

ORDINANCE NO. 1125

AN ORDINANCE AMENDING THE EXISTING CHAPTER 6, "NUISANCES AND SANITATION," FORT MORGAN MUNICIPAL CODE (2010)

WHEREAS, this Ordinance is intended to amend Chapter 6, "Nuisances and Sanitation," of the Fort Morgan Municipal Code (2010)

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

Section 1. That the following Articles of Chapter 6, "Nuisances and Sanitation," are hereby deleted in their entirety:

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| Article 1 | Nuisances |
| Article 2 | Food Regulation |

Section 2. That Chapter 6, Article 1, "Nuisances," is hereby adopted as follows:

**ARTICLE I
Nuisances**

Sec. 6-1-10. Definitions.

For the purpose of the provisions of this Article, the following words and phrases shall have the meanings respectively ascribed to them by this Section:

Garbage means animal and vegetable waste resulting from the handling, preparation, cooking, storage or consumption of food.

Inoperable vehicle means any vehicle not in working order or that lacks current legal registration.

Junk shall mean to include, but is not limited to, any old or discarded material, such as metal, paper, or rags or anything that is regarded as worthless or trash.

Refuse means all putrescible and nonputrescible solid wastes including garbage, rubbish, debris, ashes, street cleanings, dead animals, grass clippings, leaves, hay, straw, manure, shavings, excelsior, paper, ashes, containers, boxes, glass, cans, bottles, waste and discarded building and construction materials, including but not limited to plaster, broken concrete, bricks, cinder blocks, stones, wood, roofing material, wire or metal binding, sacks or loose discarded or unused material, abandoned or inoperable automobiles, abandoned or inoperable household appliances, moveable furniture not designed for or modified to withstand the elements and outdoor use, solid market wastes and industrial wastes, and all rubbish of any kind or nature whatsoever and any other materials commonly known as rubbish or refuse of any kind or character or by any means known.

Noxious Weed means any plant species listed on the Colorado Agricultural Commissioner's "A", "B", or "C" noxious weed list, as amended.

Sec. 6-1-20. Public nuisance defined.

(a) As used in this Chapter, a "public nuisance" shall mean any act, thing, occupation, condition or use of property which shall be of such a nature and shall continue for such length of time as to do any of the following:

- (1) Substantially annoy, injure or endanger the comfort, health, repose or safety of the public;
- (2) Greatly offend the public morals or decency;
- (3) Unlawfully and substantially interfere with, obstruct or tend to obstruct or render dangerous for passage any street, alley, highway, navigable body of water or other public way.

(b) Public nuisances shall include but not be limited to the following acts, conduct, omissions, conditions or things:

- (1) All accumulations of scrap metal and other pieces of metal whether ferrous or nonferrous, discarded equipment, inoperable machinery or parts thereof, automotive parts, salvage materials, and junk;
- (2) All decayed, harmfully adulterated or unwholesome food or drink sold or offered for sale to the public;
- (3) Carcasses of household pets or other animals not disposed of in a sanitary manner within twenty-four (24) hours after death;
- (4) The killing or slaughter any animal within the City, either for market or for private consumption, except in that portion of the City zoned for such use. The provisions of this subsection (4) shall not apply to animals that are killed outside the city limits and subsequently transported into the City or the killing or slaughter of domestic fowl for any such purpose;
- (5) Accumulations of garbage in a manner in which flies, mosquitoes, disease-carrying insects, rodents, or other vermin may breed or may reasonably be expected to breed;
- (6) Accumulations of refuse in which disease-carrying insects, rodents, or other vermin may breed or may reasonably be expected to breed;
- (7) All stagnant water in which mosquitoes, flies or other insects can multiply;
- (8) Containers with garbage or refuse which are not covered by solid, tight-fitting lids or which have any uncovered holes or for which at least weekly removal of garbage and refuse is not provided;
- (9) Any inanimate object upon public or private property, which by reason of its location and condition constitutes an imminent danger to any person or property;
- (10) Vegetation or woody perennial, which:
 - (i) Harbors or aids in harboring rats, snakes, or vermin;
 - (ii) Harbors or hosts diseases or insects which may reasonably be expected to injure other forms of life (except the harboring of insects, such as those commonly called Lady Bugs, used for pest control);
 - (iii) Are prohibited by law or ordinance, including but not limited to noxious weeds;
 - (iv) By reason of its location or condition constitutes an imminent danger to any person or property;
 - (v) Hinders the removal of accumulations of junk, garbage and debris;
 - (vi) Is unmanaged and in excess of six (6) inches in height, provided cultivated flowers, ornamentals, or food plants shall be presumed to be managed vegetation; provided further that vegetation in excess of six (6) inches in height shall be presumed unmanaged (unless predominantly composed of cultivated flowers, ornamentals, cultivated wild flowers or food plants), including vegetation which interferes with or obstructs the view or passage on any street, alley or other public way. This section shall not apply to property designated as part of a storm water drainage system or property that is governed by a political subdivision of the state designated by the state or local government as a conservation area or natural preserve;
- (11) The escape of smoke, soot, cinders, noxious acids, fumes, gases, fly ash or industrial dust within the City limits or within one mile therefrom in such quantities as to endanger the health of persons or to threaten or cause substantial injury to property, but excluding smoke emanating from residential fireplaces;

- (12) The pollution of any public well or cistern, stream, lake, canal or body of water by sewage, creamery or industrial wastes or other substances;
- (13) Any use of property, substances or things within the City or within one (1) mile thereof, emitting or causing any foul, offensive, noisome, nauseous, noxious or disagreeable odors, effluvia or stenches extremely repulsive to the physical senses of ordinary persons which annoy, discomfort, injure or inconvenience the health of any appreciable number of persons within the City;
- (14) All refuse created in the process of constructing, reconstructing or wrecking any building or part of building, fence or sidewalk or other improvement upon the premises;
- (15) Any structure or building that is in a state of dilapidation, deterioration or decayed, is of faulty construction, is open to intrusion, abandoned, damaged by fire to the extent as not to provide shelter, is extremely unsound, in danger of collapse or failure, and endangers the health and safety of the public;
- (16) Any building maintenance issues, where the owner fails to comply with the following standards:
 - (i) General: The exterior of every building, accessory structure, and all fences and walls shall be maintained in good repair. The same shall be maintained free of broken glass, loose shingles, crumbling stone or brick, excessive peeling paint or other condition reflective of deterioration or inadequate maintenance;
 - (ii) Exterior Walls: Exterior building walls shall be free from holes, breaks, and loose or rotting materials; and maintained weatherproof and properly surface coated where required to prevent deterioration;
 - (iii) Roofs and drainage: The roof and flashing shall be sound, tight and free from defects that admit rain. Roof drainage shall be adequate to prevent dampness or deterioration in the walls or interior portion of the structure. Roof drains, gutters and downspouts shall be maintained in good repair and free from obstructions. Roof water shall be discharged in a manner that preserves public safety and does not destabilize adjoining foundations;
- (17) Any inoperable, unlicensed or abandoned vehicle which is stored outside, except evidencing signs of an intent to repair or those stored at a place of business licensed to store junk vehicles;
- (18) Any vehicle parked on private property except on a weed-free surface made of gravel, crushed stone, asphalt or portland cement concrete;
- (19) Dumpsters, trash containers, or trash container stands, located on a public right-of-way unless the dumpster is owned, leased or under the control of the City; provided, further that trash containers may be placed on the publicly owned area adjacent to the pavement, on the day the trash in the container is scheduled for removal by a trash hauler;
- (20) Such other actions, conduct, omissions, conditions or things defined or specified in this Code as nuisances or as public nuisances.

Sec. 6-1-30. Prohibition.

- (a) No person shall erect, contrive, cause, continue, maintain or permit to exist any public nuisance within the City.
- (b) The procedures and remedies set forth in Sec. 6-1-40 and Sec. 6-1-50 may be used in the alternative or in conjunction with Sec. 6-1-60 or in lieu of any other remedy or procedure authorized by law for the removal of violations or nuisances.

Sec. 6-1-40. Filing complaints; inspections; notice to abate; failure to abate; abatement

by city; appeal.

- (a) All complaints alleging the existence of a public nuisance shall be filed with the City Manager.
- (b) The City Manager shall promptly inspect the premises or cause them to be inspected and shall make a written report of the findings of the inspection. Whenever practical, photographs of the premises shall be attached to the written report.
- (c) Upon determining that a public nuisance exists on private property and that there is danger to the public health, safety, peace, morals or decency, the City Manager shall cause a notice to be delivered to the owner and the occupant of the private property where the public nuisances exists or upon the person causing, permitting or maintaining such nuisance, if such owner, occupant or person causing the nuisance can be found, and shall post a copy of the notice on the premises where the public nuisance exists.
- (d) Such notice shall specifically describe the public nuisance and shall direct the owner and the occupant of the private property where the public nuisance exists or the person causing, permitting or maintaining such nuisance to abate or remove such nuisance within twenty-four (24) hours of service or posting of the notice. Such notice shall contain a telephone number and a name of the City Officer or employee who made the inspection resulting in the notice, and shall state that telephone inquiries may be made. If the owner, occupant or person cannot be located after reasonable inquiry, posting shall be sufficient notice. The notice shall state that unless such nuisance is so abated or removed the City will cause it to be abated or removed, that the cost thereof will be charged to the owner, occupant or person causing, permitting or maintaining the nuisance and that such cost shall be a lien on the real property where the nuisance was abated or removed. Such notice shall also state that the failure of such owner, occupant, or person to abate the nuisance as required by such notice shall be deemed an implied consent for the City to abate or remove such nuisance. Such implied consent shall be deemed to form a contract between such owner, occupant or person and the City. If the public nuisance does not constitute a great and immediate danger to the public health, safety or welfare, the City Manager may serve the owner or occupant of such premises or the person in whose name such real estate was last billed for property tax purposes a notice to demand the abatement or removal of the violation within ten (10) days. Service may be had by certified mail or personal service; or by posting the notice on the property and mailing notice by first class mail.
- (e) If a nuisance is not abated or removed after notice pursuant to this Section and within the time specified in the notice, the City Manager may cause the abatement or removal of such public nuisance. The reasonable cost thereof shall be a lien on the real property where the nuisance was abated or removed.
- (f) The owner or occupant of the private property where the public nuisance exists who fails to abate or to remove the nuisance required by this Section, thereby consents, under the terms of this Section, to have the City abate or remove the nuisance at the expense of the owner or occupant.
- (g) The person upon whom a notice to abate a nuisance is served, the property owner, tenant or other affected person may appeal the determination of nuisance in writing to the City Manager. The written appeal must be made within the time period in which to abate the nuisance is given in the notice. The City Manager shall meet with the appellant within five (5) working days of the receipt of the written appeal. The City Manager may extend the time in which the nuisance must be abated, determine that a nuisance does not or no longer exists, or that the nuisance must be abated within the time period set out in the notice or immediately if the period set out in the notice has run. Provided, however, that if the nuisance was determined to be an emergency and that the opportunity for an appeal was not available due to the short period of time to abate the nuisance, an appeal may be heard after the abatement of the nuisance by the City. In that event, the City Manager may determine that the appellant is liable for the costs, or that, upon good cause shown, that the appellant is not liable for the costs and that a lien shall not be filed by the City upon the property. The notice to abate shall contain a statement as to the right of appeal.

Sec. 6-1-50. Cost of abatement as a lien.

- (a) Whenever a bill for the reasonable costs of abatement or removal of a nuisance

pursuant to this Ordinance remains unpaid for thirty (30) days after it has been sent, the City Manager shall file a notice of lien with the County Recorder. Any notice of lien pursuant to this Ordinance shall be filed within ninety (90) days after the cost and expense of abatement or removal of nuisance has been incurred by the City. The notice shall consist of a sworn statement setting out: (1) a description of the real estate sufficient for identification thereof; (2) the amount of money representing the cost and expense incurred or payable by the City; and (3) the date or dates when such cost and expense was incurred by the City. However, any purchaser whose rights in such real estate have arisen subsequent to removal of the public nuisance and prior to the filing of such notice shall not be held liable for the costs of abatement or removal, and the lien of the City shall not have priority as to any mortgage, judgment creditor or other lienor whose rights in and to such real estate arise prior to the filing of such notice.

- (b) Costs and expenses under this Ordinance include, but are not limited to, the actual costs and expenses in time of City employees or City authorized contractors and in materials concerning the actual actions of abatement of the nuisance pursuant to this Ordinance, transportation to and from the property, title searches or certifications, preparation of lien documents, foreclosures and other related expenses, including but not limited to reasonable attorney's expenses.
- (c) A copy of the notice of lien shall be mailed by the City Manager to the owner of the property or to the occupant, or to the person or persons in whose name such real estate was last billed for property tax purposes.
- (d) The real estate subject to a lien for such an unpaid assessment of such costs and expenses may be sold for nonpayment thereof, and the proceeds of the sale applied to pay the charges, after deducting costs.
- (e) The City may institute proceedings in any court having jurisdiction over such matters against any property for which such costs and expenses have remained unpaid thirty (30) days after a statement of such costs and expenses have been mailed to the property owner, to the occupant or to the person or persons in whose name the property was last billed for property tax purposes.
- (f) Upon payment of the costs and expenses, plus interest from the date thirty (30) days after the bill was sent after notice of lien has been filed the City Manager shall file with the County Recorder a release of the lien.
- (g) If the payment of the City's costs of removal or abatement of the nuisance is not paid to the City within thirty (30) days of filing of the notice of lien, the City may commence proceedings in Court seeking a judgment from the owner or occupant of such property. The action authorized by this subsection shall be in addition to, and without waiver of, any other remedy.

Sec. 6-1-60. Violations.

- (a) In addition to the procedures and remedies set forth in Sec. 6-1-40 and Sec. 6-1-50, a summons and complaint may be filed in the municipal court for any violation of this Chapter.
- (b) A separate offense shall be deemed committed on each day during or on which a violation of this Chapter continues unabated ten (10) days after the mailing of a notice pursuant to this Chapter. Any person violating this provision shall be fined not less than \$100 and not more than \$1,000.
- (c) The provisions for remedying violations of this Chapter are in addition to other applicable remedies, including but not limited to an action in court for an injunction.

Section 3. Chapter 15. That Chapter 15, Article 1, "General Provisions," of the *Fort Morgan Municipal Code* (2010) shall be amended to remove any language that is inconsistent or redundant with the provisions of this Ordinance.

Section 4. 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 5. 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 6. 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 7. 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 8. 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 9. 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. This Chapter 6, Article 1 "Nuisances" shall be effective as to all violations of the Code committed five (5) days after final publication.

INTRODUCED, READ, PASSED ON FIRST READING AND ORDERED PUBLISHED the 3rd day of April, 2012.

THE CITY COUNCIL OF THE CITY
OF FORT MORGAN, COLORADO

[SEAL]

/s/ Terry L. McAlister

Mayor Terry McAlister

ATTEST:

/s/ John J. Brennan
City Clerk

PASSED, APPROVED AND ADOPTED ON FINAL READING AND ORDERED PUBLISHED the 17th day of April, 2012.

THE CITY COUNCIL OF THE CITY
OF FORT MORGAN, COLORADO

[SEAL]

/s/ Terry L. McAlister

Mayor Terry McAlister

ATTEST:

/s/ John J. Brennan
City Clerk

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

CERTIFICATE

I, John Brennan, the duly appointed, qualified and acting Clerk of the City of Fort Morgan, Colorado, do hereby certify and attest that the foregoing **ORDINANCE NO. 1125** 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 3rd day of April, 2012. Said Ordinance, as proposed, was duly read at length at said regular meeting, and thereafter the same was, on the 6th day of April, 2012, 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 17th day of April, 2012. 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/ John J. Brennan
City Clerk