

## **ORDINANCE NO. 1199**

### **AN ORDINANCE AMENDING PORTIONS OF THE FORT MORGAN MUNICIPAL CODE CONCERNING IMPRISONMENT AS A PUNISHMENT**

**WHEREAS**, Colorado State Statutes concerning the operations of Municipal Courts have changed significantly in recent years resulting in several operational changes to the Municipal Court; and

**WHEREAS**, House Bill 17-1316 in conjunction with House Bill 16-1309, among others, will impose additional financial burdens on the court and place significant additional operational strains on the court; and

**WHEREAS**, the City of Fort Morgan must either amend the Fort Morgan Municipal Code or devote significant additional resources to the operation of the Fort Morgan Municipal Court in order to be compliant with the recent changes in state law; and

**WHEREAS**, the City Council has determined that changes in the Fort Morgan Municipal Code to remove imprisonment as a possible punishment for violations of the Code, with exceptions related to violations of the sewer code, is the appropriate way to ensure compliance with the Colorado Revised Statutes while avoiding extraordinary cost increases for the City; and,

**WHEREAS**, House Bill 14-1061 changed the operation of collection of fines in Municipal Court by removing "Pay or Serve Warrants" and adjusting the process for collecting fines; and,

**WHEREAS**, while the practices of the Municipal Court have been timely brought into compliance with state law, the Fort Morgan Municipal Code requires updating to be harmonious with the Colorado Revised Statutes.

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

**Section 1:** The Fort Morgan Municipal Code Chapter 2, Article 4 Section 270 is amended as follows:

**Sec. 2-4-270. - Fines, methods of payment and applicable administrative fees.**

(a) When the Municipal Court imposes a fine on an individual, the Municipal Court may direct as follows:

(1) That the defendant pay the entire amount of the fine at the time sentence is pronounced.

(2) That the defendant pay the entire amount of the fine at some later date.

(3) That the defendant pay a specified portion of the fine at designated periodic intervals, and, in such case, the Municipal Court may also direct that the fine be remitted to a designated official who shall report to the Municipal Court on any failure to comply with the order.

(4) When the Municipal Court directs either the payment of the entire amount of the fine at some later date, or directs that the fine be paid at designated periodic intervals, a thirty-day grace period may be granted to allow payment of the fine in full within that thirty-day period. Should payment in full not be received within the time allowed, a Stay of Execution fee shall be imposed if a payment plan is implemented. Once a payment plan has been implemented and the Stay of Execution fee imposed, this matter shall be subject to review by the Municipal Court in ninety (90) days, at which time, if the amount due has not been paid in full, additional fees and surcharges may be imposed in the Municipal Court's discretion.

(5) Where the defendant is sentenced to a period of probation as well as a fine, that payment of the fine shall be a condition of probation.

(b) Where the Municipal Court imposes a fine at the time the Municipal Court pronounces sentence, the sentence may provide that, if the defendant fails to pay the fine in accordance with the direction of the Municipal Court, collection of the fines and costs shall be conducted in accordance with state law. ~~defendant shall be imprisoned until the fine is satisfied or the defendant is released after serving the period of imprisonment specified by the Municipal Court in accordance with Subsection (c) below. If the defendant fails to pay a fine as directed, the Municipal Court may issue a warrant for the defendant's arrest for failure to comply with a Court order.~~

(c) Reserved. ~~When the Municipal Court pronounces sentence ordering that the defendant be imprisoned until the fine is satisfied, the Municipal Court shall specify a maximum period of imprisonment subject to the following limits:~~

~~(1) Where the fine was imposed for a municipal offense or misdemeanor, the period shall not exceed thirty (30) days;~~

~~(2) Where the fine was imposed for a traffic violation which is punishable by a jail sentence, the period shall not exceed fifteen (15) days;~~

~~(3) There shall be no imprisonment in those cases where no imprisonment is provided as a punishment alternative; and~~

~~(4) Where a sentence of imprisonment as well as a fine is imposed, the aggregate of the period and the term of the sentence shall not exceed the maximum term of imprisonment authorized for the offense.~~

(d) Where the defendant is unable to pay a fine imposed by the Municipal Court, the defendant may at any time apply to the Municipal Court for resentence. If the Municipal Court is satisfied that the defendant is unable to pay the fine, the Municipal Court shall may:

(1) Adjust the terms of payment;

(2) Lower the amount of the fine;

(3) Where the sentence consists of probation or imprisonment and a fine, revoke the portion of the sentence imposing the fine; or

(4) Revoke the entire sentence imposed and resentence the defendant. Upon a resentence, the Municipal Court may impose any sentence it originally could have imposed; except that the amount of any fine imposed shall not be in excess of the amount the defendant is able to pay.

(e) ~~Notwithstanding that the defendant was imprisoned for failure to pay a fine or that he or she has served the period of imprisonment imposed, a~~ A fine may be collected in the same manner as a judgment in a civil action. The City Attorney may, in his or her discretion, and shall, upon order of the Municipal Court, institute proceedings to collect such fine.

(f) Nothing contained within this Section shall be construed to limit or curtail or in any manner affect the inherent powers of the Municipal Court to hold persons in contempt of the Municipal Court for nonpayment of a fine or by a failure to make

restitution as ordered or by the failure to comply with any other order of the Municipal Court.

**Section 2:** The Fort Morgan Municipal Code Chapter 8, Article 1 Section 40 is amended as follows:

**Sec. 8-1-40. - Penalties.**

Section 1701 of the Model Traffic Code is repealed and reenacted to provide for the following penalties, herewith set forth in full, which shall apply to all violations of the Model Traffic Code adopted herein:

" 1701. Traffic offenses classified - schedule of fines.

"(1) (a) It shall be a traffic offense or a traffic infraction, as specified in the Common Code of Traffic Violations which is hereby adopted by reference and incorporated herein as if set forth in full, for any person to violate any provision of this code.

"(b) A traffic infraction shall constitute a civil matter. In all cases involving solely a traffic infraction, all questions of fact and law shall be heard and decided by the municipal judge without a jury and there shall be no trial by jury.

"(2) (a)(I) Except as provided in subsections (3) and (4) of this section, traffic infractions are divided into two (2) classes which shall be subject to the following penalties which are authorized upon entry of judgment against the defendant:

"Class	Minimum Penalty	Maximum Penalty
A	<del>\$5.00</del> <u>\$10.00</u>	<del>\$250.00</del> <u>A fine in accordance with Section 1-4-10 of this Code</u>
B	<del>\$5.00</del> <u>\$10.00</u>	<del>\$250.00</del> <u>A fine in accordance with Section 1-4-10 of this Code</u>

"(II) (A) Except as provided in subsections (3) and (4) of this section, traffic offenses are divided into two (2) classes which are distinguished from one another by the following penalties which are authorized upon conviction:

Class	Minimum Sentence	Maximum Sentence
1	<del>10 days imprisonment or \$100.00 fine, or both</del>	<del>1 year imprisonment or \$1,000.00 fine, or both</del> <u>A fine in accordance with Section 1-4-10 of this Code</u>
2	<del>5 days imprisonment or \$10.00</del> <u>\$50.00</u> <del>fine, or both</del>	<del>90 days imprisonment or \$300.00 fine, or both</del> <u>A fine in accordance with Section 1-4-10 of this Code</u>

**Section 3:** Various sections of the Fort Morgan Municipal Code Chapter 10 are amended as follows:

**Sec. 10-1-20. - Sentencing.**

Unless otherwise indicated, all violations under this Chapter shall be punishable by a fine in accordance with Section 1-4-10 of this Code. In addition to any penalties provided herein, the Municipal Judge or plea agreements may require useful public service, treatment, supervised or unsupervised probation, and/or remedial classes as a part of sentencing.

**Sec. 10-2-20. - Assault and battery.**

Any person who willfully or recklessly uses physical force against another person in a violent or angry manner shall be deemed guilty of the crime of assault and battery, a misdemeanor, and, upon conviction, shall be punished by a fine ~~or by imprisonment, or by both such fine and imprisonment.~~

**Sec. 10-2-30. - Disorderly conduct.**

(a) A person commits disorderly conduct if he or she intentionally, knowingly or recklessly:

- (1) Makes a coarse and obviously offensive utterance, gesture or display in a public place and the utterance, gesture or display tends to incite an immediate breach of the peace;

(2) Fights with another in a public place except in an amateur or professional contest of athletic skill;

(3) Not being a peace officer, discharges a firearm in a public place in a manner calculated to alarm another person; or

(4) Not being a peace officer, displays a deadly weapon, displays any article used or fashioned in a manner to cause a person to reasonably believe that the article is a deadly weapon, or represents verbally or otherwise that he or she is armed with a deadly weapon in a public place in a manner calculated to alarm.

(b) A person found guilty of the crime of disorderly conduct under Paragraph ~~(a)(1) or (2)~~ above, a misdemeanor, shall, upon conviction, be punished by a fine.

~~(c) A person found guilty of disorderly conduct under Paragraph (a)(3) or (4) above, a misdemeanor, shall, upon conviction, be punished by a fine or by imprisonment, or by both such fine and imprisonment.~~

#### **Sec. 10-2-120. - Restraining orders and violations.**

(c) Sentencing.

(1) A person found guilty of a violation of a restraining order, a misdemeanor, shall, upon conviction, be punished by a fine ~~or by imprisonment, or by both such fine and imprisonment.~~

~~(2) Any sentence imposed for a violation of this Section shall run consecutively and not concurrently with any sentence imposed for any crime which gave rise to the issuing of the restraining order.~~

#### **Sec. 10-3-60. - Interfering or tampering with a utility meter.**

(d) Penalties.

(1) Any person, whether as principal, agent, employee or otherwise, violating the provisions of this Chapter shall, upon conviction thereof, be punished by a fine, ~~imprisonment or by both such fine and imprisonment.~~ In addition to any penalties imposed by the Court upon conviction for

violation of this Chapter, the Court shall order restitution for the stolen service and the costs to repair or replace the utilities connection.

**Sec. 10-5-20. - Resisting arrest.**

(e) A person convicted of resisting arrest under this Section shall be punished by a fine ~~or by imprisonment, or by both such fine and imprisonment.~~

**Section 4. 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 5. 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 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 a copy 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 change shall be effective five (5) days after final publication of this ordinance.

**INTRODUCED, READ, ADOPTED ON FIRST READING AND ORDERED  
PUBLISHED** on the 7th day of November, 2017.

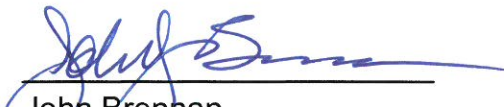




THE CITY COUNCIL OF THE CITY OF FORT  
MORGAN, COLORADO

  
By: Ronald Shaver  
Mayor


Attest:

  
John Brennan  
City Clerk

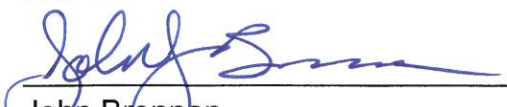
PASSED, APPROVED AND ADOPTED ON FINAL READING AND ORDERED  
PUBLISHED this 21<sup>st</sup> day of November, 2017.



THE CITY COUNCIL OF THE CITY OF  
FORT MORGAN, COLORADO

  
By: Ronald Shaver  
Mayor

Attest:

  
John Brennan  
City Clerk


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

**CERTIFICATE**

I, John Brennan, the duly appointed, qualified Clerk of the City of Fort Morgan, Colorado, do hereby certify that the foregoing **Ordinance No. 1199** was, as a proposed Ordinance, duly and legally presented to the City Council of the City of Fort Morgan, Colorado, on the 7th day of November, 2017. Said ordinance, as proposed, was duly



read at length at said meeting, and thereafter the same was, on the 10th day of November, 2017, 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 21<sup>st</sup> day of November, 2017. Within five (5) days after its final passage, said **Ordinance No. 1199** 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.



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John Brennan  
City Clerk