

ORDINANCE NO. 1099

AN ORDINANCE EXTENDING A MORATORIUM ON MEDICAL MARIJUANA DISPENSARIES IN THE CITY OF FORT MORGAN

WHEREAS, the City of Fort Morgan is a legally and regularly created, established, organized and existing municipal corporation under the provisions of Article XX of the Constitution of the State of Colorado and the home rule charter of the City (the “Charter”); and,

WHEREAS, Article IV, Section 4(d)(2) of the *Charter* authorizes City Council to pass ordinances for the protection of the public health, safety, and welfare, and provide penalties for the violation thereof; and,

WHEREAS, over the past several months many communities in Colorado have been faced with the issue of how to regulate the new business of medical marijuana dispensaries, and City Council wishes to address this issue before an application is made within the City limits; and,

WHEREAS, City Council has been made aware that Staff has received an inquiry from an individual who may be interested in opening and operating a business within the City which would offer medical marijuana for sale and such activities related to such business; and,

WHEREAS, Article 18, Section 14 of the Colorado Constitution, adopted by the voters of the State of Colorado on November 7, 2000, created a limited exception from criminal liability under Colorado law for seriously ill persons who are in need of marijuana for specified medical purposes and who obtain and use medical marijuana under the limited, specified circumstances described in Amendment 20; and,

WHEREAS, Article 18, Section 14 of the Colorado Constitution authorized the sale of medical marijuana for use in the treatment of debilitating medical conditions; and,

WHEREAS, On October 20, 2009, City Council imposed a one-hundred and eighty day (180) moratorium for the submission, acceptance, processing, and approval of all applications for City permits, licenses, and land use approvals relating to the operation of a person that grows, produces or sells medical marijuana to allow the City to investigate the City’s ability to regulate such uses, and to develop and implement any appropriate regulations deemed necessary by the City Council; and

WHEREAS, City Council has determined that the imposition of an additional **one-hundred and eighty (180) day** moratorium on the submission, acceptance, processing, and approval of all applications for City permits, licenses, and land use approvals relating to the operation of a person that grows, produces or sells medical

marijuana will be necessary to allow the City to fully investigate the City's ability to regulate such uses, and to develop and implement any appropriate regulations deemed necessary by the City Council; and,

WHEREAS, the City does not have any current regulations pertaining to persons that grow, produce or sell medical marijuana, the City will suffer irreparable harm if a moratorium on the submission, acceptance, processing, and approval of City permits, licenses, and land use applications related to the operation of such facilities is not imposed; and,

WHEREAS, the duration of the moratorium imposed by this ordinance is reasonable in length, and is no longer than is required for the City to properly investigate, develop, and if appropriate, adopt and implement any regulations deemed necessary with respect to persons that grow, produce or sell marijuana; and,

WHEREAS, the State legislature is currently working on legislation that could impact regulations adopted by the City, and the process is better served if the City understands the State's regulatory scheme before adopting the local regulatory scheme.

WHEREAS, proprietors and other persons desiring to open a business that grows, produces or sells medical marijuana or persons that wish to grow or produce marijuana will not be unfairly prejudiced by the imposition of the temporary moratorium imposed by this ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT MORGAN, COLORADO, THAT:

Section 1. Upon the adoption of this ordinance, a moratorium is imposed upon the submission, acceptance, processing, and approval of all applications for permits, licenses, and land use approvals by the City of Fort Morgan related to a person that grows, produces or sells, or proposes to grow, produce or sell medical marijuana and pursuant to the authority granted by Article 18, Section 14 of the Colorado Constitution, City Staff is directed to refuse to accept for filing and shall not to process or review any such new applications during the moratorium period.

Section 2. The moratorium imposed by this ordinance shall commence at the end of the current moratorium which will expire on April 9, 2010, and shall expire **one-hundred and eighty (180) days** thereafter, unless sooner repealed. The period of effectiveness of this Ordinance is referred to herein as the "Effective Period".

Section 3. As the growing, production and sale of marijuana is not currently addressed in the *Code of the City of Fort Morgan*. The growing, production and sale of marijuana shall not be permitted within the City of Fort Morgan during the duration of the moratorium. Any notice of intent received prior to the date of this moratorium may

proceed on a temporary basis dependent upon the outcome of the proposed regulations.

Section 4. Before the expiration of the moratorium imposed by this ordinance, Staff will work with the City Attorney to review the legal authority of the City to regulate persons growing, producing and selling medical marijuana pursuant to Article 18, Section 14 of the Colorado Constitution. Such investigations shall be completed promptly and with due diligence. The City Attorney shall prepare appropriate regulations with respect to such persons for consideration by the City Council.

Section 5. The Council hereby finds, determines and declares that it has the power to adopt this ordinance pursuant to: (i) the Local Government Land Use Control Enabling Act, Article 20 of Title 29, C.R.S.; (ii) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal zoning powers); (iii) Section 31-15-103, C.R.S. (concerning municipal police powers); (iv) Section 31-15-401 C.R.S. (concerning municipal police powers); (v) Section 31-15-501 (concerning municipal power to regulate businesses); (vi) the authority granted to home rule municipalities by Article XX of the Colorado Constitution; and (vii) the powers granted by the *Charter* of the City of Fort Morgan.

Section 6. The City Council of the City of Fort Morgan hereby finds, determines, and declares that an emergency exists and that this ordinance is necessary for the immediate preservation of public property, health, welfare, peace or safety. The adoption of this ordinance on an emergency basis is necessary in order to prevent a person from filing an application for a permit, license, or land use approvals relating to the operation of a person that grows, produces or sells medical marijuana until the City has had a reasonable opportunity to determine: (i) the extent of the city's regulatory authority over persons that grow, sell, or produce medical marijuana; and (ii) what regulations, if any, should be imposed by the City upon such persons. Failure to immediately impose the moratorium provided for in this ordinance will potentially allow a person to submit an application for a permit, license, or land use approval from the City (including but not limited to an application for a development permit; an application for a business license; an application for sales tax license; or a land use application), and to possibly acquire certain rights with respect to the processing of such applications before the City has the reasonable opportunity to evaluate the possible community impacts that might be associated with the operation of facilities farming, producing, or selling medical marijuana and to implement appropriate regulations with respect to such facilities. This could lead to the City being forced to allow the operation of a facility that sells medical marijuana in a location or in such a manner that would be out of character with the community and which would negatively affect the cultural, environmental, and neighborhood areas of the City, and potentially present issues related to crime. The City Council further determines that the adoption of this ordinance as an emergency ordinance is in the best interest of the citizens of the City of Fort Morgan.

Section 7. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional in a court of competent

jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and shall not affect the validity of the remaining portions thereof.

INTRODUCED, READ AND PASSED UPON FIRST READING this 16th day of March 2010, for publication once in a newspaper of the City of Fort Morgan, Colorado, at least ten days before its final passage.

[SEAL]

THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

BY: /s/ Terry L. McAlister
Mayor

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ATTEST:

/s/ Cheryl Winberg
Deputy City Clerk

FINALLY PASSED, ADOPTED AND APPROVED this 6th day of April, 2010, for publication once in the newspaper of the City of Fort Morgan, Colorado, within five days of the final passage, to take effect upon its passage.

[SEAL]

THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

BY: /s/ Terry L. McAlister
Mayor

ATTEST:

/s/ Andrea Strand
City Clerk

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

CERTIFICATE

I, Andrea Strand, the duly appointed, qualified and acting Clerk of the City of Fort Morgan, Colorado, do hereby certify and attest that the foregoing **Ordinance No. 1099**

was, as a proposed **Ordinance** duly and legally presented to the City Council of the City of Fort Morgan, Colorado, at a Regular Meeting on the 16th day of March, 2010. Said **Ordinance**, as proposed, was duly read at length at said regular meeting, and thereafter the same was, on the day of 19th day of March, 2010 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 6th day of April, 2010. Within five (5) days after its final passage, said **Ordinance** 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/ Andrea Strand
City Clerk