

ORDINANCE NO. 1135

AN ORDINANCE IMPOSING A MORATORIUM ON THE OPERATION OF MARIJUANA ESTABLISHMENTS PURSUANT TO AMENDMENT 64

WHEREAS, the voters of the State of Colorado on November 6, 2012 approved a ballot initiative known as Amendment 64, which amends the Colorado State Constitution to authorize the operation of marijuana establishments, which are defined as marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and retail marijuana stores notwithstanding contrary provisions of Colorado statute, whether criminal or civil; and

WHEREAS, Amendment 64 requires the Department of Revenue to adopt regulations governing the operation of marijuana establishments no later than July 2013; requires local governments to adopt regulations identifying the entity within the local government responsible for processing license applications for marijuana establishments no later than October 1, 2013; authorizes local governments to adopt licensing procedures and regulations governing certain aspects of the operation of marijuana facilities; and authorizes local governments to prohibit the operation of marijuana establishments by adoption of an ordinance or through an initiated or referred measure; and

WHEREAS, Amendment 64 permits the personal use of marijuana and marijuana products by persons twenty-one (21) years of age or older, Amendment 64 provides that nothing contained in said amendment shall permit consumption that is "conducted openly and publicly or in a manner that endangers others", but said terms are not well defined; and

WHEREAS, the Colorado Clean Indoor Air Act, Sections 25-14-201 et. seq. C.R.S. prohibits the smoking of tobacco products or medical marijuana within most commercial buildings, but said prohibition is unclear in how it applies to the recreational use or consumption of marijuana and possible amendments to the Colorado Clean Indoor Air Act may be considered by the Department of Revenue; and

WHEREAS, the Department of Revenue may adopt regulations governing the operation "Marijuana clubs" which constitute a business operating as a place of private assembly for the purpose of inviting members or non-members to use or consume marijuana on site shall be prohibited on non-residential property within non-residential zones; and

WHEREAS, Amendment 64 permits the operation of marijuana establishments only pursuant to licenses issued by the Department of Revenue and/or a local government,

and does not require the Department of Revenue or local governments to begin processing license applications until October 1, 2013; and

WHEREAS, marijuana establishments may not operate lawfully until the adoption of licensing regulations;

WHEREAS, the moratorium imposed by this emergency ordinance is intended to prevent the operation of marijuana establishments prior to the adoption of the regulatory framework contemplated by Amendment 64; to ensure that prospective operators and owners of marijuana establishments are able to make business and investment decisions with sufficient knowledge of local regulations or prohibition can be enforced in a fair and equitable manner; and

WHEREAS, the City Council finds it necessary to the public health, safety, and welfare to adopt this emergency ordinance imposing a moratorium on the operation of marijuana establishments pending adoption by the Department of Revenue of licensing regulations and the issuance of licenses pursuant to Amendment 64; adoption of regulations relating to the operation and licensing of marijuana establishments by the City Council; and/or pending a determination whether by ordinance.

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

Section 1. This moratorium will be in effect through December 31, 2013, unless otherwise shortened, terminated, or extended by City Council. During the effective term of this emergency ordinance no person shall operate a marijuana establishment, which shall include establishments created by Amendment 64 as defined above as well as marijuana clubs, in the limits of Fort Morgan. No Fort Morgan personnel shall accept or process an application for a sales tax license, land use approval, building permit, or any other license or permit in relation to the operation of a marijuana establishment or club.

Section 2. 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 3. 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 4. 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 5. 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 6. 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 7. 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. As such, this Ordinance shall be effective five (5) days after final publication.

INTRODUCED, READ, ADOPTED AND ORDERED PUBLISHED ON FIRST READING on the 19th day of March, 2013.

THE CITY COUNCIL OF THE CITY OF FORT MORGAN, COLORADO

[SEAL]

/s/ Terry L. McAlister
By: Terry McAlister
Mayor

ATTEST:

/s/ John J. Brennan
John Brennan
City Clerk

PASSED, APPROVED AND ADOPTED ON FINAL READING AND ORDERED
PUBLISHED this 2nd day of April, 2013.

THE CITY COUNCIL OF THE CITY OF FORT
MORGAN, COLORADO

[SEAL]

/s/ Terry L. McAlister

By: Terry McAlister
Mayor

ATTEST:

/s/ John J. 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. 1135** was, as a proposed Ordinance, duly and legally presented to the City Council of the City of Fort Morgan, Colorado, on the 19th day of March, 2013. Said ordinance, as proposed, was duly read at length at said meeting, and thereafter the same was, on the 22nd day of March, 2013, 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 2nd day of April, 2013. Within five (5) days after its final passage, said **Ordinance No. 1135** 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

John Brennan
City Clerk