

March 3, 2015

The City Council of the City of Fort Morgan, Colorado, met this day in the Council Chambers of City Hall. The Honorable Mayor Terry L. McAlister called the regular meeting to order at 6:00 p.m.

The Pledge of Allegiance was given.

Roll Call: Present: Honorable Mayor Terry L. McAlister  
Councilmember Christine Castoe  
Councilmember Kevin Lindell  
Councilmember Damon Mussman  
Councilmember Lisa Northrup  
Councilmember Joe Segura Jr.  
Councilmember Ronald Shaver

The meeting was also attended by City Manager Jeff Wells, Police Chief Darin Sagel, City Treasurer Jean Kinney, Engineering Public Works Director Brad Curtis, Community Services Director Josh Miller, Water Resources/Utilities Director Brent Nation, Human Resources/Risk Management Director Michael Boyer, Management Intern Chelsea Gondeck, Assistant City Attorney Jason Meyers, Information Technology Director Nelson McCoy and City Clerk/PIO John Brennan.

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**APPROVAL OF THE MINUTES OF THE FEB. 17, 2015 CITY COUNCIL REGULAR MEETING**

Councilmember Damon Mussman offered a resolution to approve the minutes as presented, which was seconded by Councilmember Ron Shaver and approved unanimously.

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**RENEWAL OF A MEMORANDUM OF UNDERSTANDING WITH MUSTANG BASEBALL**

Community Services Director Josh Miller reviewed highlights of the agreement, which was a renewal of a 2014 MOU with the Mustang Baseball organization. Councilmember Mussman asked whether he should step down from the vote on this matter due to his affiliation with the baseball group, and City Manager Jeff Wells said the standard for such a decision was whether he would receive any pecuniary gain from the decision. If there was no such gain, it was up to the council member's conscience on whether to abstain from the vote, Wells said. Mussman said he would step down from the vote and left the room.

Shaver offered a resolution to approve the renewal of the memorandum of understanding with Mustang baseball, which was seconded by Councilmember Christine Castoe and approved on a unanimous vote of 6-0, with Mussman having stepped down.

Mussman then returned to the meeting.

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**PUBLIC HEARING ON AN APPLICATION FOR A SPECIAL USE PERMIT FOR A RESIDENTIAL USE IN B-2 ZONING AT 113 MAIN ST.**

Mayor Terry McAlister reviewed the format to be followed during the public hearing, and City Clerk/PIO John Brennan confirmed that proper legal notice of the hearing had been published. Engineering/Public Works Director Brad Curtis reviewed the criteria for granting a special use permit, and staff's analysis of this application's adherence to those criteria. He said the city Planning Commission had recommended approval with certain conditions, and staff was recommending council approval with those same conditions.

No comments were offered by the applicant, the public or the council, and Shaver made a motion to close the public hearing, which was seconded by Castoe and approved unanimously. Wells then advised the council that it should weigh the evidence presented at the public hearing and base its decision on that evidence as to whether the granting of the special use permit would enhance the community and be in the best interest of the city.

Councilmember Lisa Northrup offered a resolution to grant conditional approval of the special use permit with the following conditions:

1. The property owner meets with staff regarding a detailed building plan review/process. This includes, but is not limited to, the owner and her contractor and/or designer going over the required City codes (building, electrical, plumbing and mechanical) and issuance of applicable permits; and
2. The living spaces meet or exceed all applicable codes for residential uses; and
3. That the special use runs with the land in perpetuity.

That resolution was seconded by Castoe and approved unanimously.

### **PUBLIC HEARING ON AN APPLICATION FOR A SPECIAL USE PERMIT FOR A LARGE FAMILY CHILD CARE HOME IN R-2 ZONING AT 927 SAUNDERS ROAD**

Mayor McAlister said the same protocols outlined for the previous public hearing would apply for this hearing, and Brennan confirmed that proper legal notice had been published.

Curtis reviewed the application and the special use permit criteria, and said the Planning Commission had recommended approval of this special use permit with conditions. No comments were offered by the applicant or the public, either during the hearing or in advance. Northrup stated that although she works for the Department of Human Services, she was not a part of the decision-making structure that would evaluate this child care facility on behalf of that agency. Councilmember Kevin Lindell noted that in a previous council hearing pertaining to a different application for a child care facility, concerns were raised by neighbors about such issues as noise, speeding vehicles and parking issues. Lindell suggested that the applicant in this case consider placing language regarding expectations and requirements for such issues into the agreements with parents who use the facility.

Shaver made a motion to close the public hearing, which was seconded by Lindell and approved unanimously.

Wells again advised the council to base its decision on the evidence and the best interests of the community.

Northrup offered a resolution to grant conditional approval of the special use permit with the following conditions:

1. The child care home shall be maintained in accordance with all applicable provisions of Colorado Revised Statutes 26-6-101, et seq.
2. The child care home may consist of seven (7) to twelve (12) children from birth to eighteen (18) years of age.
3. The child care home will require an assistant when the ninth child arrives at the facility.
4. The child care home may not provide care to more than two (2) children under two (2) years of age.
5. That the special use is personal to the applicant and may not be inherited.

That resolution was seconded by Castoe and approved unanimously.

### **PUBLIC HEARING ON AN APPLICATION FOR A SPECIAL USE PERMIT FOR A HOME BUSINESS IN B-1 ZONING AT 519 RIVERVIEW AVE.**

McAlister said the same format and rules would be used for this hearing as in the previous two, and Brennan confirmed proper legal notice.

Curtis reviewed the application and staff's analysis, and said the city had worked with the applicant to find a solution that would preserve the primary residential use of the home but allow for the business use without extensive renovations. This solution also would allow for the possible future conversion back to residential use without further costly modifications to the structure, all while conforming to the city's building codes.

No comments were offered by the applicant or the public, either during the hearing or in advance.

Mayor McAlister asked if the home could be used by the applicant, Colorado Plains Medical Center, for nurses or doctors who are working in Fort Morgan for a period of weeks or months. Gene O'Hara, chief executive officer of CPMC, said that was a possibility, but the plan was to use the business space for the hospital's home care program, with nurses who spend most of their time on home visits but need to come back the office periodically.

Castoe made a motion to close the public hearing, which was seconded by Shaver and approved unanimously.

Wells advised the council about basing its decision on the evidence presented and the best interests of the city.

Northrup offered a resolution to grant conditional approval of the special use permit with the following conditions:

1. The primary structure can be used as shown in the application for home business for no more than 120 days, to allow for remodeling of the garage and/or the basement.
2. The main floor of the structure shall maintain at least 50 percent residential characteristics, including but not limited to kitchen, bathroom, bathing area and no less than 2 bedrooms.
3. Any and all signage shall be per the Residential zone criteria as established by Chapter 20 of the Municipal Code.
4. That the special use is personal to the applicant and may not be inherited.

That resolution was seconded by Castoe and approved unanimously.

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### **SECOND READING AND PUBLIC HEARING ON ORDINANCE NO. 1167, AMENDING PORTIONS OF CHAPTER 21 OF THE MUNICIPAL CODE PERTAINING TO THE PLUMBING CODE AND FUEL GAS CODE**

Mayor McAlister reviewed the format to be followed during this public hearing, and Brennan confirmed that proper legal notice had been published.

Curtis said this ordinance was unchanged from the first reading at the previous council meeting, and would adopt the 2012 state plumbing code to ensure that city would continue to be able to perform plumbing inspections.

No public comments were offered, either during the hearing or in advance, and no comments were made by the council. Mussman made a motion to close the public hearing, which was seconded by Castoe and approved unanimously.

Wells advised the council members that they should vote in the best interest of the city in this matter. Northrup offered a resolution to approve the second and final reading of Ordinance No. 1167, amending portions of Chapter 21 of the Fort Morgan Municipal Code pertaining to the plumbing code and the fuel gas code, and authorize publication by title only. That resolution was seconded by Shaver and approved unanimously.

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### **BIDS FOR SMALL FORM FACTOR COMPUTERS**

Information Technology Director Nelson McCoy reviewed the bid process for this purchase, for which seven companies had submitted bids. He explained his reasons for recommending acceptance of the bid from Byte Speed Inc. of Moorhead, Minn., even though it was not the

lowest bid. One bid was much lower than all others, McCoy said, but that company had some questionable credentials and references. Another bid slightly lower than Byte Speed's was for Dell computers, which McCoy said had declined in quality and service. He also pointed out the Byte Speed program of providing a supply of spare parts at no cost.

Northrup offered a resolution to approve the purchase of 47 small form factor computers from Byte Speed Inc., which was seconded by Shaver and approved unanimously.

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### **RESOLUTION AUTHORIZING THE MAYOR TO SIGN A LEASE AGREEMENT FOR DIGITAL COLOR MULTIFUNCTIONAL PHOTOCOPIERS**

Wells said this agenda item was also an update for council on the situation regarding photocopiers for city departments, for which the city had awarded a bid to Great Copier Service of Fort Morgan but had been unable to reach agreement on terms of the lease and service agreements, ultimately ending with Great Copier Service withdrawing its bid at the last council meeting. Wells said he had not heard anything more from Great Copier since that withdrawal, so the city's options were limited to going out for new bids or moving to the next low bidder, which in this case was actually the lowest bidder and the company originally recommended by staff.

Wells said that company, Konica Minolta Business Solutions of Fort Collins, had agreed to offer the same price it had bid in mid-2014, and city staff was working out details of the lease and service agreement with that company and was very close to finalizing them. By approving the resolution presented here, Wells said, the council would authorize the mayor to sign those agreements when they were finalized. Wells said doing a new bid process would take several months, and in the meantime the lack of copiers and printers for many departments would compromise the city's ability to do its job and serve the public. Therefore staff was recommending that the council authorize the mayor to sign the agreements with Konica Minolta Business Solutions when finalized.

Council discussion followed regarding whether a bidder had ever withdrawn a bid before, and whether it was general practice to re-bid in a situation like this. Wells said the procurement policy requirement to seek bids had already been met, and because the recommended bidder was honoring its price from that bid there was no need to re-bid.

McAlister said he thought the council should take this action because of the need to get the process moving again.

Shaver offered a resolution to approve the Resolution authorizing the mayor to sign a lease agreement for digital multifunctional copiers, which was seconded by Castoe. Wells then pointed out that staff would not bring the agreements for the mayor's signature until they meet the requirements of the city. Shaver's motion was then approved unanimously.

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### **RESOLUTION AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT FOR THE PURCHASE OF PROPERTY**

Wells said this purchase was for property near the city's water treatment plant, and related to the city's longstanding goal of obtaining land for more raw water storage near the plant. A copy of the proposed purchase contract with Phyllis Carlock was included in the council meeting packets.

Shaver offered a resolution to approve the Resolution authorizing the mayor to sign a contract for the purchase of property near the water treatment facility, which was seconded by Castoe and approved unanimously.

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**PRESENTATION AND POSSIBLE ACTION ON THE 2016 BUDGET CALENDAR**

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Wells said the budget calendar listed the dates of meetings at which various aspects of the 2016 budget would be discussed and reviewed by the council during 2015, and was being presented for council's approval. He noted that the calendar could be adjusted as necessary during the course of the year but provided a preliminary outline leading to adoption of the 2016 budget in November 2105.

Shaver made a motion accepting the 2016 budget calendar as presented, which was seconded by Northrup and approved unanimously.

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**PUBLIC COMMENT / AUDIENCE PARTICIPATION**

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Jerry Wathen of 1100 Linda St. in Fort Morgan spoke to the council about the 2016 presidential election and the city's lodging tax ballot question presented to voters in 2014. He said he hoped the lodging tax question would be brought to voters again in the future.

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**REPORTS BY OFFICIALS AND STAFF**

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Wells reported that the city was notified it would receive a \$90,000 grant from the Department of Local Affairs for the rewriting of the city's comprehensive plan, an important project planned for 2015.

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**BIDS, MEETINGS AND ANNOUNCEMENTS**

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Brennan announced current bids and upcoming meetings, and reviewed highlights of recent news releases by the city.

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**EXECUTIVE SESSIONS**

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The regular portion of the meeting ended at 7:07 p.m., and Mayor McAlister said the next item on the agenda was the first of two scheduled executive sessions. Councilmember Castoe made a motion to convene this executive session, which was seconded by Councilmember Shaver and approved unanimously. This executive session had been published as follows:

**EXECUTIVE SESSION** for the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators, under C.R.S. Section 24-6-402(4)(e); AND THE FOLLOWING ADDITIONAL DETAILS ARE PROVIDED FOR IDENTIFICATION PURPOSES: Water purchase.

This executive session began at 7:16 p.m. and ended at 7:30 p.m., and was attended by the mayor and council along with Wells, Water Resources/Utilities Director Brent Nation and Assistant City Attorney Jason Meyers. At the conclusion of the executive session, the council returned to the open regular meeting, where Castoe reported that the council had met in executive session for the purpose stated on the agenda. Castoe then made a motion directing staff to negotiate a water purchase based on the criteria discussed in executive session, which was seconded by Shaver and approved unanimously.

Councilmember Lindell then made a motion to convene the second executive session, which was seconded by Castoe and approved unanimously. This executive session had been published as follows:

**EXECUTIVE SESSION** for a conference with the City Attorney for the purpose of receiving legal advice on specific legal questions under C.R.S. Section 24-6-402(4)(b); AND THE FOLLOWING ADDITIONAL DETAILS ARE PROVIDED FOR IDENTIFICATION PURPOSES: Litigation.

This executive session began at 7:34 p.m. and ended at 8:00 p.m., and was attended by the mayor and council along with Wells and Meyers. On the advice of the city attorney, the recording of this executive session was turned off at 7:36 p.m. because the discussion concerned an attorney-client privileged communication. The recording was turned back on at 7:59 p.m.

At the conclusion of the executive session, the council returned to the regular open meeting, where Castoe reported that the council had met in executive session for the purpose stated on the agenda. Castoe then made a motion directing the city attorney's office to proceed with litigation according to the legal advice received in the executive session, which was seconded by Councilmember Northrup and approved unanimously.

Mayor McAlister adjourned the March 3, 2015 regular meeting at 8:01 p.m.

/s/ Terry McAlister  
Mayor

/s/ John Brennan  
City Clerk