

# ORDINANCE NO. 1045

## AN ORDINANCE ADOPTING A NEW SECTION 2-20, OF THE FORT MORGAN MUNICIPAL CODE, REGARDING PROHIBITED GIFTS TO CITY OFFICIALS

**WHEREAS**, on November 7, 2006, the voters approved Amendment 41 on the statewide general election ballot; and

**WHEREAS**, Amendment 41 adopts a new Article XXIX of the Colorado Constitution entitled "Ethics in Government"; proposing similar but more restrictive gift limitations of state and local government officials and employees; and

**WHEREAS**, Section 7 of Amendment 41 provides that the gifting prohibitions of Amendment 41, as well as the other provisions of Amendment 41, will not apply to home rule municipalities that have adopted their own charter, ordinances or resolution provisions that address the ethical matters addressed in Amendment 41; and

**WHEREAS**, the Article V, Sec. 14(a) of the *Charter* currently provides, "No officer or employee shall receive any service or derive any profit or advantage, directly or indirectly, from the city, by reason of his connection therewith, on terms more favorable than those granted to the public generally...", and

**WHEREAS**, the City Council has reviewed the gift prohibitions of both Amendment 41 and C.R.S. § 24-18-104 and has determined that the City, as a home rule municipality, should further define its own provisions to regulate the kinds of gifts that City officials are prohibited from receiving; and

**WHEREAS**, by the City adopting its own gift prohibitions for City officials and employees as set forth by this Ordinance, the public trust will be better served by clearly and directly defining what gifts are prohibited and what gifts are permitted and by providing for enforcement and penalties through the Fort Morgan Municipal Court with respect to gifts hereafter received by the City's council members, board and commission members and employees.

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

**SEC. 2-20, PROHIBITED GIFTS TO CITY OFFICIALS, IS HEREBY ADOPTED TO READ AS FOLLOWS:**

### **Sec. 2-20. Prohibited Gifts to City Officials**

**Sec. 2-20.1 – Definitions.** As used in this Chapter, the following words, terms and phrases shall have the following meanings, except where the context clearly indicates otherwise:

- a. "Board and commission member" shall mean any person duly appointed by the Council to any board or commission of the City.
- b. "City official" shall mean a council member, an employee, or a board and/or commission member.
- c. "Council member" shall mean a member of the Council.
- d. "Employee" shall mean each compensated person in the service of the City who is designated as an employee under Article V, Sec. 1 of the *Charter*, but shall not include any person providing services to the City, who for federal income tax purposes, is considered an independent contractor.
- e. "Gift" shall mean the transfer of a thing of value by one person to another person without the person transferring the thing of value receiving in return lawful compensation or consideration of equal or greater value from the person receiving the thing of value. However, a "gift" shall not mean any thing of value given to a person by a local, state or the federal government as authorized by law.
- f. "Person" shall mean any individual, corporation, business trust, estate, trust, Limited Liability Company, partnership, labor organization, associations, political party, committee or other legal entity.
- g. "Thing of value" shall mean any tangible or intangible thing having a market value, including, without limitation, money, real property, personal property, services, loans of money or property, favors, gratuities, rewards, awards, grants, scholarships, discounts, promises of future employment, honoraria, event tickets, travel, lodging, meals, and the forbearance and forgiveness of debt.

**Sec. 2-20.2 – Prohibited Gifts.** Unless permitted under City Code Section 2.17.3, a City Official shall not solicit or accept any gift from any person either directly or indirectly through the City Official's spouse or dependent child which gift the City Official knows or which a reasonable person in the City Official's position should know under the circumstances is either:

- A. a gift that would tend to improperly influence that City Official to depart from the faithful and impartial discharge of his or her public duties; or
- B. is a gift being solicited or given for the primary purpose of rewarding the City Official for an official action he or she has taken.

**Section 2-20.3 – Permitted Gifts.** The gift prohibitions of City Code Section 2.17.2 shall not apply to City Officials with respect to the following permitted gifts:

- A. campaign contributions as authorized by law;
- B. a non-monetary award, publicly presented, in recognition of public service;
- C. gifts similarly available to the general public;
- D. educational scholarships and grants available to members of the general public similarly situated;
- E. grants and services provided for medical, respite or hospice care or other social welfare needs available to members of the general public similarly situated;
- F. an occasional, unsolicited gift having a fair market value of fifty dollars (\$50) or less;
- G. unsolicited information material, publications, or subscriptions related to the City Official's performance of his or her official duties;
- H. an unsolicited token or award of appreciation in the form of a plaque, trophy, desk item, wall memento or similar item;
- I. payment of or reimbursement for actual and necessary expenditures for registration, travel, lodging and meals for attendance at a convention, training seminar, or other meeting at which the City Official is scheduled to participate as a representative of the City or to attend as part of his or her official duties;
- J. an occasional, unsolicited opportunity to participate in a business meeting or social function where a meal is served and/or entertainment is provided if the City Official's attendance would not be considered extraordinary when reviewed in light of the position held by the City Official;
- K. payment received by a council member for a speech, appearance or publication required to be reported by the council member pursuant to C.R.S. § 24-6-203;
- L. gifts received by a council member or a board and commission member arising from his or her employment and that is unrelated to his or her official City duties; and
- M. gifts received by an employee from the City as authorized in the City's *Charter*, and any gifts received by an employee arising from his or her non-city employment and that is unrelated to his or her official City duties;

- N. Anything given by an individual who is a relative or personal friend of the recipient;
- O. Items of perishable or non-permanent value, including but not limited to meals, lodging, travel expenses, or tickets to sporting, recreational, or cultural events;
- P. Payment for a speech, appearance, or publication reported pursuant to Section 24-6-203, C.R.S.; and
- Q. Payment of salary from employment, including other government employment, in addition to that earned from being a member of the City Council or by reason of service in other public office;
- R. Anything given as part of an inter-office gift exchange.

**Section 2-20.4 – Violations.**

- A. It shall be unlawful for any City Official to violate any provision of this Chapter. Proof of a violation shall be established by a preponderance of the evidence presented at trial.
- B. Any City Official determined by the Municipal Court to have violated any provision of this Chapter shall be deemed to have committed a civil infraction and shall be punished by a civil fine not to exceed one thousand (\$1,000) dollars. In addition to any civil fine imposed, a judgment in the amount of twice the fair market value of the prohibited gift received shall also be entered by the Municipal Court against the City Official. If the City Official fails to pay the total judgment amount entered for the civil fine and for twice the fair market value of the prohibited gift within sixty (60) days of the entry of the final judgment, the City may pursue any legal means available to it for the collection of the judgment.

**EFFECTIVE DATE.**

This Ordinance shall be in full force and effect five (5) days after publication.

READ, PASSED ON FIRST READING AND ORDERED PUBLISHED this 17<sup>th</sup> day of April, 2007.

THE CITY COUNCIL OF  
FORT MORGAN, COLORADO

BY: */s/ Jack Darnell*  
Mayor

ATTEST:

*/s/ Andrea J. Strand*  
City Clerk

[SEAL]

PASSED, APPROVED AND ADOPTED ON FINAL READING AND ORDERED  
PUBLISHED the 1<sup>st</sup> day of May, 2007.

THE CITY COUNCIL OF  
FORT MORGAN, COLORADO

BY: */s/ Jack Darnell*  
Mayor

ATTEST:

*/s/ Andrea J. Strand*  
City Clerk

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

I, Andrea Strand, the duly appointed, qualified and acting Clerk of the City of Fort Morgan, Colorado, do hereby certify that the foregoing Ordinance No. 1045 was, as a proposed Ordinance, duly and legally presented to the City Council of the City of Fort Morgan, Colorado, on the 17<sup>th</sup> day of April, 2007. Said Ordinance, as proposed, was duly read at length at said meeting, and thereafter the same was, on the 20<sup>th</sup> day of April 2007, 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 at a regular meeting of the City Council held on the 1<sup>st</sup> day of May, 2007; that the above and foregoing Ordinance No. 1045 was duly and legally, passed, approved and adopted on said 1<sup>st</sup> day of May 2007, and thereafter published as an Ordinance of the City in the said *Fort Morgan Times* on the 4<sup>th</sup> day of May, 2007.

*/s/ Andrea J. Strand*  
City Clerk

[SEAL]