

ORDINANCE NO. 1068

AN ORDINANCE AMENDING SEC. 20-12 ENTITLED “FIREWORKS; PUBLIC DISPLAY PERMIT REQUIRED.”

WHEREAS, Sec. 20-12 of *The Fort Morgan Municipal Code*, was previously adopted to address public displays of fireworks within the City of Fort Morgan; and,

WHEREAS, City Staff including the Fire Department and the Police Department have recommended that this section be reconstructed to provide a more comprehensive section; and,

WHEREAS, it is the intent of this amendment to safeguard the health, safety, and welfare of the citizens of the City of Fort Morgan and to eliminate the harm to health and property within the City; and,

WHEREAS, the Mayor and City Council desire to amend Sec. 20-12, Fireworks; Public Display Permit Required in its entirety.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF FORT MORGAN, COLORADO that Sec. 20-12 be hereby amended in entirety as follows:

Sec. 20-12. Fireworks.

Section 1. Purpose. The purpose of this ordinance is to eliminate the harm to health and property within the City and is designed to safeguard the health, safety, and welfare of the citizens and protect property.

Section 2. Scope of Authority. Unless exempted by provisions contained herein, the provisions of this ordinance shall apply to all persons within the City.

Section 3. Definitions. As used in this ordinance, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:

(a) **City:** The City of Fort Morgan

(b) **Fire chief:** The fire chief of the City of Fort Morgan.

(c) **Fireworks:** Any combustible or explosive composition, or any substance or combination of substances, or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation,

and shall include blank cartridges, toy pistols, toy cannons, toy canes, or toy guns in which any such explosives are used, the type of unmanned balloons which require fire underneath to propel the same, firecrackers, lady fingers, torpedoes, skyrockets, Roman candles, Day-Glo bombs, sparklers, or other device containing any such explosive substance. The term "fireworks" shall not include model rockets and model rocket engines which are designed, sold, and used for the purpose of propelling recoverable aero models, when actually used for that purpose and used under the supervision of the science instructor or other competent adult and when the place and time of firing the sky rockets or missiles has been approved by the fire chief. The term "fireworks" shall not include toy pistols, toy canes, toy guns or other devices in which paper or plastic caps manufactured in accordance with the United States Department of Transportation regulations for packing and shipping of toy paper or plastic caps are used and such toy paper or plastic caps are manufactured as provided therein except that no toy paper or plastic cap shall contain more than twenty-five hundredths of a grain of explosive composition per cap. Each package containing toy paper or plastic caps offered for retail sale shall be labeled to indicate the maximum explosive content per cap. The sale and use of these toy paper or plastic caps shall be permitted at all times. Nothing in this section shall be construed as applying to the manufacture, storage, sale, or use of signals necessary for the safe operation of railroads or other classes of public or private transportation, nor applying to the military or naval forces of the United States or of this state, or to peace officers. Nothing in this section shall be construed as forbidding the sale and use of blank cartridges for ceremonial, theatrical or athletic events.

(d) **Person:** Any individual, firm, organization, partnership, unincorporated association or corporation.

(e) **Sell or Display:** Selling, offering to sell, exhibiting, or possessing with intent to give away, sell, or offer to sell within the City.

(f) **Use:** Purchasing, possessing, setting off or otherwise causing to explode or discharge or burn, any firecrackers, torpedo, rocket, or other fireworks or explosives of inflammable material, or to discharge them or throw them from land, air, or highway into any area of the City. This prohibition includes any substance, compound, mixture, or article that in conjunction with any other substance or compound would be dangerous from any of the foregoing standpoints. This provision shall also mean and include casting, throwing, lighting, or firing any squib, rocket, cracker, torpedo, grenade, gun, revolver, pistol, cap or cartridge, or other fireworks or combustible firecrackers of any kind.

Section 4. Prohibitions, Unlawful Acts. Except as provided herein, it shall be unlawful for any person to sell or display, offer to sell, possess, give away, store, or use fireworks within the City. It shall be unlawful for a person to allow or permit fireworks to be used or exploded on his premises or premises under his control. It shall be unlawful

for any person to mishandle or misuse fireworks. The following constitute unlawful mishandling or misuse of fireworks:

- (a) It shall be unlawful to throw any firework, whether such firework is burning or not.
- (b) It shall be unlawful to throw or otherwise use fireworks from an automobile or other motor vehicle, whether the vehicle is moving or standing still.
- (c) It shall be unlawful to store, keep, sell, or use any fireworks within 50 feet of any gasoline pump, gasoline filling station, gasoline bulk station or any building in which gasoline or volatile liquids are sold in quantities in excess of one gallon.
- (d) It shall be unlawful to discharge or use any fireworks within 1,000 feet of any hospital, sanitarium, nursing home, or infirmary.
- (e) It shall be unlawful to discharge or use any fireworks in, under, or on an automobile or other motor vehicle, whether moving or standing still.
- (f) It shall be unlawful to discharge or use fireworks within 50 feet of any retail fireworks stand or facility where fireworks are sold.
- (g) It shall be unlawful to mishandle or misuse fireworks in any other way.
- (h) It shall be unlawful for anyone under the age of sixteen (16) to purchase fireworks.
- (i) It shall be unlawful for any person to sell fireworks to anyone under the age of sixteen (16).

Section 5. Exceptions. The following exceptions shall apply:

- (a) It shall be lawful for a person to possess the fireworks, specified in paragraph (c) below, on and between the dates of June 1 and July 15 of each year. Provided that, nothing in this provision shall be construed to allow the sale or display of any fireworks.
- (b) Between the dates of June 1 and July 15, excluding July 4, it shall be lawful for a person to use fireworks, herein specified between the hours of 8:00 a.m. and 10:00 p.m. On July 4, it shall be lawful for a person to use fireworks specified herein between 8:00 a.m. to 11:59 p.m.

(c) The following fireworks may be possessed or used, as listed in this section, provided that nothing in this section shall be construed to allow the possession or use of any firework that is not a Class 1.4G formally known as Class C firework as defined by federal law or as prohibited under state law:

(1) Cylindrical fountains, with total pyrotechnic composition not exceeding 75 grams in weight, and inside tube diameter not exceeding three-fourths inch.

(2) Cone fountains, with total pyrotechnic composition not exceeding 50 grams each in weight.

(3) Wheels, with total pyrotechnic composition not exceeding 60 grams for each driver unit or 240 grams for each wheel, and with inside tube diameter or driver units not exceeding one-half inch.

(4) Illuminating torches and colored fire in any form, with total pyrotechnic composition not exceeding 100 grams each.

(5) Dipped sticks, the pyrotechnic composition of which contains any chlorate or perchlorate not exceeding five grams, and all sparklers.

(6) Smoke devices known as smoke balls, or tubes containing a pyrotechnic mixture, which upon ignition produces a visible cloud of black, white or colored smoke.

(d) Nothing in section 6 shall be construed as forbidding the possession or use of any fireworks by those in charge of a public exhibition. Such an exhibition may be held on any day or days of the year provided that it is held at a location which does not endanger persons or property, and provided that a pyrotechnic expert is used, and provided that those in charge of the exhibition obtain a permit and comply with section 8 and 9 herein and all applicable state laws or regulations. As used in this section "pyrotechnic expert" means an individual who by experience and training has demonstrated the required skill and ability for safely setting up and discharging displays of fireworks or as otherwise defined by state law.

Section 6. Use of Fireworks in Public Parks and on Public Land. It shall be unlawful for any person to discharge or possess any fireworks upon public land or in any public park, owned by the City, provided, however, that such use shall be permitted under the following circumstances:

(a) This provision shall not apply to possession of fireworks in the otherwise lawful use of public rights of way such as sidewalks and planting strips. This subsection shall not be a defense to a charge of obstructing traffic or otherwise obstructing a public right of way.

(b) The Superintendent of Parks may designate limited areas for use during the hours permitted by the Chapter for the discharge of fireworks as allowed by section 6 of this Chapter. Otherwise, lawful discharge and possession of fireworks as allowed by section 6 in such areas shall not be a violation of this section. In doing so, the Superintendent shall consider:

- (1) The sensitivity of the area's environment, wildlife and wildlife habitat;
- (2) The inconvenience and nuisance to abutting property owners;
- (3) The safety and suitability of the area as a place for the discharge of fireworks; and
- (4) Danger of fire or other destruction of public property and improvements from the use of the fireworks.

(c) Upon designation of any area, it may be signed by the City Manager or his designee and posted by July 1 of each year for use on July 4 between the hours of 8:00 a.m. and 11:59 p.m.

(d) Nothing in this ordinance shall be deemed to limit the authority of the City Manager or the Police Chief to allow public exhibitions or display of fireworks under a permit issued in accordance with the provisions of this ordinance.

(e) The use of fireworks permitted under this ordinance may be suspended at anytime by order of the Fire Chief or his designee when it is determined that the use of fireworks pose a threat to the community as the result of drought or any other condition.

Section 7. PUBLIC EXHIBITIONS—PERMIT APPLICATIONS—CONTENT. An applicant for a permit for a public exhibition or display of fireworks shall file with the City Clerk a written application therefore, duly subscribed and sworn by the applicant. Such application shall set forth the following:

- (a) The name of the association, organization, or corporation sponsoring the display, together with the names of the persons to be in charge of the display.
- (b) The date and time of day at which the display is to be held.
- (c) The exact location planned for the display.
- (d) A description setting forth the name, age, address, and experience of the persons who are to do the actual firing and discharging of the fireworks.

(e) The number and kinds of fireworks to be discharged.

(f) The manner and place of the storage of such fireworks between the date of purchase and the date of display.

(g) A diagram or sketch of the grounds on which the display is to be held, showing the point at which the fireworks are to be discharged, the location of all buildings, streets, trees, telephone, or telegraph lines or overhead obstructions within a distance of 50 yards of the point of discharge, and the lines behind which the public will be restrained.

Section 8. Public Exhibitions—Permit Applications—Filing. An application for a permit for a public exhibition or display of fireworks shall be filed with the City Clerk at least 20 days before the date set for the display. A copy of such application shall be sent at once to the Fire Chief or his designee, who shall make or cause to be made, an investigation of the site of the proposed display and investigate the competence and skill of the persons in charge of the firing and discharge of the fireworks. If satisfied that the display will be conducted lawfully and in accordance with this ordinance, he shall so advise the City Clerk within 10 days, who shall issue the permit. The applicant for a permit shall at the time of filing application, pay to the City Clerk a fee of \$250, the sum of which shall be refunded in the event the application for such permit is denied. Each applicant shall also pay to the City Clerk a nonrefundable investigation fee of \$50.

(a) City Manager may sign the application/permit if he finds that the display proposed in the application meets all safety requirements and obtains the recommendation of the Fire Chief.

(b) The applicant shall have a valid and current license issued by the State of Colorado authorizing the holder to engage in public fireworks display.

(c) The applicant shall procure and maintain a policy or policies of public liability and property damage insurance issued by a company or companies authorized to do business in the State of Colorado in the following minimum amounts: \$500,000 for injuries to any one person in one accident or occurrence; \$1,000,000 for injuries to two or more persons in any one accident or occurrence; \$500,000 for damage to property in any one accident or occurrence; \$1,000,000 combined single limit for any one accident or occurrence. In addition, the City is to be an additional named insured and the policy shall provide for the immediate notification of the City by the insurer of any cancellation of any policy.

Section 9. Application For Seller's Permit—Conditions For Issuance. Applications for seller's permits shall be made to the City Clerk at least twenty (20) days prior to the start of any permitted activities. Applications shall be signed by the retail seller, if an individual, or by the duly authorized officer, if an association or corporation. It is unlawful for a fireworks manufacturer, wholesaler or supplier to make application for or

to obtain a retail sales permit on behalf of any retailer. Seller's permits for the sale of those fireworks allowed pursuant to section 6 of this Chapter shall be issued only to applicants meeting the following conditions:

(a) The retailer or person in charge and responsible for the retail operation shall be 18 years of age or older, of good moral character and of demonstrated responsibility.

(b) The applicant shall have a valid and current license issued by the State of Colorado authorizing the holder to engage in the retail sale of fireworks.

(c) The applicant shall own or have the right to possess a temporary fireworks stand complying with the requirements of this ordinance.

(d) The applicant shall procure and maintain a policy or policies of public liability and property damage insurance issued by a company or companies authorized to do business in the State of Colorado in the following minimum amounts: \$500,000 for injuries to any one person in one accident or occurrence; \$1,000,000 for injuries to two or more persons in any one accident or occurrence; \$500,000 for damage to property in any one accident or occurrence; \$1,000,000 combined single limit for any one accident or occurrence. In addition, the City is to be an additional named insured and the policy shall provide for the immediate notification of the City by the insurer of any cancellation of any policy.

(e) The permit holder's location or place of business shall be only in those areas or zones within the City where commercial activities are authorized under applicable zoning law.

(f) The applicant shall post with the City a performance bond or a cash deposit in an amount not less than \$200 conditioned upon the prompt removal of the temporary fireworks stand and the cleaning up of all debris from the site of the stand, which deposit shall be returned to the applicant only in the event that the applicant removes the temporary stand and cleans up all debris to the satisfaction of the City. In the event the applicant fails to do so, the performance bond or cash deposit shall be forfeited. In no event shall the applicant be entitled to the return of the performance bond or cash deposit if he or she has failed to remove the stand and clean up all debris by the tenth (10th) of July following the sales period.

(g) No seller's permit shall be issued for a location that fails to meet the criteria set forth in Section 10 of this Chapter, including the minimum stand separation requirement. When necessary, in order to determine priority as to a proposed location, the earliest date and time of filing of an application for a seller's permit with the City Clerk shall be controlling.

(h) The application fee for a permit described in this Chapter shall be \$250.00.

Section 10. Standards for Firework Vending Facilities. The facilities of all seller's permit holders shall conform to the following minimum standards and conditions:

Temporary Firework Stands

(a) Temporary fireworks stands need not comply with all provisions of the building code; provided, however, that all such stands be erected under the supervision of the City Building Inspector, who shall require all stands to be constructed in a safe manner ensuring the safety of attendants and patrons. In the event any temporary stand is wired for electricity, the wiring shall conform to the electrical code.

(b) No temporary fireworks stand shall be located within 50 feet of any other building or structure, nor within 100 feet of any gasoline station, oil storage tank or premises where flammable liquids or gases are kept or stored.

(c) Each temporary fireworks stand must have at least two exits that shall be unobstructed at all times.

(d) Each temporary fireworks stand shall have, in a readily accessible place, at least two, 2A rated pressurized water fire extinguishers that are in good working order.

(e) All weeds, grass, and combustible material shall be cleared from the location of the temporary fireworks stand and the surrounding area to a distance of not less than 25 feet, measured from the exterior walls of the temporary fireworks stand.

(f) No smoking shall be permitted in or near a temporary fireworks stand for a distance of not less than 50 feet measured from the exterior walls of the temporary fireworks stand. Signs stating:

No smoking within 50 feet

shall be posted on the exterior of each wall of the temporary fireworks stand.

(g) Each temporary fireworks stand shall have a person who is 18 years old or older in attendance at all times the stand is stocked. Stock from the stand shall not be removed and stored in any other building during the sales period without the express approval of the City Fire Marshal.

(h) All unsold stock and accompanying litter shall be removed from the temporary fireworks stand by 12:00 noon on the fifteenth (15th) day of July of each year.

(i) No temporary fireworks stand shall be located within 500 feet of any other temporary fireworks stand.

(j) Each temporary fireworks stand shall have provisions for sufficient off-street parking, at least 15 spaces, to avoid impeding a continuous flow of traffic at entrances and exits from the premises.

(k) No person shall discharge any fireworks within two hundred fifty feet of the exterior walls of any temporary fireworks stand. Signs stating:

***No discharge of fireworks
within 250 feet***

shall be posted on the exterior of all walls of the temporary fireworks stand.

(l) Signs stating that no person under the age of sixteen (16) can legally purchase or possess fireworks within the City limits of the City of Fort Morgan.

Retail Vending Facilities

(a) Any retail establishment that obtains a permit to sell fireworks must comply with all federal, state and local fire codes with regard to the construction and maintenance of its building and storage of fireworks.

(b) All public safety notice requirements found in the temporary fireworks requirements set forth above shall apply to Retail Vending Facilities.

Section 11. Standards for Public Fireworks Displays. All public fireworks displays shall conform to the following minimum standards and conditions:

(a) All public fireworks displays must be planned, organized and discharged by pyrotechnician, "Pyrotechnician" means an individual who by experience and training has demonstrated the required skill and ability for safety setting up and discharging displays of special fireworks or as otherwise defined by state law.

(b) A permit must be obtained from the City as required by section 8 of this Chapter.

(c) When, in the opinion of the Chief of Police or Fire Marshal, such requirement is necessary to preserve the public health, safety and welfare, the permit may require that a City Fire Department pumper and a minimum of two trained City Firefighters shall be on site thirty (30) minutes prior to and after the shooting of the event. The exhibitor shall repay the City for all costs and wages due to

firefighters for such time. All compensation for City Fire Department apparatus will be set by the Fire Chief and shall be designated to the City's general fund.

(d) All combustible debris and trash shall be removed from the area of discharge for a distance of three-hundred (300) feet in all directions.

(e) All unfired or "dud" fireworks shall be disposed of in a safe manner.

(f) A minimum of two 2A-rated pressurized water fire extinguishers and one fire blanket shall be required to be at the fireworks discharge site.

(g) The permit shall be immediately revoked at any time the Chief of Police or Fire Marshal or a designee deems such revocation is necessary due to noncompliance, weather conditions such as, but not limited to, extremely low humidity or high winds. The display shall also be cancelled by accidental ignition of any form of combustible or flammable material in the vicinity due to falling debris from the display.

(h) Areas of public access shall be determined by the Chief of Police, Fire Chief, or a designee and maintained in an approved manner.

Section 12. Penalty. Any person, firm or corporation violating any provision of this ordinance shall be fined not less than Fifty (\$50) Dollars or more than One-Thousand (\$1,000) Dollars for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

INTRODUCED, READ AND PASSED UPON FIRST READING this 20th day of May, 2008, for publication once in a newspaper of the City of Fort Morgan, Colorado, at least ten days before its final passage.

THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

[SEAL]

BY: */s/ Jack L. Darnell*
Mayor

ATTEST:

/s/ Andrea Strand
City Clerk

FINALLY PASSED, ADOPTED AND APPROVED this 3rd day of June, 2008, for publication once in the newspaper of the City of Fort Morgan, Colorado, within five days of the final passage, to take effect five days after final publication.

THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

[SEAL]

BY: /s/ Jack L. Darnell
Mayor

ATTEST:

/s/ Andrea Strand
City Clerk

STATE OF COLORADO)
COUNTY OF MORGAN)
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. 1068** 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 20th day of May, 2008. Said **Ordinance**, as proposed, was duly read at length at said regular meeting, and thereafter the same was, on the 23rd day of May, 2008, 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 3rd day of June, 2008. 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