

ORDINANCE NO. 1144

AN ORDINANCE TO AMEND CHAPTER 10 OF THE FORT MORGAN MUNICIPAL CODE TO PROHIBIT MARIJUANA CULTIVATION FACILITIES, MARIJUANA PRODUCT MANUFACTURING FACILITIES, MARIJUANA TESTING FACILITIES AND RETAIL MARIJUANA STORES WITHIN THE CITY OF FORT MORGAN

WHEREAS, Colorado voters approved an amendment to the State Constitution, Article XVIII, Section 16, which allows in part for the retail sale and cultivation of marijuana in the State of Colorado; and

WHEREAS, Article XVIII, Section 16, of the Colorado Constitution authorizes local governments to "prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities or retail marijuana stores through the enactment of an ordinance"; and

WHEREAS, the City of Fort Morgan has previously prohibited medical marijuana establishments within City limits; and

WHEREAS, the City of Fort Morgan has previously placed a moratorium on commercial marijuana establishments within City limits; and

WHEREAS, the City Council has carefully considered the provisions of Article XVIII, Section 16, of the Colorado Constitution, and the impact of operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and retail marijuana stores' licenses on the health, safety and welfare of the City and the inhabitants thereof; and

WHEREAS, the City Council has determined, as an exercise of its local land use authority, that such marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and retail marijuana stores shall not be located within the corporate limits of the City.

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

Section 1. The Fort Morgan Municipal Code, Chapter 10 Article 6 is amended by the addition of a new Division 5, entitled "Marijuana Facilities and Stores," to read as follows:

Division 5 Marijuana Facilities and Stores

10-6-510 Findings and legislative intent.

The City Council makes the following legislative findings:

(1) The City Council finds and determines that Article XVIII, Section 16, of the Colorado Constitution specifically authorizes in part that the governing body of a municipality may enact an ordinance to prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and retail marijuana stores.

(2) The City Council finds and determines after careful consideration of the provisions of Article XVIII, Section 16, of the Colorado Constitution, and after evaluating, *inter alia*, the potential secondary impacts associated with the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and retail marijuana stores, that such land uses have an adverse effect on the health, safety, and welfare of the City and the inhabitants thereof.

(3) The City Council therefore finds and determines that as a matter of the City's local land use and zoning authority as a home rule municipality pursuant to the provisions of Article XX, Section 6 of the Colorado Constitution, and consistent with the authorization provided by the Article XVIII, Section 16, of the Colorado Constitution, that no suitable location exists within the corporate limits of the City of Fort Morgan for the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and retail marijuana stores' licenses.

10-6-520 Authority.

The City Council hereby finds, determines and declares that it has the power and authority to adopt this Article pursuant to:

- (1) Article XVIII, Section 16, of the Colorado Constitution;
- (2) The authority granted to home rule municipalities by Article XX of the Colorado Constitution;
- (3) The powers contained in the City of Fort Morgan Home Rule Charter.
- (4) The Local Government Land Use Control Enabling Act, article 20 of title 29, C.R.S.;
- (5) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal zoning powers);
- (6) Section 31-15-103, C.R.S. (concerning municipal police powers);
- (7) Section 31-15-401, C.R.S. (concerning municipal police powers);

(8) Section 31-15-501, C.R.S. (concerning municipal authority to regulate businesses).

10-6-530 Definitions.

For purposes of this Chapter, the following terms shall have the following meanings:

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 cultivation facility means an entity licensed to cultivate, prepare, and package marijuana and sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.

Marijuana establishment means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, or a retail marijuana store.

Marijuana product manufacturing facility means an entity licensed to purchase marijuana; manufacture, prepare, and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.

Marijuana products 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.

Marijuana testing facility means an entity licensed to analyze and certify the safety and potency of marijuana.

Retail marijuana store means an entity licensed to purchase marijuana from marijuana cultivation facilities and marijuana and marijuana products from marijuana product manufacturing facilities and to sell marijuana and marijuana products to consumers.

Person means a natural person, partnership, association, company, corporation, limited liability company, or organization, or a manager, agent, owner, director, servant, officer, or employee thereof.

10-6-540 Marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and retail marijuana stores' licenses prohibited.

It is unlawful for any person to operate, cause to be operated, or permit to be operated, any marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and retail marijuana stores within the City and all such uses are hereby prohibited in any location within the City, or within any area hereinafter annexed to the City.

10-6-550 Penalty.

A violation of the provisions of this Chapter shall be punishable as follows:

- (1) By a fine as described in Section 1-4-10 of this Code;
- (2) Each and every day a violation of the provisions of this Chapter is committed, exists or continues shall be deemed a separate offense;
- (3) The City Attorney is specifically authorized to seek an injunction, abatement, restitution or any other remedy necessary to prevent, enjoin, abate, or remove the violation; and
- (4) Any remedies provided for herein shall be cumulative and not exclusive, and shall be in addition to any other remedies provided by law or in equity.

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. This amendment to Chapter 10, "General Offenses" shall be effective as to all violations of the Code committed five (5) days after final publication.

**INTRODUCED, READ, ADOPTED ON FIRST READING AND ORDERED
PUBLISHED** on the 6th day of August, 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 3rd day of September, 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. 1144** was, as a proposed Ordinance, duly and legally presented to the City Council of the City of Fort Morgan, Colorado, on the 6th day of August, 2013. Said ordinance, as proposed, was duly read at length at said meeting, and thereafter the same was, on the 9th day of August, 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 3rd day of September, 2013. Within five (5) days after its final passage, said **Ordinance No. 1144** 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