



City of Ewart
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March 25, 2013

To: Honorable Mayor and Council Members
From: Zackary Szakacs, City Manager

Re: Ordinance 2013-1

Attached is the Medical Marijuana Ordinance, Ordinance No. 2013-1 for your review. The Planning Commission reviewed it with Mr. White and the recommendation is to approve it with the zoning restrictions as follows; "Medical Marijuana Dispensary" shall be located only within the C-2 district.

This is just for your review, please prepare for a Public Hearing on April 15, 2013 at 7:00PM.

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 Evert
- 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 15th 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 __, 2013

ERIC SCHMIDT, Mayor

M. ANN PATTEE, City Clerk

I, M. Ann Pattee, City Clerk for the City of Ewart, hereby certify that the above Ordinance was adopted on the ____, day of April, 2013.

M. ANN PATTEE, City Clerk