evert without a valid marijuana facility license issued by the Evert City Council pursuant to the provisions of this ordinance.
- B. Every applicant for a license to operate a marijuana facility shall file an application, in the office of the Evert City Manager, upon a form provided by the City of Evert. A copy of the applicable application is attached to this Ordinance and may be modified, from time to time, by the City Manager, or his/her designee.
- C. Every applicant for a license to operate a marijuana facility shall submit with the application a photocopy of the applicant's valid and current license issued by the State of Michigan in accordance with the Medical Marihuana Facilities Licensing Act, MCL 33.27101 et seq.

- D. Upon an applicant's completion of the above-provided form and furnishing of all required information and documentation, the (municipal official) shall accept the application and assign it a sequential application number by facility type based on the date and time of acceptance. The Evert City Manager shall act to approve or deny an application not later than fourteen (14) days from the date the application was accepted. If approved, the Evert City Manager shall issue the applicant a provisional license.
- E. A provisional license means only that the applicant has submitted a valid application for a marijuana facility license, and the applicant shall not locate or operate a marijuana facility without obtaining all other permits and approvals required by all other applicable ordinances and regulations of the City of Evert. A provisional license will lapse and be void if such permits and approvals are not diligently pursued to completion.
- F. Within fourteen (14) days from the applicant submitting proof of obtaining all other required permits and approvals and payment of the license fee, the (municipal official) shall approve or deny the marijuana facility license. The Evert City Manager shall issue marijuana facility licenses in order of the sequential application number previously assigned.
- G. Maintaining a valid marijuana facility license issued by the state is a condition for the issuance and maintenance of a marijuana facility license under this ordinance and continued operation of any marijuana facility.
- H. A marijuana facility license issued under this ordinance is not transferable.

**Section 812.05 License Renewal**

- A. A marijuana facility license shall be valid for one year from the date of issuance, unless revoked as provided bylaw.
- B. A valid marijuana facility license may be renewed on an annual basis by submitting a renewal application upon a form provided by the City of Evert and payment of the annual license fee. Application to renew a marijuana facility license shall be filed at least thirty (30) days prior to the date of its expiration.

**Section 812.06    Applicability**

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

**Section 812.07    Penalties and Enforcement**

- A. Any person who violate any of the provisions of this Ordinance shall be responsible for a municipal civil infraction and subject to the payment of a civil fine of not more than (\$500.00), plus costs. Each day a violation of this Ordinance continues to exist constitutes a separate violation. A violator of this Ordinance shall also be subject to such additional sanctions, remedies and judicial orders as are authorized under Michigan Law.
- B. A violation of this Ordinance is deemed to be a nuisance per se. In addition to any other remedy available at law, the City of Ewart may bring an action for an injunction or other process against a person to restrain, prevent, or abate any violation of this Ordinance.
- C. This Ordinance shall be enforced and administered by the Ewart City Manager, or such other official as may be designated from time to time by resolution of the Ewart City Council.

**Section 812.08    Severability.**

In the event that any 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 the enforceability of the remaining sections, provisions, phrases or words of this Ordinance.

**Section 812.09    Conflict of Laws:**

It is not the intent of this ordinance to be in conflict with any other state or federal law.

**ORDINANCE NO: 2013-1**

**AN ORDINANCE TO REGULATE THE DISPENSING OF MEDICAL MARIJUANA**

**THE CITY OF EVART ORDAINS:**

**MEDICAL MARIJUANA DISPENSARY**

**Section 1: Definitions**

- A. City means: City of Evart
- B. “Primary Caregiver”: A person who is operating a “Medical Marijuana Dispensary” by supplying “Medical Marijuana” for up to (5) “qualifying patients,” and who is registered with the Michigan Department of Community Health or successor agency hereinafter referred to as “ Department” for such purpose.
- C. “Medical Marijuana Dispensary”: A facility where a “Primary Caregiver” who is legally registered by the Department may lawfully assist up to (5) “qualifying patients” who are also legally registered by the Department with the acquisition of medical marijuana in accordance with the Michigan Medical Marijuana Act of 2008.
- D. “Marijuana”: means that term as defined in Section 7106 of the Public Health Code, 1978 PA 368, MCL 333.7106.
- E. “Medical Use”: means the acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer or transportation of marijuana or paraphernalia relating to the administration of marijuana to treat or alleviate a registered “qualifying patient’s” debilitating medical condition.
- F. “Qualifying Patient”: A person who has obtained a valid registration card from the Department allowing them to possess and purchase medical marijuana.

**Section 2: Purpose and Intent:**

It is determined necessary for the health, safety and welfare of the City to adopt this Ordinance regulating the location and operation of “Medical Marijuana Dispensaries” due to the following factors:



- A. Outside the purview of the Michigan Medical Marijuana Act the possession and use of marijuana (a Schedule I Drug) in the State of Michigan remains a misdemeanor offense. Possession with intent to deliver, delivery or manufacture of marijuana, remains felonies.
- B. Marijuana is classified federally as a “Schedule I Drug” under the Controlled Substances Act and is illegal to possess, manufacture, distribute or dispense. Schedule I drugs, which include heroin and LSD, have a high potential for abuse.
- C. In May, 2001, the United States Supreme Court issued its decision in *United States v. Oakland Buyers’ Cooperative and Jeffery Jones* holding that distribution of medical marijuana is illegal under the Federal Controlled Substances Act, 21 U.S.C Section 841 (“CSA”), and there is no medical necessity defense allowed under federal law.
- D. The location of, and easy availability of “Medical Marijuana Dispensaries” in close proximity to homes, apartments, schools, churches, licensed day care centers and public parks give an impression of legitimacy to such uses and have adverse effects upon children, established family relations, property values and public safety.
- E. The Michigan Medical Marijuana Act states that registered “Primary Caregivers” may receive compensation for assisting “qualified patients” in the medical use of marijuana, making them a likely commercial activity.

**Section 3: Geographic Restrictions:**

- A “Medical Marijuana Dispensary” shall not be located:
  - A. Within 500 feet of any residential zoning district.
  - B. Within 500 feet of the property line of any public or private school, any nursery school, day nursery, licensed day care center or any other building or location either rented or used in any way for the care or instruction of children under 18.
  - C. Within 500 feet of the property line of any church, house of worship or other religious facility or institution.
  - D. Within 500 feet of any public park, publically owned building or recreational area commonly used by minor children.

- E. Within 500 feet of any other “Medical Marijuana Dispensary” business.

*The distance measurement provided for in this subsection shall be a straight line from the boundary line of the “Medical Marijuana Dispensary” business to the boundary line of the location it is to be separated from.*

Section 4: **Zoning Restrictions:**

- A. “Medical Marijuana Dispensary” shall be located only within the C-2 district.

Section 5: **Special Use**

A “Medical Marijuana Dispensary” shall be permitted only by special land use approval granted by the City Council after review and recommendation of the Planning Commission, and after a public hearing pursuant to the discretionary decisions in the Zoning Ordinance of the City of Ewart. The following criteria must be satisfied and complied with for the special land use to be approved:

*(These criteria must also be complied with on an ongoing basis)*

- A. The hours of operation shall be restricted to between 8:00 A.M. and 8:00 P.M., Monday through Saturday.
- B. The business shall be subject to inspection by law enforcement, city building officials and members of the Department.
- C. A “Medical Marijuana Dispensary” shall at all times comply with each and every provision of the Michigan Medical Marijuana Act of 2008. (MCL 333.26421).
- D. A “Medical Marijuana Dispensary” must possess a valid registration card issued by the Department for such purpose.
- E. No alcoholic beverage shall be sold, conveyed or consumed on the premises of any “Medical Marijuana Dispensary.” Nor shall any person be present on the premises of a “Medical Marijuana Dispensary” while intoxicated and/or under the influence of alcohol or any controlled substance.
- F. Persons under the age of (18) years of age are not permitted to be on the premises of any “Medical Marijuana Dispensary” unless they possess a valid Medical Marijuana Registry Card issued by the State of Michigan.

- G. A "Medical Marijuana Dispensary" business must maintain a list of its "qualifying patients." This list is subject to inspection during business hours by members of law enforcement and by members of the Department.
- H. Use or consumption in any manner of marijuana or any illegal controlled substance is not permitted on the premises of any "Medical Marijuana Dispensary."
- I. The owner of a "Medical Marijuana Dispensary" shall obtain and display for inspection a valid sales tax license issued by the State of Michigan.
- J. Pay phones and/or vending machines, if any, shall be located inside the dispensary only.
- K. It shall be in violation of this ordinance for any "Medical Marijuana Dispensary" to employ any person who is not at least 18 years of age. No employee can have been convicted of a drug related felony. The owner and /or proprietor of a "Medical Marijuana Dispensary" is required to provide the local law enforcement agency, within whose boundaries it is located, a list of all its employees, including full name and date of birth, by January 15<sup>th</sup> of each year, or anytime a new employee is hired.
- L. Each "Medical Marijuana Dispensary" shall dispense a safe product. It is the sole responsibility of each "Medical Marijuana Dispensary" to test their products and list the name, quantity and percentage of the main active ingredient (Delta 9 Tetrahydrocannabinol commonly, known as THC) on the labels of its products. Copies of laboratory testing results showing the percentage level of THC must be available on site for inspection by employees of the Department of Community Health or law enforcement. When the product is dispensed it shall be packaged in child proof tamper resistant packaging that is sealed, and the contents will be clearly marked with its percentage of THC and weight.
- M. A ledger must be maintained of all transactions. This ledger shall contain the following information: type and source of medical marijuana dispensed; the "qualifying patients" name and Marijuana Registry ID Number; and the date and time dispensed.
- N. "Medical Marijuana Dispensaries" that display or sell drug paraphernalia may only display and sell paraphernalia that is otherwise legal under city and state law.
- O. Every "Medical Marijuana Dispensary" must comply with all local, county and state laws.

- P. Each “Medical Marijuana Dispensary” shall be liable for all costs associated with the investigation, prosecution, incarceration, booking, medical treatment, storage and destruction of evidence, and any other unspecified costs for the failure to comply with the provisions of this ordinance resulting in the arrest and prosecution of any employees, owners or patrons.
- Q. Every “Medical Marijuana Dispensary” shall keep its product in a locked, safe area within the Dispensary.

**Section 6: Criminal Penalty:**

Any person violating any of the provisions of this Ordinance and any of the articles stated within, shall upon conviction, be guilty of a misdemeanor, and shall be punished by imprisonment of not more than 90 days and/or a fine not to exceed \$500, plus costs of prosecution in the discretion of the court.

**Section 7: Conformity:**

Any “Medical Marijuana Dispensary” operating within the City at the time this ordinance is adopted will have (60) days from the date the ordinance takes effect to conform to all of the provisions contained therein.

**Section 8: Severability:**

Each of the provisions of this ordinance is severable from all other provisions. If any article, section, subsection, paragraph, sentence, clause or phrase of this ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Ewart hereby declares that it would have adopted this ordinance and each section, subsection, paragraph, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, paragraphs, sentences, clauses, phrases or portions be declared invalid or unconstitutional

**Section 9: Conflict of Laws:**

It is not the intent of this ordinance to be in conflict with any other state or federal law.


**Section 10: Ordinance Repeal:**

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 11: **Effective Date:**

This ordinance shall be effective upon adoption and publication.

Date: ~~April~~ <sup>MAY</sup> 6, 2013

  
ERIC SCHMIDT, Mayor

  
M. ANN PATTEE, City Clerk

I, M. Ann Pattee, City Clerk for the City of Evert, hereby certify that the above Ordinance was adopted on the 6<sup>th</sup>, day of ~~April~~ <sup>MAY</sup>, 2013.

  
M. ANN PATTEE, City Clerk

**ORDINANCE NO. 2017-7**

**AN ORDINANCE TO AUTHORIZE AND REGULATE THE ESTABLISHMENT OF  
MEDICAL MARIJUANA FACILITIES.**

THE CITY OF EVART ORDAINS:

**Section 1. Purpose**

- A. It is the intent of this ordinance to authorize the establishment of certain types of medical marijuana facilities in the City of Evert and provide for the adoption of reasonable restrictions to protect the community at large. It is the intent of this ordinance to help defray administrative and enforcement costs with a nonrefundable fee of not more than \$5,000 on licensee.
- B. Nothing in this ordinance is intended to grant immunity from criminal or civil prosecution, is not in compliance with the Michigan Medical Marihuana Act
- C. As of the effective date of this ordinance, marijuana remains classified as a Schedule I controlled substance under the Federal Controlled Substances Act. Nothing in this ordinance is intended to grant immunity from any criminal prosecution.

**Section 2. Definitions**

For the purposes of this ordinance:

- A. Any term defined by the Michigan Medical Marihuana Act, MCL 333.26421 et seq., shall have the definition given in the Michigan Medical Marihuana Act.
- B. Any term defined by the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq., shall have the definition given in the Medical Marihuana Facilities Licensing Act.
- C. Any term defined by the Marihuana Tracking Act, MCL 333.27901 et seq., shall have the definition given in the Marihuana Tracking Act.
- D. "Grower" means 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.
- E... "Licensee" means a person holding a state operating license issued under the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq.
- F. "Marijuana" or "marihuana" means that term as defined in the Public Health Code
- G. "Marijuana facility" means an enterprise at a specific location at which a licensee is licensed to operate, including a marijuana grower, processor, provisioning center, secure transporter, or safety compliance facility

- H. "Person" means an individual, corporation, limited liability Company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, trust, or other legal entity.
- I. "Processor" means a licensee that is a commercial entity that purchases marijuana from a grower, creates a marihuana-infused product for sale and transfer in packaged form.
- J. "Provisioning center" means a licensee that is a commercial entity that purchases marihuana from a grower or processor and sells, supplies, or provides marihuana to registered qualifying patients. Provisioning center includes any commercial property where marihuana is sold at retail to registered qualifying patients.
- K. "Safety compliance facility" means a licensee that is a commercial entity that receives marihuana, tests it for contaminants.
- L. "Secure transporter" means a licensee that is a commercial entity located in this state that stores marihuana and transports marihuana between marihuana facilities for a fee.

**Section 3. Authorization of Facilities and Fee**

- A. The maximum number of each type of marijuana facility allowed in the City of Evert, shall be as follows.

<u>Facility</u>	<u>Number</u>
Grower	Four (4)
Processor	Four (4)
Secure transporter	Two (2)
Provisioning center	Two (2)
Safety compliance facility	Two (2)

- B. At least every Five (5) years after adoption of this ordinance, the Evert City Council shall review the maximum number of each type of marijuana facility allowed.
- C. A nonrefundable fee shall be paid in an annual amount of \$5,000.00

**Section 4. Requirements and Procedure for Issuing License**

- A. No person shall operate a marijuana facility in the City of Evert without a valid marijuana facility license.
- B. Every applicant for a license to operate a marijuana facility shall file an application in the office of the Evert City Manager.
- C. Every applicant for a license to operate a marijuana facility shall submit with the application a photocopy of the applicant's valid and current license.
- D. Upon an applicant's completion of all required information the Evert City Manager shall act to approve or deny an application. If approved, the Evert City Manager shall issue the applicant a provisional license.
- E. A provisional license means only that the applicant has submitted a valid application for a marijuana facility license.
- F. Within fourteen (14) days from the applicant submitting shall approve or deny the marijuana facility license.
- G. Maintaining a valid marijuana facility license issued by the state is a condition for the issuance and maintenance of a marijuana facility
- H. A marijuana facility license issued under this ordinance is not transferable.

**Section 5. License Renewal.**

- A. A marijuana facility license shall be valid for one year from the date of issuance
- B. A valid marijuana facility license may be renewed on an annual basis

**Section 6. Applicability**

The provisions of this ordinance shall be applicable, whether the operations or activities associated with a marijuana facility were established without authorization before the effective date of this ordinance.



**Section 7. Penalties and Enforcement**

- A. Any person who violate any of the provisions of this Ordinance shall be responsible for a municipal civil infraction. Each day a violation of this Ordinance continues to exist constitutes a separate violation.
- B. A violation of this Ordinance is deemed to be a nuisance
- C. This Ordinance shall be enforced and administered by the Evert City Manager Section 8. Severability.

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

**Section 9. Effective Date.**

**That this Ordinance shall become effective immediately after enactment and upon publication thereof**

**Voting Yeas: Keysor, Joyce, Carlson, Foster**

**Nays: Elliott**

**Heather Pattee**

**Evert City Clerk**