

ORDINANCE NO. 1256

AN ORDINANCE AMENDING CHAPTER 10, ARTICLE 4 OF THE FORT MORGAN MUNICIPAL CODE, CONCERNING OFFENSES OF MINORS AND UNDERAGE PERSONS, RAISING THE MINIMUM AGE REGARDING TOBACCO PRODUCTS TO TWENTY-ONE YEARS

WHEREAS, the City of Fort Morgan, Colorado (the "City"), is a Colorado home rule municipality, duly organized and existing pursuant to Section 6 of Article XX of the Colorado Constitution; and

WHEREAS, the City Council (the "Council") has authority pursuant to the Home Rule Charter and C.R.S. §31-16-101, et seq. to adopt and enforce all ordinances; and

WHEREAS, pursuant to C.R.S. § 31-15-401, the City by and through its Council also possesses the authority to adopt laws and ordinances within its police power in furtherance of the public health, safety and welfare; and

WHEREAS, pursuant to that authority, the City has previously adopted and amended certain code provisions, general offenses and violations, and the penalties attached to them, codified in the Fort Morgan Municipal Code (the "Code"), including Chapter 10, Article 4, concerning offenses of minors and underaged persons; and

WHEREAS, on December 20, 2019, the President signed legislation to amend the Federal Food, Drug, and Cosmetic Act and raise the federal minimum age of the sale of tobacco products from eighteen to twenty-one years; and

WHEREAS, Colorado House Bill 20-1001 raised the minimum age of a person to whom cigarettes, tobacco products and nicotine products may be sold from 18 years to 21 years of age, and also prohibits a retailer from permitting a person under 18 years of age to sell or participate in the sale of products; and

WHEREAS, the City must now update its Code, to clarify and resolve any inconsistencies regarding the minimum age of a person able to consume or be sold tobacco and nicotine products from 18 years to 21 years of age; and

WHEREAS, the Council therefore desires and finds it in the best interests of the public health, safety and welfare of the citizens, residents and customers of Fort Morgan to make the following recommended amendments to Chapter 10, Article 4.

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

SECTION 1. The City Council incorporates the foregoing recitals as conclusions, facts, determinations and findings by the City Council.

SECTION 2. The Fort Morgan Municipal Code section 10-4-40, concerning Illegal possession or use of tobacco products, is hereby amended to read as follows:

Sec 10-4-40. – Illegal possession or use of tobacco products by a minor AN INDIVIDUAL UNDER THE AGE OF TWENTY ONE.

- (a) Any minor individual under the age of twenty one (21) who possesses or uses any tobacco product anywhere in the City commits illegal possession or use of a tobacco product by a minor an individual under the age of twenty one (21). Illegal possession or use of a tobacco product by a minor an individual under the age of twenty one (21) is a strict liability offense.
- (b) Prima facie evidence of a violation of Subsection (a) above shall consist of evidence that the defendant was under the age of eighteen (18) twenty one (21) years and possessed or used a tobacco product anywhere in the City.
- (c) During any trial for a violation of Subsection (a) above, any package or container with labeling indicating the contents of such package or container shall be admissible into evidence, and the information contained on any label on such package or container shall be admissible into evidence and shall not constitute hearsay. A jury or a judge, whichever is appropriate, may consider the information upon such label in determining whether the contents of the package or container were composed in whole or in part of a tobacco product. A label which identifies the contents of any package or container as *cigarettes, cigars, chewing tobacco, smokeless tobacco* or any other tobacco product as defined above shall constitute prima facie evidence that the contents of the package or container were composed in whole or in part of a tobacco product.
- (d) Penalties. Illegal possession or use of a tobacco product by a minor an individual under the age of twenty one (21) in the City is a petty offense. The Court, upon sentencing a defendant pursuant to this Subsection may, in addition to any fine or penalty imposed pursuant to this Subsection, order that the defendant perform useful public service or community service, and may further order that the defendant complete a Tobacco Education Program at the defendant's own expense.
- (e) Upon the expiration of one (1) year from the date of a conviction for a violation of Subsection (a) of this Section, any person convicted of such violation may petition the Municipal Court in which the conviction was entered for an order sealing the record of such conviction. The Court shall grant such petition if the petitioner has not been arrested for, charged with or convicted of any felony, misdemeanor or petty offense during the period of one (1) year following the date of such petitioner's conviction for a violation of Subsection (a).

SECTION 3. The Fort Morgan Municipal Code section 10-4-50, concerning Unlawful sale to or procurement of tobacco products, is hereby amended to read as follows:

Sec 10-4-50. – Unlawful sale to or procurement of tobacco products for a minor AN INDIVIDUAL UNDER THE AGE OF TWENTY ONE.

- (a) It is unlawful for any person eighteen (18) twenty one (21) years of age or older to assist a minor an individual under the age of twenty one (21) in obtaining tobacco

by buying for, transferring, delivering or selling to such minor individual under the age of twenty one (21) any tobacco product. This is a strict liability offense.

(b) Any person found guilty of the unlawful sale to or procurement of tobacco products for a minor an individual under the age of twenty one (21), a misdemeanor offense, shall, upon conviction, be punished by a fine.

SECTION 4. 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 5. 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.

INTRODUCED, READ, ADOPTED ON FIRST READING AND ORDERED

PUBLISHED on the 3rd day of August, 2021.



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 17th day of August, 2021.



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
CITY OF FORT MORGAN

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CERTIFICATE

I, John Brennan, the duly appointed, qualified Clerk of the City of Fort Morgan, Colorado, do hereby certify that the foregoing **Ordinance No. 1256** was, as a proposed Ordinance, duly and legally presented to the City Council of the City of Fort Morgan, Colorado, on the 3rd day of August. Said ordinance, as proposed, was duly read at length at said meeting, and thereafter the same was, on the 6th day of August, 2021, 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 August, 2021. Within five (5) days after its final passage, said **Ordinance No. 1256** 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.


John Brennan

City Clerk