

ORDINANCE NO. 1155

AN ORDINANCE AMENDING SECTIONS OF CHAPTER 10, "GENERAL OFFENSES," OF THE CITY OF FORT MORGAN MUNICIPAL CODE

WHEREAS, on November 6, 2012, the voters of Colorado approved Amendment 64 which amended the Colorado Constitution to authorize the personal use of marijuana in certain circumstances; and,

WHEREAS, the Fort Morgan Municipal Code currently prohibits the possession, use, display, or consumption of marijuana under § 10-6-20; and,

WHEREAS, the City Council hereby finds that its prohibition on the possession of marijuana may be in conflict with Section 16 of Article XVIII of the Colorado Constitution; and,

WHEREAS, the City Council desires to consider amendments to the Fort Morgan Municipal Code to reconcile it with the requirements of Article XVIII; and,

WHEREAS, the Fort Morgan Municipal Code is also lacking provisions for other acts contrary to public decency, peace, safety, and welfare; and,

WHEREAS, the City Council has authority to create and pass ordinances for the enforcement of the general police powers pursuant to Colorado Constitution Article XX Section 6 and the Colorado Revised Statutes § 31-15-401; and,

WHEREAS, the Fort Morgan City Council finds and determines that this Ordinance is necessary for the preservation of the public peace, safety, and welfare.

THEREFORE, BE IT ORDAINED BY THE COUNCIL OF FORT MORGAN,

Section 1. The Fort Morgan Municipal Code Section 10-6-20 is hereby repealed and replaced with the following:

Sec. 10-6-20. Possession of marijuana, marijuana products and marijuana accessories.

(a) The following terms have the following meanings for purposes of this Code:

Marijuana means all parts of the plant of the genus cannabis, whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin, including marijuana concentrate. Marijuana does not include industrial hemp, nor does it include fiber produced from the stalks, oil or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink or other product.

Marijuana accessories means any equipment, products or materials of any kind which are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing or containing marijuana, or for ingesting, inhaling or otherwise introducing marijuana into the human body.

Marijuana product means concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments and tinctures.

Openly and publicly means in a manner perceptible by or in a place accessible to the members of the community.

Public area or building means a place open to the general public which includes a place to which the public or a substantial number of the public has access without restriction including but not limited to streets, highways, public sidewalks, transportation facilities including rest areas, places of amusement, parks, playgrounds, City owned open space, common open space owned by owners' associations, common areas of public buildings and facilities that are generally open or accessible to members of the public without restriction, parking lots and areas, and shopping centers or shopping areas.

- (b) It is unlawful for a person under the age of twenty-one (21) years to consume, possess, transfer, transport, or purchase marijuana products, marijuana accessories or less than one (1) ounce of marijuana.
- (c) It is unlawful for a person twenty-one (21) years of age or older to possess, transfer, transport or purchase less than one (1) ounce of marijuana, marijuana products or marijuana accessories for any reason other than personal use unless the person has obtained a current, valid license to operate a marijuana product manufacturing facility, testing facility, cultivation facility or retail marijuana store or is acting in his or her capacity as an owner, employee or agent of a licensed manufacturing, testing, cultivation or retail marijuana facility.
- (d) It is unlawful for a person of any age to consume marijuana openly and publicly or in a manner that endangers others.
- (e) It is unlawful to make marijuana grown for personal use available for sale in any manner.
- (f) It is unlawful to possess, use, display, transfer, sell, transport, grow or purchase marijuana products, marijuana accessories or less than one (1) ounce of marijuana in any public area or building, except that marijuana or marijuana products may be transported on public streets, roads and highways if the person has obtained a current, valid license to operate a marijuana product manufacturing facility, testing facility, cultivation facility or retail marijuana store or is acting in his or her capacity as an owner, employee or agent of a licensed manufacturing, testing, cultivation or retail marijuana facility.
- (g) Any person violating the provisions of this Section shall be punished by a fine.

Section 2. The following sections are hereby added to the Fort Morgan Municipal Code:

Sec. 10-1-30. Complicity.

Every person who attempts to commit, conspires to commit, aids, abets, or encourages the commission of any act declared herein to be in violation of this Chapter, whether individually or in connection with one (1) or more other

persons, or as a principal agent or accessory, shall be guilty of such offense, and every person who falsely, fraudulently, forcibly or willfully induces, causes, coerces, requires, permits or directs another to violate any provision of this Chapter is likewise guilty of such offense.

Sec. 10-1-40. Criminal attempt.

(a) It shall be unlawful for a person to attempt to commit an offense. A person commits criminal attempt if, acting with the kind of culpability otherwise required for commission of an offense, he engages in conduct constituting a substantial step toward the commission of the offense. A substantial step is any conduct, whether act, omission, or possession, which is strongly corroborative of the firmness of the actor's purpose to complete the commission of the offense.

Factual or legal impossibility of committing the offense is not a defense if the offense could have been committed had the attendant circumstances been as the actor believed them to be, nor is it a defense that the crime attempted was actually perpetrated by the accused.

(b) A person who engages in conduct intending to aid another to commit an offense commits criminal attempt if the conduct would establish his complicity under section 10-1-30 were the offense committed by the other person, even if the other is not guilty of committing or attempting the offense.

(c) It is an affirmative defense to a charge under this section that the defendant abandoned his effort to commit the crime or otherwise prevented its commission, under circumstances manifesting the complete and voluntary renunciation of his criminal intent.

(d) Attempted violation under this Section is a lesser included violation of every violation of the provisions of this Title and shall be punishable by a fine.

Sec. 10-1-50. Criminal conspiracy.

(a) It shall be unlawful for a person to conspire to commit an offense. A person commits conspiracy to commit a crime if, with the intent to promote or facilitate its commission, he agrees with another person or persons that they, or one or more of them, will engage in conduct which constitutes a crime or an attempt to commit a crime, or he agrees to aid the other person or persons in the planning or commission of a crime or of an attempt to commit such crime.

(b) No person may be convicted of conspiracy to commit a crime, unless an overt act in pursuance of that conspiracy is proved to have been done by him or by a person with whom he conspired.

(c) If a person knows that one with whom he conspires to commit a crime has conspired with another person to commit the same crime, he is guilty of conspiring to commit a crime with the other person or persons, whether or not he knows their identity.

(d) It is an affirmative defense to a charge of conspiracy that the offender, after conspiring to commit a crime, thwarted the success of the conspiracy, under circumstances manifesting a complete and voluntary renunciation of his criminal intent.

(e) Criminal conspiracy shall be punishable by a fine.

Sec. 10-1-60. Accessory to a violation.

(a) It shall be unlawful for any person to be an accessory to an ordinance violation. A person is an accessory to an ordinance violation if, with intent to hinder, delay or prevent the discovery, detection, apprehension, prosecution, conviction or punishment of another for the commission of an ordinance violation, that person renders assistance to such other person. For the purpose of this Section, render assistance means to:

- (1) Harbor or conceal such person;
- (2) Warn such other person of impending discovery or apprehension, except that this does not apply to a warning given in an effort to bring such other person into compliance with the law;
- (3) Provide such other person with money, transportation, weapon, disguise or other thing to be used in avoiding discovery or apprehension;
- (4) By force, intimidation or deception, obstruct anyone in the performance of any act which might aid in the discovery, detection, apprehension, prosecution, conviction or punishment of such other person; or
- (5) Conceal, destroy or alter, or assist in concealing, destroying or altering, any physical evidence that might aid in the discovery, detection, apprehension, prosecution, conviction or punishment of such other person.

(b) Criminal Accessory is punishable by a fine.

Sec. 10-2-50. Menacing.

- (a) It shall be unlawful for any person to, by threat or physical action, intentionally place another person in fear of imminent bodily injury.
- (b) Menacing shall be punishable by a fine.

Sec. 10-2-60. Window peeping.

- (a) It shall be unlawful for any person to look, peer or peep into, or to loiter around or within view of, any window of a building occupied as the residence of another for the purpose of observing the actions of the occupants thereof to such an extent as to harass or be injurious to the occupants or with the intent of observing any person undressed or in the act of dressing or undressing.
- (b) Window peeping shall be punishable by a fine.

Sec. 10-3-15. Criminal mischief.

Any person who knowingly damages or destroys the real or personal property of another, including property owned by the person jointly with another person or property owned by the person in which another person has a possessory or proprietary interest, in the course of a single criminal episode, where the aggregate damage to the real property is less than two thousand dollars (\$2,000.00), commits a misdemeanor and shall be punished by a fine.

Sec. 10-3-45. Price switching.

- (a) It is unlawful for any person willfully to alter, remove or switch the indicated price of any unpurchased goods, wares or merchandise owned or held by and offered or displayed for sale by any store or other mercantile establishment; provided, however, that this Section shall not apply to goods, wares or merchandise of value of two thousand dollars (\$2,000.00) or more.
- (b) Price switching shall be punishable by a fine.

Sec. 10-6-300 Obstructing public ways, property.

- (a) Obstructing Traffic. It is unlawful for any person to obstruct in any manner any sidewalk, public highway, street or alley in the City, or to place in any doorway or driveway or on any sidewalk, public highway, street or alley in the City any item or article which may cause or tend to cause the obstruction thereof or any part thereof.
- (b) Interfering with the Use of Streets or Sidewalks. It is unlawful for any person or assemblage of persons, whose standing, remaining or congregating on any public highway, street, alley or sidewalk in the City shall obstruct, interfere with or prevent the free, unobstructed and reasonable use of that public

- highway, street, alley or sidewalk by any other person, to fail or refuse to yield to the reasonable use or passage of any other person on that public highway, street, alley or sidewalk, or to fail or refuse to move on, disperse or cease such obstruction or interference immediately on being so ordered by any police officer of the City or other authorized peace officer.
- (c) Nothing herein shall be prohibit the use of public sidewalks, highways, streets, alleys, driveways, or other public rights of way pursuant to a valid permit issued by the City or other governmental entity who owns or controls said public right of way.
 - (d) Obstructing public ways shall be punishable by a fine.

Section 3. The Fort Morgan Municipal Code Section 10-2-120 (b) is hereby repealed and replaced with the following:

Sec. 10-2-120. Restraining orders and violations.

- (b) A person commits the crime of violation of a restraining order if, after such person has been personally served with any such order or otherwise has acquired from the Court actual knowledge of the contents of any such order, he or she:
- (1) contacts, harasses, injures, intimidates, molests, threatens or touches any protected person; or,
 - (2) enters or remains on premises or comes within a specified distance of a protected person or premises and such conduct is prohibited by a restraining order; or
 - (3) violates a term of the restraining order or participates in conduct that is prohibited by a restraining order.

Section 4. The following Fort Morgan Municipal Code sections are hereby amended as follows:

Sec. 10-3-40. Theft.

- (a) A person commits theft when he or she knowingly obtains or exercises control over a thing of value, which is equal to or less than ~~one~~ TWO thousand dollars (\$~~1,000.00~~ 2,000.00), of another without authorization, or by threat or deception, and:

Sec. 10-3-50. Theft by lessee.

- (a) A lessee shall be presumed to have committed theft if, having lawfully obtained possession for temporary use of the personal property, which is equal to or less than ~~one~~ TWO thousand dollars (\$~~1,000.00~~ 2,000.00), of another, which is available only for hire, he or she shall fail to return the same within ten (10) days after actual written notice has been given by or on behalf of the lessor and actually received by the lessee. Such notice shall not be given until after the expiration of the term of the original lease. The provisions of this Section shall not apply to unlawful occupancy of land or of a building.

Sec. 10-4-40. Illegal possession or use of tobacco products by a minor.

- (c) During any trial for a violation of Subsection (a) above, any package or container with labeling indicating the contents of such package or container shall be admissible into evidence, and the information contained on any label on such package or container shall be admissible into evidence and shall not constitute hearsay. A jury or a judge, whichever is appropriate, may consider the information upon such label in determining whether the contents of the package

or container were composed in whole or in part of a tobacco product. A label which identifies the contents of any package or container as cigarettes, cigars, chewing tobacco, or smokeless tobacco, OR ANY OTHER TOBACCO PRODUCT AS DEFINED ABOVE shall constitute prima facie evidence that the contents of the package or container were composed in whole or in part of a tobacco product.

Section 5. The Fort Morgan Municipal Code subsection (6) is hereby added:

Sec. 10-6-220. Indecent exposure.

(a) Any person who performs any of the following in a public place or where the conduct may reasonably be expected to be viewed by members of the public commits public indecency:

(6) An act of knowingly exposing his or her genitals or breasts to the view of any person under circumstances in which such conduct is likely to cause affront or alarm to the other person.

Section 6. The following definition of *Tobacco product* within Section 10-4-10 of the Fort Morgan Municipal Code is repealed and replaced as follows:

Sec. 10-4-10. Definitions.

Tobacco product means:

- (a) cigarettes, cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, Cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or for smoking in a pipe or otherwise, or both for chewing and smoking, or
- (b) Any product that contains nicotine or tobacco or is derived from tobacco and is intended to be ingested, inhaled, smoked, placed in the oral or nasal cavities, or applied to the skin of an individual, including but not limited to, cigarettes, cigars, cigarillos, kreteks, bidis, hookah, and pipes; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff and snuff flour, snus, plug and twist, fine-cut, and other chewing or dipping tobacco; shorts, refuse scraps, clippings, cuttings, and seepings of tobacco; and any other kinds and forms of tobacco, prepared in such manner as to be suitable for both chewing or for smoking in a cigarette, pipe, or otherwise, or both for chewing and smoking. Tobacco product also includes cloves and any other plant matter or product that is packaged for smoking; or
- (c) Any electronic device or any component thereof that can be used to deliver nicotine to the person inhaling from the device, including but not limited to, an electronic cigarette, cigar, cigarillo, hookah, hookah pin, pipe, or nicotine vaporizer; and nicotine or other chemical liquids, extracts, and oils intended to be used therein.

Section 7. Validity. If any part or parts of this Ordinance are for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance

and each part hereof irrespective of the fact that any one part or parts be declared invalid.

Section 8. Repeal. All or parts of Ordinances covering the same matters as embraced in this Ordinance are hereby repealed and all Ordinances or parts of Ordinances inconsistent with the provisions of this Ordinance are hereby repealed, except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any Ordinance hereby repealed prior to the effective date of this Ordinance.

Section 9. Interpretation. This Ordinance shall be so interpreted and construed as to effectuate its general purpose. Article and section headings of the Ordinance shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or extent of the provisions of any Article or Section thereof.

Section 10. Certification. The City Clerk shall certify to the passage of this Ordinance and make not less than three copies of the adopted Code available for inspection by the public during regular business hours.

Section 11. Severability. In the event any part of this Ordinance is found to be unenforceable by a Court of competent jurisdiction, it shall not affect the enforceability of the other portions of the Ordinance.

Section 12. Effective date. The City Council hereby finds, determines, and declares that this ordinance is necessary for the immediate preservation of the public peace, health, and safety. These changes shall be effective five (5) days after final publication of this ordinance.

INTRODUCED, READ, ADOPTED ON FIRST READING AND ORDERED PUBLISHED on the 5th day of August, 2014.

THE CITY COUNCIL OF THE CITY OF FORT MORGAN, COLORADO

[SEAL]

/s/ Terry McAlister
By: Terry McAlister
Mayor

Attest:

/s/ John Brennan
John Brennan
City Clerk

PASSED, APPROVED AND ADOPTED ON FINAL READING AND ORDERED PUBLISHED this 19th day of August, 2014.

THE CITY COUNCIL OF THE CITY OF FORT MORGAN, COLORADO

[SEAL]

/s/ Terry McAlister
By: Terry McAlister
Mayor

Attest:

/s/ John Brennan

John Brennan
City Clerk

STATE OF COLORADO)
COUNTY OF MORGAN) ss. **CERTIFICATE**
CITY OF FORT MORGAN)

I, John Brennan, the duly appointed, qualified Clerk of the City of Fort Morgan, Colorado, do hereby certify that the foregoing **Ordinance No. 1155** was, as a proposed Ordinance, duly and legally presented to the City Council of the City of Fort Morgan, Colorado, on the 5th day of August, 2014. Said ordinance, as proposed, was duly read at length at said meeting, and thereafter the same was, on the 9th day of August, 2014, published in *The Fort Morgan Times*, a daily newspaper of general circulation published and printed in the City of Fort Morgan, Morgan County, Colorado. Said proposed ordinance was again taken up and read a second time, duly and legally, passed, approved and adopted at a regular meeting of the City Council held on the 19th day of August, 2014. Within five (5) days after its final passage, said **Ordinance No. 1155** was published in *The Fort Morgan Times*, a daily newspaper of general circulation published and printed in the City of Fort Morgan, Morgan County, Colorado.

/s/ John Brennan

John Brennan
City Clerk