

****DISAPPROVED****

ORDINANCE NO. 1236

AN ORDINANCE REPEALING AND REPLACING CHAPTER 5, ARTICLE 1 and CHAPTER 5, ARTICLE 6 OF THE FORT MORGAN MUNICIPAL CODE FOR THE PURPOSE OF ESTABLISHING A FORMAL BUSINESS REGISTRATION AND LICENSING PROGRAM FOR THE CITY OF FORT MORGAN

WHEREAS the City Council of the City of Fort Morgan desires to establish a formal business licensing program for all commercial and nonprofit enterprises operating and doing business in the city; and

WHEREAS the registration and regulation of business and nonprofit operations in the city has benefits for the city, its residents and the businesses themselves, including but not limited to the assurance that businesses are legitimately and properly established with the state of Colorado, that they adhere to all zoning, building and other code requirements of the city and state, that they properly account for and remit sales and other taxes as appropriate, and that the owners of all city businesses can be contacted in the event of an emergency or other need; and

WHEREAS a formal business registration and licensing program will allow the City of Fort Morgan to develop a database of all local commercial and nonprofit enterprises operating in the city, which information can be made available to the public to the betterment of the businesses and used for purposes of economic development and marketing to enhance the local economy; and

WHEREAS the City Council of the City of Fort Morgan has determined that it is in the best interest of the City's residents, businesses and customers to establish a formal business registration and licensing program.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Fort Morgan, Colorado:

SECTION 1. Chapter 5, Article 1 of the Fort Morgan Municipal Code is hereby repealed and replaced by a new Chapter 5, Article 1, Business Licenses and Regulations, as follows:

Chapter 5, Article 1. BUSINESS LICENSES AND REGULATIONS

Sec. 5-1-10. - Violations.

It shall be a violation of the Fort Morgan Municipal Code to conduct business within the city without a valid business license unless specifically exempted from the provision of this Chapter. A business license shall be considered valid if it is current and complies with the requirements of the City Code. Penalties for violations of this section shall be

as set forth in Article 4 of Chapter 1 of the City Code. Each day that a business is conducted in violation of the City Code shall be a separate offense.

Sec. 5-1-20 - Scope of chapter.

- (a) *Legislative intent.* It is hereby declared to be the intent of the city council that no person may engage in business within the City of Fort Morgan unless he obtains a valid business license issued pursuant to this Chapter. As used in this Chapter "engage in business within the City" means performing or providing services or selling, leasing, renting, delivering or installing tangible personal property for storage, use or consumption, within the City. Engage in business in the city includes, but is not limited to, any one of the following activities by a person: (1) Directly, indirectly, or by a subsidiary maintains a building, store, office, salesroom, warehouse, or other place of business within the City; (2) Sends one or more employees, agents or commissioned sales persons into the City to solicit business or to install, assemble, repair, service, or assist in the use of its products, or for demonstration or other reasons; (3) Maintains one or more employees, agents or commissioned sales persons on duty at a location within the City; (4) Owns, leases, rents or otherwise exercises control over real or personal property within the City; or (5) Makes more than one delivery into the City within a twelve-month period by any means other than a common carrier.
- (b) *Application.* The provisions of this chapter shall apply to and govern the application for, and the issuance, regulation, suspension and revocation of, business licenses, except that:
- (1) The requirement of any ordinance relating to any license or licensed activity shall be complied with and enforced in addition to the requirements of this Chapter.
 - (2) The provisions of this chapter shall be construed to affect the purposes of providing orderly procedures, observation of the requirements of due process of law, and implementation of the purposes of the ordinances of the city.

Sec. 5-1-30 - Applications.

- (a) An application for a license shall be made on forms prescribed by the city clerk and filed at the offices of the city clerk, in compliance with the provisions of this Chapter.
- (b) Application shall be made prior to the commencement of business within the city or, in the event of a renewal, prior to January 1 of the renewal period for which the license is sought. A thirty-day grace period after the application deadline shall be permitted.
- (c) A business license shall be required in addition to all other licenses required by the City Code or state statute.

Sec. 5-1-40. - Issuance of License.

- (a) No license shall be issued unless the city clerk finds, after investigation, that:
- (1) All applicable provisions of the City Code and state statutes have been met by the applicant;

- (2) The required fees, if any, and previously assessed penalties have been paid;
 - (3) The application has been reviewed by the city zoning officials, the use is valid under the city land use ordinances, and all required inspections have been performed.
- (b) Any license issued in error may be canceled.
- (c) Upon issuance, the license shall be mailed to the licensee at the address stated in the application.

Sec. 5-1-50 - Licenses.

- (a) Every license shall show upon its face:
- (1) The name of the person and the trade name of the business to whom such license has been issued;
 - (2) The kind of license;
 - (3) The time period for which the license is issued;
 - (4) The street address, if any, where such business is regularly carried on;
 - (5) Such other information deemed necessary by the city clerk.
- (b) A separate license shall be required for each location of a business within the city.
- (c) No license shall be transferred from one person, business or location to another. Any change of ownership, nature of business or location shall require a new application and license, including any applicable fees. A merger of an existing licensed business with any other business that does not necessitate a mandatory change in the federal employer identification number shall not be considered a change of ownership for licensing purposes. In the first year following any merger, City of Fort Morgan Finance Department tax division personnel shall have the right to audit the merged business in order to confirm that the merger of the businesses did not constitute fraud to avoid outstanding debts or liabilities. A merger of an existing licensed business with any other business that necessitates a mandatory change in the federal employer identification number shall be considered a change of ownership for licensing purposes and shall require application for a new license.
- (d) The license for a particular business location shall be posted at all times that it is in effect in the principal room or office of the business. No expired or invalid license shall remain posted. The license shall be exhibited upon request of any law enforcement officer or city official.
- (e) The city clerk shall keep a record of all licenses issued, including the name of each licensee and business, the location of the business and the type of licenses issued.

Sec. 5-1-60. - Expiration of and renewal of license.

- (a) All general business licenses shall expire on December 31 of each odd-numbered calendar year.

- (b) A renewal notice and application shall be sent to each licensee prior to the expiration of the license. The license may be renewed by completing the renewal application and paying applicable fees, if any, as required by this Chapter.
- (c) Except as otherwise provided by the City Code, the city clerk may, in his discretion, waive the submission of a renewal application, so long as the information on the original or prior renewal application has not changed and license fees imposed by this chapter, if any, are paid in a timely manner and the vendor is not delinquent in the payment of any tax either collected and due the city, made by or otherwise assessed by the city, or delinquent in filing of required city sales and use tax returns.

Sec. 5-1-70. - Denial of license.

- (a) If the city clerk finds that the applicant has not satisfied the pre-requisites of this Chapter, the application for a license shall be denied.
- (b) If the city zoning officials disapprove issuance of a license, such disapproval shall be endorsed on the face of the application and written reasons for such disapproval shall be provided to the city clerk and the applicant.
- (c) A license may be denied for any reason that it could be canceled, suspended or revoked.
- (d) A license may not be denied solely on the ground that the licensee has previously had a license denied, canceled, suspended, or revoked, so long as the pre-requisites of this Chapter are met and the City Code does not otherwise require denial.

Sec. 5-1-80. - Fees.

- (a) Application fees, annual license fees and late fees may be imposed, in an amount as determined from time to time by resolution of the city council.
- (b) Late fee waivers may be granted at the discretion of the city clerk only in acknowledgment of proof of timely mailing or in the event of exigent and unavoidable circumstances such as: Death, catastrophic illness, or disaster

Sec. 5-1-90. - Cancellation of license.

- (a) A license shall be canceled by the city clerk:
 - (1) When it appears that issuance of the license was illegal;
 - (2) The license was mistakenly issued to the wrong person or premises or the wrong license was issued;
 - (3) When any taxes due the city or penalties or interest are unpaid; or
 - (4) Upon grounds provided by ordinance or by statute.
- (b) Cancellation of a business license shall require that the licensee cease business operations until the license is reinstated, renewed or any other licensing issue is resolved.

Sec. 5-1-100. - Suspension, conditional suspension or revocation.

A business license may be suspended, conditionally suspended or revoked by the city clerk upon the following reasons:

- (1) When any activity conducted pursuant to such license violates a city ordinance or state statute;
- (2) When it appears that the activity conducted pursuant to such license is a public nuisance. When determining whether a public nuisance exists, the city clerk shall consider whether the activity in question is substantially similar to a public nuisance as defined by Chapter 6 of this Code, state statute or the common law;
- (3) When it appears that the license was obtained by fraud or misrepresentation or false statements within the application for such license;
- (4) When the business or activity being conducted under the license is a different business or activity than the business or activity for which the license was originally granted or duly amended.
- (5) Upon any other grounds provided by this Code.

Sec. 5-1-110. - Adverse action.

- (a) Whenever the city clerk cancels, suspends or revokes a license, the clerk shall state the grounds for such action in a notice given by certified mail, return receipt requested, to the address of the licensee as shown on the records of the city clerk. Notice of the denial of a license application shall be given in the same manner. All reference to "licensee" in this section shall also apply to applicants who have been denied a license. Within twenty (20) days following the date of the notice, the licensee may either:
 - (1) Perform any act or cure any default necessary to avoid the adverse action; or
 - (2) Request a hearing, in which event the license shall not be denied, canceled, suspended or revoked, except as provided by paragraph (b) of this section.
- (b) Except as otherwise provided in this section, no license shall be denied, canceled, suspended or revoked without affording opportunity for a hearing before the city clerk. In such hearing the licensee shall have the opportunity to appear in his own behalf, with or without the assistance of legal counsel, present evidence in his own behalf, and cross-examine witnesses presented against him. The city clerk or other hearing officer shall determine whether the reasons for the denial, suspension, cancellation or revocation, as provided in sections 5-1-60, 5-1-70, 5-1-90 or 5-1-100 in fact exist.
- (c) A licensee shall be deemed to have been afforded opportunity for a hearing if notice of the proposed adverse action, and the grounds therefor, which may include notice of the date, time and place of a hearing, is given in the manner provided herein, and:
 - (1) The notice is not delivered because the licensee has moved from the address stated in the license or application therefor; provided, however, in such circumstances that a notice has also been posted in a conspicuous place at the

location as indicated on the license or the application therefor for at least twenty (20) days;

- (2) The notice is not delivered because the address stated in the license or application therefor is false or nonexistent;
 - (3) The notice is not delivered because the licensee refuses to accept the certified mail; provided, however, in such circumstances that a notice has also been posted in a conspicuous place at the location as indicated on the license or the application therefor for at least twenty (20) days;
 - (4) The licensee, having received a notice that an adverse action will be taken unless a hearing is requested, fails to request a hearing within the time stated in such notice;
 - (5) The licensee, having received notice of hearing, fails without good cause to attend such hearing in person or by counsel; or
 - (6) The licensee, having requested a hearing, fails without good cause to attend such hearing in person or by counsel.
- (d) The city clerk may nominate another officer or employee of the city to sit as a hearing officer to conduct any hearing requested by a licensee, but no final adverse action shall be taken except by the city clerk after reviewing the recommendations of the hearing officer and the record of the hearing.

Notice shall be provided for as follows:

- (1) Notice given under this Chapter must be in writing;
 - (2) Notice shall be first attempted by personal service upon the individual identified as such person authorized to accept service for the business;
 - (3) Upon failure to serve notice by personal service, the city may send notice by certified mail, addressed to the person authorized to receive such notice; and
 - (4) If such notice by certified mail is returned as undeliverable for any reason, then the city may serve notice by posting such notice in a conspicuous place at the location of the business as indicated on the business license or application.
- (e) Nothing in this Chapter shall authorize adverse action against a licensee based upon consumer complaints against a business.
- (f) Notwithstanding the procedures set forth in this section, the city clerk may enter an order for immediate suspension of a license, pending further investigation for a period not to exceed thirty (30) days, upon a finding that probable cause exists for revocation of a license of a business regulated and controlled under the police power of the city or the state.
- (h) No revocation, suspension or surrender of a license shall impair or affect the obligation of any lawful contract between the licensee and third parties, unless the contract so requires.
- (i) In the event the licensee fails to take action as provided in subsection (a)(1) or (b) of this section, at the conclusion of the twenty-day period set forth in subsection (a) of

this section, the city clerk may summarily revoke, suspend or conditionally suspend the license and mail notice of such decision to the last known address of the licensee, return receipt requested.

SECTION 2. Chapter 5, Article 6, of the Fort Morgan Municipal Code is hereby repealed and replaced by a new Chapter 5, Article 6, Peddlers, Solicitors and Nonresident Vendors, as follows:

Chapter 5, Article 6. PEDDLERS, SOLICITORS AND NONRESIDENT VENDORS

Sec. 5-6-10. - Definitions.

Nonresident vendor: Any retailer or vendor whose place of business is outside the city.

Peddler: Any person, whether as volunteer, owner, agent, consignee or employee, who engages in a temporary business of selling and delivering goods within the city, and who, in furtherance of such purpose, leases, uses or occupies any tent, temporary structure, stand or outdoor location on private property for the exhibition and sale of such goods. This definition shall include any person who associates temporarily with any local dealer, trader, merchant or auctioneer, or conducts a transient business in connection with, as a part of or in the name of any local dealer, trader, merchant or auctioneer. This definition shall not include any person who holds a general business license from the city and operates in full compliance with the zoning code of the city.

Solicitor: Any person, whether as volunteer, owner, agent, consignee or employee, who travels by foot, wagon, motor vehicle, pushcart or any other method of transportation from house to house or street to street selling or offering to sell services, food, beverages, goods or merchandise.

Sec. 5-6-20. - License required.

No person shall carry on the business of peddler or solicitor within the City without a license therefor, first obtained according to the provisions of this Article.

Sec. 5-6-30. - Fee.

For a license to carry on the business of either a peddler or solicitor there shall be paid for each day the business is carried on, a dollar amount to be established by Council and amended from time to time, such license to be obtained from the City Manager.

Sec. 5-6-40. - Exempt sales.

The hawking or peddling of produce by persons raising or producing the same shall be exempt from the provisions of this Article.

Sec. 5-6-50. - Nonresident vendor.

- (a) *Engaging in business.* It shall be unlawful for any nonresident vendor to engage in business in the city without first having obtained a business license in accordance with Article 1 of this Chapter 5, and both state and city sales tax licenses if required by the nature of the goods or services being sold.
- (b) *Engaging in peddling or soliciting.* It shall be unlawful for any person to engage in the business of a peddler or solicitor within the city limits of the city without first obtaining a license as provided herein.
- (c) Any nonresident vendor engaged in business in the city shall have the same tax liability and responsibility for reporting and collecting the city tax on sales to city residents as a resident vendor has with respect to sales tax pursuant to this chapter.
- (d) *Presentation of license.* Any nonresident vendor shall present its license for inspection upon request of the sales tax inspector or other law enforcement officer of the city.
 - (1) If such nonresident vendor is unable to produce a license, or identify the person in whose possession such license could be found, or produces an expired or invalid license, such nonresident vendor shall be directed and ordered to cease his operations immediately and not resume such operations until a valid license is obtained.
 - (2) Any nonresident vendor who fails to comply with such order or directive may be issued a summons and complaint, or may be subject to the impoundment of his property as specified in paragraph (e) of this section.
- (e) *Seizure of property; administrative hearing.* In the event that a nonresident vendor fails to comply with an order to obtain a license and continues to engage in business in the city, the city may seize and impound any personal property of the nonresident vendor, or his agent, located in the city and used in any manner in furtherance of or to facilitate the transaction of the vendor's business in the city. The vendor shall be notified of the impoundment and shall have the right to demand an administrative hearing to be held not later than five (5) working days from the date of seizure, unless the vendor requests a later date. The hearing officer at such hearing shall determine only whether or not the nonresident vendor had a valid business license and whether or not the impounded property was used in furtherance of or to facilitate the transaction of business by the nonresident vendor in the city. If no hearing is demanded or if a hearing is held and it is determined that the property was so used, the impounded property shall be held until the vendor has obtained a license. If it is determined at the hearing that the property was not so used, it shall be released forthwith. The determination of the hearing officer shall be appealable to the district court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

- (f) *Investigation and issuance.* Upon receipt of a license application, the municipal clerk shall refer copies to the city zoning official and when deemed appropriate or in the best interest of the safety of the citizens of Fort Morgan to the police department.
- (g) *Grounds for denial.* The clerk shall deny the issuance of a license for the following reasons:
 - (1) Any misrepresentation, fraud, deception, breach of warranty, or breach of contract in the city or elsewhere by the applicant.
 - (2) Failure by the applicant to comply with this chapter or any other applicable provisions of the City Code.
 - (3) Failure by the applicant, his supervisor or his employer to remit any tax due to the city under this chapter.
- (h) *Issuance upon payment of fee.* If the application is approved, upon payment of the prescribed fees, if any, by the applicant, the city clerk shall issue the license. Such license shall contain the signature of the city clerk and shall show the name, address of said licensee, the kind of license issued, the amount of fee paid, the date of issuance and the length of time the same shall be operative. The sales tax inspector shall keep a permanent record of all licenses issued.
- (i) *Property owner's permission required for issuance of peddler's license.* A peddler shall not receive a license under this section if he does not have written permission from respective property owners to set up displays and sell goods on private property. A permission form must be signed and notarized on the form provided by city clerk.
- (j) *Compliance with other applicable laws.* All licensees under this chapter shall comply with the applicable laws of the City of Fort Morgan or State of Colorado.
- (l) *Zoning.* All peddlers conducting activities under this chapter shall conform to the zoning provisions of the Fort Morgan Code, including the sign code, unless otherwise provided herein.
 - (1) No peddler shall conduct his activities within ten (10) feet of any public property or right-of-way.
 - (2) If customers of the peddler are required to park in order to gain access to the goods or services of the peddler, the peddler shall not do business at a location that lacks sufficient parking or that interferes with the public rights-of-way on sidewalks or streets or that requires customers to park on private property without the consent of the property owner.
 - (3) Peddlers must be located in order to provide safe access by vehicle and pedestrian traffic to the peddler's location without requiring illegal or unsafe turning movements by vehicles or trespassing across private property.
 - (4) Peddlers shall not use a property or location in a way that:
 - a. Impedes access to the entrance of any adjacent building or driveway.

- b. Is located in such a manner as to interfere with a fire hydrant, fire escape, bus stop, loading zone, or driveway of a fire station, police station, hospital, or handicapped parking space or access ramp.
- (p) *Hours of operation.* Licensees shall be allowed to engage in their businesses between the hours of 7:00 a.m. and 10:00 p.m., unless otherwise stated in the conditions on their license.
- (q) *Compliance with traffic and parking laws.* All soliciting and peddling activities, whether conducted on foot or from a vehicle, shall be conducted in strict accordance with all traffic and parking laws.
- (r) *Licenses to be displayed.* The city clerk shall issue the license. Each license shall bear the words "Peddler" or "Solicitor," and the period for which the license is issued.
- (s) Reserved
- (t) *Duty of enforcement personnel.* It shall be the duty of any police officer, tax division personnel or code enforcement officer of the city to require any person required to have a license, as provided in this chapter, to produce his license and to enforce the provisions of this chapter against any person found to be violating the same.
- (u) *Clerk shall maintain records.* The chief of police shall report to the tax division all violations of this chapter and all violations of this Code by licensees. The tax division shall maintain a record for each license issued and record such reports therein.

SECTION 3. If any section, provision, paragraph, clause or phrase of this Ordinance is held, or decided to be unconstitutional, invalid or enforceable for any reason, such decision shall not affect the constitutionality, validity or enforceability of the remaining portions of this Ordinance.

SECTION 4. All other ordinances or portions thereof inconsistent or conflicting with this Ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

SECTION 5. The City Council finds that this Ordinance is necessary for the immediate preservation of the public peace, health and safety of the residents of the City.

INTRODUCED, READ, ADOPTED ON FIRST READING AND ORDERED PUBLISHED on the 3rd day of September, 2019.

CITY COUNCIL OF THE CITY OF FORT
MORGAN, COLORADO

By: /s/ Ronald Shaver
Ronald Shaver, Mayor

[SEAL]

ATTEST:

By: John J. Brennan
John Brennan, City Clerk

PASSED, APPROVED AND ADOPTED ON FINAL READING AND ORDERED
PUBLISHED this _____ day of _____, 2019.

CITY COUNCIL OF THE CITY OF FORT
MORGAN, COLORADO

By: _____
Ronald Shaver, Mayor

ATTEST:

By: _____
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.** _____ was, as a proposed Ordinance, duly and legally presented to the City Council of the City of Fort Morgan, Colorado, on the _____ day of _____, 2019. Said ordinance, as proposed, was duly read at length at said meeting, and thereafter the same was, on the _____ day of _____, 2019, 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 _____ day of _____, 2019. Within five (5) days after its final passage, said **Ordinance No.** _____ 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.

By: _____
John Brennan, City Clerk