

**Ordinance No. 134  
Medical Marijuana**

**WHEREAS**, Section 7-1-101, MCA, states, "As provided by Article XI, section 6, of the Montana constitution, a local government unit with self-government powers may exercise any power not prohibited by the constitution, law, or charter;" and

**WHEREAS**, Section 7-1-104, MCA, states, "The powers of a self-government unit, unless otherwise specifically provided, are vested in the local government legislative body and may be exercised only by ordinance or resolution;" and

**WHEREAS**, Section 7-1-105, MCA, states, "All state statutes shall be applicable to self-government local units until superseded by ordinance or resolution in the manner provided in chapter 5, part 1 and subject to the limitations provided in this part;" and

**WHEREAS**, Section 7-1-106, MCA, states, "The powers and authority of a local government unit with self-government powers shall be liberally construed. Every reasonable doubt as to the existence of a local government power or authority shall be resolved in favor of the existence of that power or authority;" and

**WHEREAS**, Section 7-1-113, MCA, states, "(1) A local government with self-government powers is prohibited the exercise of any power in a manner inconsistent with state law or administrative regulation in any area affirmatively subjected by law to state regulation or control. (2) The exercise of a power is inconsistent with state law or regulation if it establishes standards or requirements which are lower or less stringent than those imposed by state law or regulation. (3) An area is affirmatively subjected to state control if a state agency or officer is directed to establish administrative rules governing the matter or if enforcement of standards or requirements established by statute is vested in a state officer or agency;" and

**WHEREAS**, Title 7, Chpt. 5, Part 1, MCA, provides standards and procedures for adoption of local ordinances; and

**WHEREAS**, Title 76, Chpt. 2, Part 3, MCA, authorizes municipalities to enact zoning to regulate the use and development of land and the activities of individuals and businesses within its boundaries subject to certain standards of procedure; and

**WHEREAS**, the voters of the State of Montana adopted Initiative 148 (the Medical Marijuana Act, Title 50, Chpt. 46, MCA (the "Act")) in November 2004 decriminalizing the use of Medical Marijuana if conducted for medicinal purposes subject to specific legal processes and restrictions; and

**WHEREAS**, Medical Marijuana continues to be classified as a Schedule I narcotic under the federal Controlled Substances Act and is listed as an illegal drug under Montana law such that the growing, distribution, and possession of Medical Marijuana, except as provided for in the Act, constitutes criminal activity; and

**WHEREAS**, it is widely understood the use of Medical Marijuana pursuant to the Act increased significantly in Montana and elsewhere after the United States Attorney General's office, on October 19, 2009, issued a memorandum requesting each state's United States Attorney to focus their law enforcement efforts regarding controlled substances on significant traffickers of illegal drugs rather than on those whose use of Medical Marijuana

appears to be "in clear and unambiguous compliance with existing state laws providing for the medical use of Medical Marijuana;" and

**WHEREAS**, in March 2008, the State of Montana's Department of Health and Human Services had 736 registered qualifying patients and 233 caregivers and in March 2010 the number of registered qualifying patients increased to 12,081 and the number of caregivers increased to 2,797 - clearly demonstrating a remarkable increase in the prevalence of Medical Marijuana in Montana's communities; and

**WHEREAS**, the Town solicited comments from members of the public through a work session, public comment and Law Enforcement comment regarding observations and concerns regarding Medical Marijuana; and

**WHEREAS**, the Town Commission finds a legitimate governmental interest exists in prohibiting the display, consumption, or smoking of Medical Marijuana in an open or visible manner on the ways of the Town of Ennis open to the public because the inadvertent direct and indirect exposure to Medical Marijuana has the potential to significantly affect the health, legal, and financial interests of the citizens of Ennis; and

**WHEREAS**, the Town Commission intends the phrase "open or visible manner" to include but not be limited to visual or sensory observations whether during the act or within a reasonable time thereafter; and

**WHEREAS**, the Town Commission intends a violation of the prohibition on public display, smoking, or consumption of Medical Marijuana on the ways of the Town of Ennis open or visible to the public to be a civil offense; and

**WHEREAS**, the Town Commission understands the need to create specific provisions related to the licensing of Medical Marijuana businesses to ensure those businesses and their employees are in full conformance with the Act and the Ennis Municipal Code; and

**WHEREAS**, a requirement that any Medical Marijuana retail establishment be separated by no less than 500 linear feet from a school grounds/facility and the Town of Ennis Commission finds this separation requirements is necessary to control the availability and use of Medical Marijuana proximate to the community's schools; and

**WHEREAS**, Medical Marijuana is now recognized as medicine in the United States by the Veterans Affairs Department. Veterans living in a state that allow Medical Marijuana can now legally obtain Medical Marijuana, and their veteran medical doctor can prescribe cannabis as medicine; and

**WHEREAS**, the proposed amendments to the Ennis Municipal Code included in this ordinance have been properly submitted, and reviewed, and all necessary public notice was given for all public hearings; and

**NOW, THEREFORE, BE IT ORDAINED** by the Town of Ennis Commission of the Town of Ennis, Montana, that:

## **Chapter 1 Definitions**

Caregiver- means an individual, 18 years of age or older who has agreed to undertake responsibility for managing the well-being of a person with respect to the medical use of Medical Marijuana. A qualifying patient may have only one caregiver at any one time.

Commercial purposes- where medicinal Medical Marijuana is grown, produced, cultivated or provided for resale, barter or gift to a person not a resident of that household or where more than two patients acquire medicine from a residential home business.

Grow house- a commercial grow facility where Medical Marijuana is grown produced or cultivated.

Electrical inspection- An inspection by a licensed electrician to insure entire facility meets national electric code.

Involuntary Exposure- any circumstance where one individual may consume second hand smoke without knowledge or consent.

Marijuana- means all plant material from the genus cannabis containing tetrahydrocannabinol (THC) or seeds of the genus capable of germination.

Medical Marijuana- means the uses of Medical Marijuana described in 50-46-102, MCA. Other phrases herein such as the "use of Medical Marijuana" or "the medical use of Medical Marijuana" shall have the same meaning.

Medical use- means: (a) the acquisition, possession, cultivation, manufacture, delivery, transfer, or transportation of Medical Marijuana or paraphernalia by a qualifying patient or a caregiver relating to the consumption of Medical Marijuana to alleviate the symptoms or effects of a qualifying patient's debilitating medical condition; (b) the use of Medical Marijuana or paraphernalia by a qualifying patient to alleviate the symptoms or effects of the patient's debilitating medical condition; or (c) the use of paraphernalia by a caregiver for the cultivation, manufacture, delivery, transfer, or transportation of Medical Marijuana for use by a qualifying patient.

Odor abatement system- is defined as a barrier that eliminates the smell of Medical Marijuana from exiting the building.

Open to the Public- Means anywhere in the Town of Ennis that is commonly used by public.

Production- includes the manufacture, planting, cultivation, growing, or harvesting of a substance or drug regulated under the provisions of this chapter.

Security inspection- An inspection from the Ennis Police department to insure that all the required security measures are in place and functioning well.

Store front- A retail outlet where patients licensed to that caregiver may either walk in, or by appointment, purchase their medicine on-site.

## Chapter 2

Medical marijuana storefront is a business and single location used solely for the distribution and sale to patients of Medical Marijuana. The location or business is not to be used for the testing, growing or processing of Medical Marijuana. A Medical Marijuana grow house is a business and location to be used solely for cultivation and/or processing of Medical Marijuana. A Medical Marijuana delivery license is required for anyone delivering Medical Marijuana in the Town of Ennis. A medical marijuana delivery license is included with a storefront, growing and or processing license. A processing license is for a business wishing to alter raw medicine in to different forms of medicine for medicinal marijuana purposes. This does not allow the facility to be used as a store front, grow house, testing or delivery unless the applicable license or licenses have been obtained. A medical marijuana testing facility license is solely for the purpose of testing marijuana for chemical components ,

structure or abnormalities in the medicine and is not licensed to grow, process, deliver, or be used as a store front.

That 3-15- shall be added for the following business license fee:

The Registration and License Fee of \$25 includes a Delivery License. Growing and/or Processing occurring at the same physical location only require a single license, however all business activities must be listed on the license application.

**Store front license fees**

1. Registration and License Fee \$25.00
2. Special Services and Regulatory Inspection Fee \$30.00

**Growing license fees**

1. Registration and License Fee \$25.00
2. Special Services and Regulatory Inspection Fee \$60.00

**Processing License Fee**

1. Registration and License Fee \$25.00
2. Special Services and Regulatory Inspection Fee \$30.00
3. Any food preparation must be done in a commercial kitchen.

**Delivery License fee**

1. Registration and License Fee \$25.00
2. There is no Special Services or Regulatory Fee for a Delivery license

**Testing facility license fee**

1. Registration and License Fee \$25.00
2. Special Services and Regulatory Inspection Fee \$30.00

**Changes to be made to Title 3 in the Ennis Municipal Code:**

3-2-13 Insert the word "enforced" before "laws of the United States".

3-2-15 Insert the word "enforced" before "federal statute"

Amend 3-1-3 for definition for conditional license, Medical Marijuana store front, Medical Marijuana grow house, Medical Marijuana delivery as follows:

Medical Marijuana storefront is a business and single location used solely for the distribution and sale to patients of Medical Marijuana. The location or business is not to be used for the growing or processing of Medical Marijuana.

A Medical Marijuana grow house is a business and location to be used solely for cultivation of Medical Marijuana.

A Medical Marijuana delivery license is required for anyone delivering medical marijuana in the Town of Ennis, unless they have already obtained a store front license.

### **Chapter 3**

#### **Medical Marijuana**

##### **Applicability Failure to Maintain State Authorization.**

For purposes of this chapter, the definitions, words, phrases, and expressions as set forth in this chapter are to be construed the same as those set forth in the Montana Medical Marijuana Act (Title 50, Chpt. 46, MCA). Any individual or entity licensed under this chapter to conduct any transaction, use or business, involving Medical Marijuana, in addition to the requirements of this chapter, is subject to all other requirements of this title, the Ennis Municipal Code, and the Montana Medical Marijuana Act and any limits on possession, clean air, and all other provisions of Title 50, Chapter 46, and any applicable administrative rules established by the State. Should such rules or laws change, any person or entity licensed under this chapter shall immediately come into compliance with any newly adopted rules. Notwithstanding the above, nothing in the Ennis Municipal Code shall be construed to authorize any person or entity to perform any act or conduct any enterprise not in conformance with state law. Compliance with this Title does not shield any person, corporation, or other legal entity from the requirements of, or enforcement by, other governing entities, or from civil liabilities. Each individual or entity issued a license under this chapter shall at all times maintain authorization from the State of Montana to acquire, possess, cultivate, manufacture, deliver, transfer, or transport Medical Marijuana. Failure to maintain authorization under the Medical Marijuana Act shall be cause for immediate suspension of a license issued under this chapter and may be cause for revocation or cause for criminal prosecution as provided by law.

##### **License - Application - Fee Change - Confidentiality.**

**Business Licenses.** Any individual or entity desiring to conduct any transaction, use, or business regarding Medical Marijuana within the Town of Ennis must first submit and obtain approval for an application for a business license under this chapter from the Town Clerk. Prior to receiving any business license(s), all fees must be payed and all documentation provided that all the inspection(s) have been preformed and passed for such license(s) as established by this Title. An activity where a duly licensed medical doctor engages in the review of a persons medical condition for purposes of recommending Medical Marijuana and who does not provide Medical Marijuana to a qualifying patient is not subject to these licensing requirements but may be subject to other requirements of this code.

There shall be the following types of business licenses related to Medical Marijuana activities conducted in the Town of Ennis regardless of whether the Medical Marijuana is sold, bartered, exchanged, or gifted:

**Storefront/Retail Locations:** Any person or entity that provides a permanent location other than the residence of the persons or entity's qualifying patient(s) where a transaction or use related to Medical Marijuana is engaged in for more than three (3) qualifying patients registered by the State of Montana to the applicant or the applicants employees or agents shall prior to engaging in such transaction or use obtain a Medical Marijuana Store Front license. The maximum number of Medical Marijuana Store Front licenses shall be three (3) within the Town of Ennis. Prior to approval the store front must meet all security requirements, and present documents verifying the security equipment is in place and functioning well.

**Delivery:** Any person or entity that delivers Medical Marijuana within the Town of Ennis to more than three (3) qualifying patients residing in the Town of Ennis or another entity regardless of whether the Medical Marijuana is sold, bartered, exchanged, or gifted shall prior to engaging in such activity obtain a Medical Marijuana Delivery license.

**Growing and/or Processing:** Any person or entity that operates a facility for the purpose of growing and/or processing Medical Marijuana shall prior to engaging in such activity obtain a Medical Marijuana Grow License. Prior to the license being issued the grow facility must pass all security, electrical and ventilation requirements, and present documents verifying that they have passed inspection. The Town of Ennis has the right to request that the fire marshal inspect the facilities as well.

**Processing:** All processing of food or sundry products with Medical Marijuana as an ingredient shall meet all security requirements required as set forth herein. All food products must be prepared in a licensed commercial kitchen.

**Testing facilities:** All Medical Marijuana testing facilities shall meet the security requirements and ventilation requirements.

A person or entity desiring to engage in an activity related to Medical Marijuana must obtain a separate license for each activity described above except a person or entity obtaining a Medical Marijuana Store Front license may also under said license deliver Medical Marijuana from that location without obtaining a separate Medical Marijuana Delivery license. A person who has obtained a medical marijuana Growing license may process at the same facility without obtaining a separate processing license. All installation and inspections are the applicants responsibility, and must be completed before applying for any license.

An application under this chapter, in addition to the requirements of 5.04.060.B, shall include the following:

- A. The name of all owners/principals of the business as applicable and the name of all agents, contractors or employees, if any;
- B. Documentation demonstrating the applicant and all owners/principals, agents, contractors or employees, as applicable, that may be involved in transactions regarding Medical Marijuana within the Town of Ennis are registered with the State of Montana under Title 50, Chpt. 46, MCA, and are duly authorized by state law to acquire, possess, cultivate, manufacture, deliver, transfer, or transport Medical Marijuana;

- C. Documentation of any inspection(s) required must be provided to the Town Clerk.
- D. A statement addressing how the applicant will comply with the security requirement provisions of 5.06.040; and
- E. Each applicant for a business license shall provide a detailed statement regarding the nature of activities related to Medical Marijuana for which the applicant is engaged in and the specific license(s) for which an application is being submitted.

An application for business license under this chapter is a public document except that the names of all agents, employees and/or contractors and the number of qualifying patients provided to the Town of Ennis in fulfillment of the requirements of this chapter are to be kept on a separate form and are to be considered confidential by the Town of Ennis unless disclosure is required by law. Nothing herein shall prevent a duly authorized agent of the Town of Ennis from sharing the information described in this section with other authorized federal, state, or local law enforcement as necessary to perform official duties. \*\*\*Site State Statute here. MCA \*\*\*

A license issued under this chapter is not transferable.

**Variance.**

Variance for the number of Storefront/Retail Locations:

- A. The applicant shall provide the commission with documentation to support the need of the community to exceed the limit of storefront/retail locations.
- B. The applicant shall provide the commission with documentation to support its ability to abide by all the necessary requirements of that location, include security requirements.
- C. The variance application accompanied by a proper Business License request shall be submitted to the commission for their consideration.

**Inspection.**

The authorization to inspect as a condition of receiving a business license under this chapter, local law enforcement, may without notice ring normal business hours inspect any premise under license pursuant to this chapter to determine whether the licensee is in compliance with the Montana Medical Marijuana Act or any other state or local regulation, and may inspect the number of plants or amount of Medical Marijuana or usable Medical Marijuana on the premises or in control of the licensee to determine whether these amounts corresponds to the amounts established by Title 50, Chpt. 46, MCA, which the licensee is authorized to lawfully possess. Businesses must at that time be able to present documentation for all patients to include their Medical Marijuana identification number, and expiration date for current patients applicable to that location to justify number of plants, and/or quantity of medicine present. Proof that all employees who handle plants are licensed caregivers or licensed patients and are in compliance with current state statute. A minimum of three inspections must be made annually.

**Security Requirements.**

Prior to issuance of a license under this chapter, a Medical Marijuana commercial business where any amount of Medical Marijuana or usable Medical Marijuana is stored on the premises and/or where Medical Marijuana is grown in any amount shall be secured at all times by a physical barrier with suitable locks and also by an electronic barrier or alarm that

is designed to detect entry by unauthorized persons at any time. In addition, any Medical Marijuana or Usable Medical Marijuana grown or stored on the premises after normal business hours shall be kept in a security safe incorporated into the buildings structure or securely attached thereto. Security cameras must be placed internally and externally of the facility along with recording equipment for logging the recorded footage.

## **Chapter 4 PUBLIC USE AND DISPLAY OF Medical Marijuana.**

### **Purpose and Intent.**

The purpose of this chapter is to identify acts regarding the medical use of Medical Marijuana within the Town of Ennis that are not authorized to be conducted in a manner open or visible to the general public. In addition, the purpose of this chapter is to identify acts related to smoking, consuming, or displaying Medical Marijuana in certain public areas are to be punished as civil acts and as such shall be subject to civil penalties. The purpose of establishing these acts where the use is further limited by the Town of Ennis as civil is to protect the public's health, safety, and general welfare.

It is the intent of this chapter to limit the visible or limit open display, smoking, or consumption of Medical Marijuana where a likelihood another person would not be involuntarily or illegally be exposed to Medical Marijuana.

### **State law superseded and applicable.**

The provisions of this chapter shall supersede Title 50, Chpt. 46, MCA, only in so far as this chapter expands the limitations on the use of Medical Marijuana. All other provisions of state law related to Medical Marijuana or Medical Marijuana shall be applicable.

### **Public display, smoking, or consumption of Medical Marijuana – prohibited**

No person authorized by authorized by Title 50, Chapter 46, MCA require, possess, cultivate, manufacture, deliver, transfer, or transport Medical Marijuana may, on the ways of the Town of Ennis open to the public, display, smoke, or consume Medical Marijuana in an open and visible manner. "Ways of the Town of Ennis open to the public" means anywhere within the Town of Ennis that is commonly used by the public.

### **Violation and Penalty.**

Any person found guilty of a violation of any offense under this chapter shall be penalized by a fine not less than one hundred dollars (\$100), or no more than three hundred dollars (\$300), or if the infraction is a repeat offense, a penalty not to exceed five hundred dollars (\$500) for each repeat violation.

### **No Private Right of Action.**

Nothing in this chapter shall be construed to create a private right of action regarding the acquisition, possession, cultivation, manufacture, delivery, transfer, or transport of either Medical Marijuana or Medical Marijuana.

## Chapter 5 Zoning

### Home Based Business

A Home Based Business for the purpose of cultivating, processing or distributing of Medical Marijuana shall be restricted in the following manner:

Cultivating and processing and distribution of Medical Marijuana for commercial purposes will only be permitted in the designated zoning areas in the Town of Ennis.

There is no restriction for Home Based business for the purposes of record keeping.

Dispensing of Medical Marijuana in a residence must have no more than 3 patients. The intent of this is to insure there is no change in the make up of the neighborhood, turning a residential district into a commercial district. Upon any complaint, the issue will be reviewed by the commission and that entity may have to come into compliance with the regulations of this chapter.

Medical Marijuana Store Fronts are limited to the following zones C-CR, HC, C-I, and P-I. Medical Marijuana Grow houses are limited to the following zones, HC, C-I, AG 640/160, and P-I.

The following sections of the Town of Ennis ordinances are amended as follows:

- 11-3C-2(b) to allow Medical Marijuana store front to be permitted use;
- 11-3D-1(b) to allow Medical Marijuana grow house and Medical Marijuana store fronts as permitted uses;
- 11-3E-2 to allow Medical Marijuana grow houses and Medical Marijuana store fronts as permitted uses;
- 11-3D-2 to allow Medical Marijuana grow houses and Medical Marijuana store fronts as permitted uses;
- 11-3A-2 to allow Medical Marijuana grow houses and Medical Marijuana store fronts as permitted uses;

#### **Amend Paragraph 11-4-12 as follows:**

No signage can contain the words "weed", "joint", "pot", or other slang terms for Medical Marijuana. Whenever used in signage, the word "Marijuana" Or "Cannabis" must be preceded by the word "medical". Images of smoking cigarettes or images of a Medical Marijuana leaf are prohibited. All exterior signage must comply with the provisions of the Community Signage Regulations found in 11-4-12 of the Ennis, Montana Town Code.

## Chapter 6

Any activity involving Medical Marijuana must meet all requirements of state law including, but not limited to, the standards of Title 50, Chapter 46, MCA, and limits on possession, clean air, and all other provisions of Title 50, Chapter 46, and any applicable administrative rules established by the State. Should such rules or laws change, any Medical Marijuana

facility shall immediately begin any required process to come into compliance with the new rules. This includes submittals for review of applications to the Town of Ennis as they may relate to zoning, business licensing, or other municipal programs. Compliance with Town of Ennis zoning regulations, and other provisions of this title, does not shield any person, corporation, or other legal entity from the requirements of, or enforcement by, other governing entities, or from civil liabilities.

A. Unless specifically exempted, any person or an existing or proposed entity intending to conduct activities which meet the definitions of Agriculture, Manufacturing, Office or Retail as established in 6-8-1 which is for the purpose of growing, processing, distribution, and/or any other activity related to Medical Marijuana shall in addition to this section, comply with all other provisions of the Ennis Municipal Code, and shall not be located within 500 linear feet of the exterior property line of:

1. All schools or facilities owned or operated by Ennis School District whether located inside or outside the Town of Ennis limits; or

2. All private schools, not including home schools, whether located inside or outside the Town of Ennis limits, which provide instruction in the class range from Kindergarten to 12th grade and which are either subject to Section 20-5-109, MCA, or listed as a Kindergarten provider by the Madison County Superintendent of Schools.

3. For purposes of this section, specified distances will be measured in a straight line, without regard to intervening structures from the property line of a school as stated in subsections 1 and 2, above, regardless of whether those schools are located within the jurisdictional limits of the Town of Ennis, to the property line of the business providing Medical Marijuana.

B. Any activities meeting the definitions of Agriculture, Manufacturing, Office or Retail as established in \*\*\*\* which is for the purpose of growing, processing, distribution, and/or any other activity related to Medical Marijuana may not be located in any zone other than those stated above **in section\*\*\*\*\***.

C. The requirements of subsections do not apply to:

1. An individual registered qualifying patient who possesses Medical Marijuana in accordance with the limits and requirements of Title 50, Chapter 46, MCA solely for that qualifying patients own use; or

2. To a caregiver providing care to not more than two qualifying patients who reside within the same dwelling as the caregiver. The caregiver and qualifying patients shall maintain appropriate state agency qualification at all times that Medical Marijuana is present.

D. Air Discharge Control: Any Medical Marijuana growing or processing operation that contains one or more Medical Marijuana plants at any one time shall provide a forced air vent discharge point, with odor abatement, that is (located no closer than 30 feet from an adjacent property line or a residence);

E. Any person making application for a zoning approval for a Medical Marijuana business shall provide evidence of DPHHS approval as a caregiver at the time of application and shall maintain such DPHHS approval at all times. Failure to maintain approval immediately suspends zoning approval to operate a Medical Marijuana business in the Town of Ennis.

F. These regulations are for review of applications to the Town of Ennis and do not restrict property owners from establishing more stringent standards for their properties.

Adopted: November 5, 2010