

November 3, 2009

The City Council of the City of Fort Morgan, Colorado, met this day in the Council Chambers of City Hall. The Honorable Mayor Jack L. Darnell called the regular meeting to order at 7:00 p.m.

The Pledge of Allegiance was given.

Roll Call: Present: Honorable Mayor Jack L. Darnell
Councilmember Sharol Lyn Deal
Councilmember Debra J. Forstedt
Councilmember Terry McAlister
Councilmember James A. Powers
Councilmember Ron Shaver
Councilmember Alberta M. Simmons

The meeting was also attended by City Manager Pat Merrill, City Attorney Jeffrey Wells, Police Chief Keith Kuretich, Director of Water Resources/Wastewater Treatment Gary Dreessen, Municipal Engineer Brad Curtis, Community Development Director David Callahan, Treasurer Terri Schafer and City Clerk Andrea Strand.

REPORT FROM THE WATER ADVISORY BOARD AS TO THE SUPPLEMENTS TO THE NORTHERN INTEGRATED SUPPLY PROJECT

Water Advisory Board Chairperson Jack Odor was present to discuss the alternatives to Northern Integrated Supply Project (NISP) as offered from the Advisory Board. He added that meetings for this Board are well attended. He was prepared to speak of NISP as it compares to other projects. NISP would consist of two reservoirs to be built in the Fort Collins area. The water impounded in Glade Reservoir would be from the Poudre River; the water would be moved by exchanges from Carter Lake. This would allow the City to bring the same water through our treatment plant and distribute it to our community. It would also allow the City to store overages in the reservoir that are allocated to our City and sell water in times of abundance.

One alternative to NISP would be to purchase more CB-T water. One of the drawbacks to this alternative is CB-T water cannot be re-used, it must be released to the river. A large portion of NISP may be reused for augmentation, other uses or leased to others. CB-T is allocated by quota on an annual basis. NISP is not subject to an annual quota with the full amount of unused water remaining in the reservoir for our use.

Cactus Hill Project – a Reservoir that the Board reviewed is another alternative. Some of the shortcomings are that it costs \$100 million more than NISP, it requires the construction of a very long canal system to participate and there are concerns of a higher depletion rate than NISP, which is a factor with an environmental impact permit.

The last option is the Renaissance Group which we would consider if they had better figures. They had three possible ideas that had not been developed yet, as it pertained to building a treatment plant to process our well water.

He added that the Water Advisory Board was not privy to the finances of the City and what was most feasible concerning NISP. The Board feels that Council should determine the direction of growth for the City – meaning is the City in a position of growth or no growth.

DIRECTION TO CITY STAFF TO ASSIST VIAERO WIRELESS IN EXPANSION EFFORTS

Mayor Darnell stated that he had received a request from Viaero Wireless to remove this item from the agenda.

Councilmember McAlister offered a motion to remove this item from the agenda. His motion was seconded by Councilmember Powers and duly carried.

DISCUSSION AND/OR FIRST READING OF TWO ORDINANCES REGARDING HISTORIC PRESERVATION

Attorney Wells presented for Council consideration two Ordinances regarding Historic Preservation. The Ordinance entitled, “Ordinance Creating a Historic Preservation Board” would create a review board and is similar to a board at the City of Brush. Councilmember Deal added that the City of Brush had been successful with this process and the Ordinance was developed with the assistance of experts in the area of historic presentation. She would recommend that Council adopt this Ordinance. She explained that she had spoken to several community members who would be interested in serving on this Board. The Advisory Board would develop the criteria and present it to Council for adoption. She named: Kerry Hart, Don Ostwald, Deb Elrick, Nicolas Ng and Mike Tibbetts as people who had expressed an interest in serving on this advisory board.

Councilmember Simmons stated that members of the community had contacted her and wondered what the rush was for this process. Her concern was determining which one of the two Ordinances presented would most benefit the City. She would like to have more staff input.

Councilmember Powers added that he would also like input from staff. He also wondered if the other requirements for other advisory boards should be placed in the Ordinance. Attorney Wells responded that those would be included in the newly formed By-Laws.

Councilmember McAlister summarized that, in his opinion, the conditions in this Ordinance would apply to people who chose to participate; people did not have to participate if they did not want to.

Councilmember Shaver offered the following Resolution and moved for its adoption. His motion was seconded by Councilmember McAlister; said Resolution being in words, letters and figures as follows, to-wit:

ORDINANCE NO. _____

AN ORDINANCE CREATING A HISTORIC PRESERVATION BOARD

WHEREAS, the protection and preservation of the City’s historic and cultural heritage is essential to the enhancement of the City’s sense of community; and,

WHEREAS, such protection and preservation will enhance property values and generally increase the economic well-being of the City, its citizens and its businesses; and,

WHEREAS, the City Council finds and determines that the creation of a historic preservation board would be advantageous to the City; and,

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

Section 1. Section 57, Chapter 17 of the *Code of the City of Fort Morgan* is hereby amended by the addition of a new article to read as follows:

Article IV Historic Preservation

Sec. 17-57 Historic Preservation.

(a) The intent of this section is to preserve and protect the heritage of the City through the identification, evaluation, rehabilitation, adaptive use, restoration, and public awareness of Fort Morgan's historic and architectural resources. This section is further intended to:

1. Effect and accomplish the protection, preservation, enhancement, perpetuation, of the City's historic and cultural heritage, as embodied in historic structures and districts;
2. Enhancement of property values, and the stabilization of historic commercial and residential neighborhoods;
3. Foster civic pride in the accomplishments of the past;
4. Protect and enhance the aesthetic and environmental character, diversity, and interest of neighborhoods;
5. Protect and enhance the City's attraction to residents, tourist, and visitors, and thereby serve as a support and stimulus to the economy;
6. Promote the use of historic sites, and historic districts for the education, pleasure, and welfare of the citizens of the City of Fort Morgan.

(b) The purpose of this section is to:

1. To provide the framework for identification and designation of properties that have major significance in the City's historic, cultural, aesthetic, and architectural heritage.
2. Assure that alterations and new construction within designated historic sites, and historic districts are compatible with the property's historic character.

Sec. 17-58 Definitions.

The following definitions shall apply only to this Chapter:

Alteration. Any change affecting the exterior appearance of a structure or its setting by additions, reconstruction, remodeling, or maintenance involving change in color, form, texture, signs, or materials, or any such changes in appearance of designated interiors.

Applicant. The owner of record of a property and/or structures located therein, or his/her designee.

Application, complete. An application for approval sought pursuant to this section shall be deemed complete if it is on a form approved by the City and all applicable information is provided by the applicant on the form, or attachments (s) as necessary, at the time of its filing and all required fees are paid.

Certificate of Appropriateness. A written document, issued pursuant to this section, permitting specified alterations, demolitions, ground disturbing activity, or other work.

Contributing structure / landscape feature. A structure or landscape feature which by location, design, setting, materials, workmanship, feeling, and association adds to the sense of time and place and historical development of a historic site or historic district.

Demolition. The complete destruction of a structure, or any part thereof.

Designated property; designated historic site, designated historic district. A historic site or historic district designated pursuant to this section.

Ground disturbing activity. Any excavation, filling, digging, removal or trees, or any other activity that may alter or reveal an interred area.

Historic Preservation Map. The Official Historic Preservation Map of the City of Fort Morgan, Colorado, which shall show all designated historic sites and historic districts.

Historic district. A geographically defined area possessing a significant concentration, linkage, or continuity of sites or structures united historically or aesthetically by plan or physical development.

Historic site. A geographically defined area containing a structure or site, or a historically related complex of structures or sites, which has a special character or a special historic or aesthetic interest or value as part of the heritage of the City.

Interim protection measure. The interim period of time needed to protect a property from demolition, relocation, alteration, or new construction until such period of time provided by law passes for the property to be considered for designation as a historic site, or historic district.

Landscape feature. Vegetation, geological features, ground elevation, bodies of water or other natural or environmental features.

Ordinary maintenance or repair. Any work, the purpose and effect of which is to correct any deterioration or decay of a structure of landscape feature, or any part thereof, by restoring it, as nearly as may be practicable, to its condition prior to such deterioration or decay, using the same materials or those materials available which are as close as possible to the original.

Rehabilitation. The act or process of returning a property to a state of utility through repair or alteration which makes possible an efficient contemporary use while preserving those portions or features of the property which are significant to its historical, architectural, and cultural values.

Relocation. Any change of the location of a structure in its present setting to another setting.

Restoration. The act or process of accurately recovering the form and details of a property and its setting as it appeared at a particular period of time by means of the removal of later work or by the replacement of missing earlier work.

Site. The location of a significant event, a historic occupation or activity, or a structure, whether staining, ruined, or vanished, where the location itself possesses historic, or cultural value regardless of the value of existing structure.

Structure. Anything constructed or erected, the use of which requires a fixed location on the ground or attachment to something having fixed location on the ground.

Unreasonable or undue economic hardship. An onerous or excessive financial burden that destroys reasonable and beneficial use of property and that would amount to the taking of property without just compensation, or failure to achieve a reasonable economic return in the case of income-producing properties.

Sec. 17-59 Historic Preservation Board Established.

There is hereby created a Historic Preservation Board, referred to as the "Board", which shall have principal responsibility for matters of historical preservation of historic sites and districts within the municipal boundaries of the City of Fort Morgan.

(a) **Membership.** The Board shall consist of five (5) members providing a balanced community-wide representation. Members shall reside [or own real property] within the corporate limits of the City. Efforts will be made to appoint at least two (2) members who are experience in the fields of history, architecture or planning. No more than one member may reside outside of the City. The City's Director of Community Development shall serve as the technical consultant to the Board.

(b) **Appointments and Terms of Office; Vacancies; Removals.** Members of the Board shall be appointed by City Council and shall serve three-year staggered terms from the date of appointment. In order to stagger the initial terms of membership, the original members shall serve as follows:

- One (1) appointee shall serve a one-year term;
- Two (2) appointees shall serve two-year terms; and,
- Two (2) appointees shall serve three-year terms.

A member shall serve until a successor is appointed. Members may be appointed to serve successive terms without limitations. Appointments to fill vacancies on the Board shall also be made by the City Council. All members of the Board shall serve without compensation except for such amounts determined appropriate by the City Council to offset expenses incurred in the performance of their duties. The City Council may remove a member of the Board for

neglect of duty or malfeasance in office or for other good cause or without cause in its discretion.

(c) Quorum and Voting. A quorum for the Board shall consist of three members. A quorum is necessary for the Board to hold a public hearing or to take official action. A roll call vote shall be taken upon the request of any member. A tie vote shall be deemed denial of the motion or recommended action.

(d) Officers. The Board shall by majority vote elect one (1) of its members to serve as chairperson to preside over the Board's meetings, one (1) member to serve as vice-chair and one member to serve as secretary. The members so designate shall serve in those capacities for terms of one (1) year and may serve successive terms.

(e) Meetings. The Board shall meet at least annually to elect offices and at other times determined necessary. Minutes shall be kept of all proceedings and in the general conformance with *Robert's Rules of Order*.

(f) Powers and Duties. The Board shall:

1. Recommend criteria for review of historic resources for approval by City Council.
2. Review resources nominated for designation as either an historic structure or a historic district and recommend designation of those resources qualifying for such designation to the City Council.
3. Review any application for alterations to the exterior of designated historic structures or historic districts.
4. Review any application for moving or demolishing a historic structure.
5. Advise and assist owners of historic properties for the purpose on physical and financial aspects of preservation, renovation, rehabilitation, and reuse, including nomination to the National Register of Historic Places.
6. Develop and assist in public education programs including but not limited to walking tours, brochures, marker programs for historic properties, lectures, and conferences.
7. Conduct surveys of historic properties for the purpose of defining those of historic significance, and to establish priorities of the importance of identified historic properties and areas.
8. Advise City Council on matters related to preserving the historic character of the City.
9. Actively pursue and maintain information on financial assistance for preservation-related programs.
10. Establish a City Register of Designated Properties.
11. Recommend removal of properties from the register for reasons the Board deems appropriate including but not limited to acts of God, under hardship and public health/safety concerns.

12. Establish and collect an application fee for applications applying for historical designation or to alter or demolish a historically designated property or district.
13. Adopt bylaws and guidelines for the functioning of the Board.

Sec. 17-60 Relationships to the City Council and Staff:

1. The Board shall advise and recommend to the City Council exclusively on those matters pertinent to the historic preservation advisory board's duties and subject area, as set forth herein.
2. The Board shall biannually prepare a written report which shall then be presented to Council at a Regular Meeting, with the first report and presentation occurring after the first of the year and the second prior to the start of the City's Budget appropriation for the following year.
3. Staff will be available to attend Board Meetings quarterly at the request of the Board Chairperson.
4. A member of the City Council shall be appointed as the Council's liaison to the Board. The liaison will attend regular Board Meetings and be the conduit of bidirectional information to and from the City Council. The liaison is not a member of the Historic Preservation Advisory Board, nor is the liaison entitled to vote.

Sec. 17-61 Conduct of Business. The Board shall conduct its business in accordance with the public meetings acts, public records act and other laws applicable to local public bodies.

Section 2. That this Ordinance shall take effect from and after its passage.

INTRODUCED, READ AND PASSED UPON FIRST READING this 3rd day of November, 2009, for publication once in a newspaper of the City of Fort Morgan, Colorado, at least ten days before its final passage.

[SEAL]

THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

BY: _____
Mayor

ATTEST:

City Clerk

FINALLY PASSED, ADOPTED AND APPROVED this ____ day of _____, 2009, for publication once in the newspaper of the City of Fort Morgan, Colorado, within five days of the final passage, to take effect five days after final publication.

[SEAL]

THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

ATTEST:

BY: _____
Mayor

City Clerk

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

CERTIFICATE

I, Andrea Strand, the duly appointed, qualified and acting Clerk of the City of Fort Morgan, Colorado, do hereby certify and attest 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, at a Regular Meeting on the 3rd day of November, 2009. Said Ordinance, as proposed, was duly read at length at said regular meeting, and thereafter the same was, on the 6th day of November, 2009 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 _____, 2009. Within five (5) days after its final passage, said Ordinance 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.

City Clerk

RESOLUTION

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT MORGAN, COLORADO that the foregoing Ordinance entitled above; and the same is hereby ordered published in the City of Fort Morgan, Colorado, not less than ten days before further consideration; and that said Bill for an Ordinance again be presented to this Council at the expiration of said period of publication for final action thereof.

PASSED, APPROVED AND ADOPTED THIS 3rd day of November, 2009, the vote upon roll call being as follows: Ayes: Mayor Darnell; Councilmembers, Deal, Forstedt, McAlister, Powers, Shaver and Simmons. Nays: None.

Councilmember Deal provided details about the following Ordinance and recommend that it not be adopted as it would be too cumbersome for our City.

ORDINANCE NO. _____

**AN ORDINANCE ESTABLISHING THE AUTHORITY
TO DESIGNATE LANDMARKS FOR HISTORIC PRESERVATION**

WHEREAS, the protection and preservation of the City's historic and cultural heritage is essential to the enhancement of the City's sense of community; and,

WHEREAS, such protection and preservation will enhance property values and generally increase the economic well-being of the City, its citizens and its businesses; and,

WHEREAS, the City Council finds and determines that designating landmarks for historic preservation would be advantageous to the City.

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

Section 1. Section 57, Chapter 17 of the *Code of the City of Fort Morgan* is hereby amended by the addition of a new article to read as follows:

Article IV Historic Preservation

Sec. 17-57 Purpose.

The purpose of this Article is to promote the public health, safety and welfare through the following:

- (1) The protection and preservation of the City's historic and cultural heritage, as represented by designated Landmarks.
- (2) The enhancement to quality of life through the maintenance of designated Landmarks.
- (3) The protection and enhancement of the City's economy through the preservation of historical attractions for local residents, tourists and visitors to the City.
- (4) The expansion of public awareness, appreciation and knowledge of the City's unique local history.

Sec. 17-58. Definitions.

Except as specifically defined herein, words or phrases in this Article shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this Article its most reasonable application.

Applicant means a person or entity appointed by the record owner of the property.

Building means any structure, place or any other construction built for the shelter or enclosure of persons, animals or personal property, or any part of such structure.

Compatible or *Compatibility* means consistent with, harmonious with and/or enhances the mixture of complementary architectural styles either of the architecture of an individual structure or the character of the surrounding structures.

Demolition or *Demolish* means any act or process that destroys in part or in whole a Landmark.

Guidelines means the City of Fort Morgan's Landmark Protection Guidelines which shall be approved by the City Council and may be amended from time to time by the Council. The Guidelines shall be available at City Hall and are incorporated herein by this reference.

Landmark means a property or structure designated as a "Landmark" by ordinance of the City Council, pursuant to procedures prescribed herein, that is worthy of rehabilitation, restoration, or preservation because of its historic and architectural significance.

Owner means the person, corporation or other legal entity listed as owner on the real property records of Morgan County.

Preservation means the act or process of applying measures to sustain the existing form, integrity, and materials of a building or structure, and the existing form and specimen trees located on a site. It may include initial stabilization work, where necessary, as well as ongoing maintenance of the historic building or materials.

Rehabilitation means the act or process of returning property to a state of utility through repair which makes possible a contemporary use while preserving those portions or features of the property which are significant to its historical, architectural and cultural value.

Relocation means any relocation of a structure on its site or to another site.

Structure means anything constructed or erected, the use of which requires permanent or temporary location on or in the ground, including, but without limiting the generality of the foregoing, buildings, fences, gazebos, advertising signs, billboards, radio and television antennae, including supporting towers, hot tubs and swimming pools.

Sec. 17- 59 Designation of landmarks.

(a) Designation. The City Council may by ordinance designate as a Landmark an individual structure or other feature or integrated group of structures and features on a single lot or site having special historical value. Each such designating ordinance shall include or reference a description of the characteristics of the landmark which justifies its designation and shall include a legal description or other information sufficient to accurately determine the location and boundaries of the landmark. The designating ordinance may indicate demolitions which would not have a significant impact on or be potentially detrimental to the landmark. Any such designation shall be in furtherance of and in conformance with the purposes of this Section. Any property designated as a landmark, regardless of whether the City or property owner initiated the landmark designation, shall be subject to the controls and requirements set forth in this Section and shall be eligible for the incentive programs provided for in this Article.

(b) Procedure for designation. Landmarks may be designated on approval of an ordinance of the City Council at a public hearing after recommendation by the Planning and Zoning Commission and after notice to and consent by the property owner of the City's intent to consider designation of the property as a landmark.

(c) Application. Applications may be filed by the property owner or may be initiated by the City. Any application filed by a property owner shall include all information required by the Guidelines and any other information reasonably requested by the Director of Community Development, the Planning and Zoning Commission or the City Council. The City shall not initiate an application for landmark designation of a structure which is exclusively residential

without the written permission of the property owner. The application fee or fees for processing the Landmark Designation Application shall be determined by City Council from time to time.

(d) Standards for designation. When considering whether certain property should be designated as a landmark, the City Council shall consider the following factors with regard to the property. It is not the intention of this Article to allow designation of insignificant structures, features or sites. Any structure, feature or site that is at least seventy-five (75) years old and demonstrates one or more of the following characteristics may be designated as a landmark.

- (1) Its character, interest or value as a part of the development, heritage or culture of the City.
- (2) Its location as a site of a significant historic event.
- (3) Its identification with a person or persons who significantly contributed to the culture and development of the City.
- (4) Its exemplification of the cultural, economic, social or historic heritage of the City.
- (5) Its embodiment of distinguishing characteristics, detail, materials or craftsmanship of an architectural type or specimen.
- (6) Its identification as a work of an architect or master builder whose individual work has influenced the development of the City.
- (7) Its unique location or singular physical characteristic representing an established and familiar visible feature of a neighborhood community or the City.
- (8) Its status as a significant component of a historically significant neighborhood and the preservation of the structure or site is important for the maintenance of that neighborhood character.

Sec. 17-60 Incentives.

From time to time, the City Council may establish by ordinance incentives for applicants in order to promote those goals identified in Sec. 17-57.

Sec. 17-61 Special landmark review approval required.

(a) No demolition, partial demolition or relocation of any landmark shall be permitted unless the demolition, partial demolition or relocation is approved by the City Council by Special Landmark Review in accordance with the standards set forth in this Chapter.

- (1) Procedures for review. At a duly noticed public hearing before the City Council held after publication, the City Council shall approve, approve with conditions or disapprove the application.
- (2) Application for a Special Landmark Review. The application shall include the following:

- a. The general information required by the City's development review application form;
- b. A written description of the actions to be permitted and a statement of how the proposal complies with the review standards set forth below;
- c. If deemed necessary by the Director of Community Development, a report from a licensed engineer or architect regarding the soundness of the structure and its suitability for rehabilitation and/or an economic feasibility report; and
- d. Any other information reasonably required by the Director of Community Development or the City Council.
- e. Any applicable fees and deposits required by the City.

(3) Standards for review. No approval for demolition, partial demolition or relocation of a landmark shall be granted unless the City Council approves or approves with conditions the Special Landmark Review after considering any of the following standards which the City Council deems applicable:

- a. The structure proposed for demolition is not structurally sound despite evidence of the owner's efforts to properly maintain the structure;
- b. The structure cannot be rehabilitated or reused on site to provide for any reasonable beneficial use of the property;
- c. The structure cannot be practically moved to another site in City;
- d. The applicant demonstrates that the proposal mitigates to the greatest extent practical, the following:
 - 1. Any impacts that occur to the character of the neighborhood;
 - 2. Any impact on the landmark or on the historic significance of the structure or structures located on the parcel and adjacent parcels; and
 - 3. Any impact to the architectural character and integrity of the structure or structures located on the parcel and adjacent parcels;
- e. Any partial demolition is required for the renovation, restoration or rehabilitation of the Landmark, or the part of the structure to be demolished does not contribute to the historic significance of the Landmark;
- f. The structure cannot be rehabilitated or reused on its original site to provide for any reasonable beneficial use of the property;
- g. Any relocation activity is demonstrated to be the best preservation method for the character and integrity of the structure and the historic integrity of the existing neighborhood and adjacent structures will not be diminished due to the relocation;

h. If appropriate, the structure has been demonstrated to be capable of withstanding the physical impacts of the relocation and re-siting. A structural report shall be submitted by a licensed engineer demonstrating the soundness of the structure proposed for relocation; and

i. If appropriate, a relocation plan shall be submitted, including posting a bond or other financial security approved by the City Council with the engineering department, to insure the safe relocation, preservation, and repair (if required) of the structure, site preparation and infrastructure connections. The receiving site shall be prepared in advance of the physical relocation.

(4) Exemption for structures or portions of structures which do not contribute to the historic significance of a landmarked parcel. Demolitions or partial demolitions which do not affect the exterior of the building are exempt from meeting the standards of Sec. 17-61. The demolition, partial demolition or relocation of a structure or portion of a structure which the Special Review Committee unanimously finds does not contribute to the historic significance or defining elements of a landmarked parcel shall be exempt from meeting the standards of Sec. 17-61.

Sec. 17-62. Penalties.

Any person violating the provisions of this Chapter 17, Article IV, shall be subject to the general penalty provisions of this Chapter, and, in addition, the City Council, by ordinance following notice to the owner and hearing, may prohibit the owner, successor, or assigns from obtaining a building permit for the affected property for a period up to three (3) years from the date of such violation. The extent of the penalty shall be determined by the City Council following a review of the severity of the violation. The City may initiate proceedings to record a public notice against the property to this effect to insure the notice and enforcement of this penalty.

Sec. 17-63. Insubstantial amendment of development order.

(a) Insubstantial amendment. An insubstantial amendment to a Special Landmark Review Approval may be authorized by the Director of Community Development. An insubstantial amendment shall be limited to technical or engineering considerations discovered after the approval process which could not reasonably have been anticipated during the approval process.

(b) Other amendments. All other amendments shall be approved by the City Council pursuant to Sec. 17-61.

Sec. 17-64. Minimum maintenance requirements.

In order to avoid loss of landmarks, all buildings and structures designated as a landmark and having historical significance shall be maintained to meet the minimum requirements of the Uniform Building Code ("UBC") and the Uniform Conservation Building Code. Provided, this requirement shall not create an obligation for an owner of a structure to repair or replace elements of such structure which are properly functioning but which are not UBC compliant. Said structures shall receive reasonable care, maintenance and upkeep appropriate for the preservation, protection, enhancement, rehabilitation, reconstruction, perpetuation or use in compliance with the terms of this Section. The owner of each such landmarked property shall keep the building or structure in good repair, including all of the exterior portions of such

improvements and all interior portions thereof which, if not maintained, may cause or tend to cause the exterior portions of such improvements to deteriorate, decay or become damaged or otherwise fall into a state of disrepair. The City Council may, on its own initiative, file a petition with the Planning and Zoning Department requesting that said Department require correction of defects or repairs to any structure covered by this Section, so that such structure shall be preserved and protected consistent with the purpose of this Section. Upon application, the City Council may approve a one-time loan to the owner of the property in an amount not to exceed ten thousand dollars (\$10,000.00) for purposes of satisfying the minimum maintenance requirements of this Section upon a demonstration of economic hardship which prohibits the owner from conducting such repairs, provided that:

- (1) The loan shall be in the minimum amount necessary to maintain the structure;
- (2) No interest will be due unless the applicant is not able to repay the loan within ten (10) years; and
- (3) In approving the loan, the Council shall establish the loan terms and interest rates in the event the loan is not to be paid back in ten (10) years.

Section 2. That this Ordinance shall take effect after its passage.

INTRODUCED, READ AND PASSED UPON FIRST READING this ____ day of _____, 2009, for publication once in a newspaper of the City of Fort Morgan, Colorado, at least ten days before its final passage.

[SEAL]

THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

BY: _____
Mayor

ATTEST:

City Clerk

FINALLY PASSED, ADOPTED AND APPROVED this _____ day of _____, 2009, for publication once in the newspaper of the City of Fort Morgan, Colorado, within five days of the final passage, to take effect five days after final publication.

[SEAL]

THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

BY: _____
Mayor

ATTEST:

City Clerk

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

CERTIFICATE

I, Andrea Strand, the duly appointed, qualified and acting Clerk of the City of Fort Morgan, Colorado, do hereby certify and attest 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, at a Regular Meeting on the ____ day of _____, 2009. Said Ordinance, as proposed, was duly read at length at said regular meeting, and thereafter the same was, on the ____ day of _____, 2009 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 _____, 2009. Within five (5) days after its final passage, said Ordinance 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.

City Clerk

CONSENT AGENDA

Clerk Strand presented the Consent Agenda for Council consideration. Councilmember Simmons offered a Resolution to approve the Consent Agenda as presented and moved for its adoption. Her motion was seconded by Councilmember Forstedt; said Consent Agenda being in words, letters and figures as follows, to wit:

- A. Approve the minutes from the October 13, 2009, special meeting.
- B. Approve the minutes from the October 20, 2009, regular meeting.
- C. Approve the application for renewal of the Beer and Wine Liquor License for Park Terrace Inc., dba Memories Restaurant, located at 725 Main Street, with a clear police investigation report.
- D. Approve the application for renewal of a 3.2 Percent Beer Liquor License for Safeway Store Forty-Six Inc., located at 620 West Platte Avenue, with a clear police investigation report.
- E. Approve the application for renewal of the Retail Liquor Store License for Village Liquor Inc., located at 631 West Platte Avenue, with a clear police investigation report.
- F. Second and Final Reading of Ordinance No. 1088 entitled, "An Ordinance Imposing a Moratorium on Medical Marijuana Dispensaries in the City of Fort Morgan," and request to publish by title only.

ORDINANCE NO. 1088

**AN ORDINANCE IMPOSING A MORATORIUM ON
MEDICAL MARIJUANA DISPENSARIES IN THE CITY OF FORT MORGAN**

WHEREAS, the City of Fort Morgan is a legally and regularly created, established, organized and existing municipal corporation under the provisions of Article XX of the Constitution of the State of Colorado and the home rule charter of the City (the "Charter"); and,

WHEREAS, Article IV, Section 4(d)(2) of the *Charter* authorizes City Council to pass ordinances for the protection of the public health, safety, and welfare, and provide penalties for the violation thereof; and,

WHEREAS, over the past several months many communities in Colorado have been faced with the issue of how to regulate the new business of medical marijuana dispensaries, and City Council wishes to address this issue before an application is made within the City limits; and,

WHEREAS, City Council has been made aware that Staff has received an inquiry from an individual who may be interested in opening and operating a business within the City which would offer medical marijuana for sale and such activities related to such business; and,

WHEREAS, Article 18, Section 14 of the Colorado Constitution, adopted by the voters of the State of Colorado on November 7, 2000, created a limited exception from criminal liability under Colorado law for seriously ill persons who are in need of marijuana for specified medical purposes and who obtain and use medical marijuana under the limited, specified circumstances described in Amendment 20; and,

WHEREAS, Article 18, Section 14 of the Colorado Constitution authorized the sale of medical marijuana for use in the treatment of debilitating medical conditions; and,

WHEREAS, the imposition of a one-hundred-eighty (180) day moratorium on the submission, acceptance, processing, and approval of all applications for City permits, licenses, and land use approvals relating to the operation of a person that grows, produces or sells medical marijuana will allow the City to investigate the City's ability to regulate such uses, and to develop and implement any appropriate regulations deemed necessary by the City Council; and,

WHEREAS, the City does not have any current regulations pertaining to persons that grow, produce or sell medical marijuana, the City will suffer irreparable harm if a moratorium on the submission, acceptance, processing, and approval of City permits, licenses, and land use applications related to the operation of such facilities is not imposed; and,

WHEREAS, the duration of the moratorium imposed by this ordinance is reasonable in length, and is no longer than is required for the City to properly investigate, develop, and if appropriate, adopt and implement any regulations deemed necessary with respect to persons that grow, produce or sell marijuana; and,

WHEREAS, proprietors and other persons desiring to open a business that grows, produces or sells medical marijuana or persons that wish to grow or produce marijuana will not be unfairly prejudiced by the imposition of the temporary moratorium imposed by this ordinance.

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

Section 1. Upon the adoption of this ordinance, a moratorium is imposed upon the submission, acceptance, processing, and approval of all applications for permits, licenses, and land use approvals by the City of Fort Morgan related to a person that grows, produces or sells, or proposes to grow, produce or sell medical marijuana and pursuant to the authority granted by Article 18, Section 14 of the Colorado Constitution, City Staff is directed to refuse to accept for filing and shall not to process or review any such new applications during the moratorium period.

Section 2. The moratorium imposed by this ordinance shall commence as of the date of passage and shall expire one-hundred-eighty (180) days thereafter, unless sooner repealed. The period of effectiveness of this Ordinance is referred to herein as the "Effective Period".

Section 3. As the growing, production and sale of marijuana is not currently addressed in the *Code of the City of Fort Morgan*, the growing, production and sale of marijuana shall not be permitted within the City of Fort Morgan during the duration of the moratorium. Any notice of intent received prior to the date of this moratorium may proceed on a temporary basis dependent upon the outcome of the proposed regulations.

Section 4. Before the expiration of the moratorium imposed by this ordinance, Staff will work with the City Attorney to review the legal authority of the City to regulate persons growing, producing and selling medical marijuana pursuant to Article 18, Section 14 of the Colorado Constitution. Such investigations shall be completed promptly and with due diligence. The City Attorney shall prepare appropriate regulations with respect to such persons for consideration by the City Council.

Section 5. The Council hereby finds, determines and declares that it has the power to adopt this ordinance pursuant to: (i) the Local Government Land Use Control Enabling Act, Article 20 of Title 29, C.R.S.; (ii) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal zoning powers); (iii) Section 31-15-103, C.R.S. (concerning municipal police powers); (iv) Section 31-15-401 C.R.S. (concerning municipal police powers); (v) Section 31-15-501 (concerning municipal power to regulate businesses); (vi) the authority granted to home rule municipalities by Article XX of the Colorado Constitution; and (vii) the powers granted by the *Charter* of the City of Fort Morgan.

Section 6. The City Council of the City of Fort Morgan hereby finds, determines, and declares that an emergency exists and that this ordinance is necessary for the immediate preservation of public property, health, welfare, peace or safety. The adoption of this ordinance on an emergency basis is necessary in order to prevent a person from filing an application for a permit, license, or land use approvals relating to the operation of a person that grows, produces or sells medical marijuana until the City has had a reasonable opportunity to determine: (i) the extent of the city's regulatory authority over persons that grow, sell, or produce medical marijuana; and (ii) what regulations, if any, should be imposed by the City upon such persons. Failure to immediately impose the moratorium provided for in this ordinance will potentially allow a person to submit an application for a permit, license, or land use approval from the City (including but not limited to an application for a development permit; an application for a business license; an application for sales tax license; or a land use application), and to possibly acquire certain rights with respect to the processing of such applications before the City has the reasonable opportunity to evaluate the possible community impacts that might be associated with the operation of facilities farming, producing, or selling medical marijuana and to implement appropriate regulations with respect to such facilities. This could lead to the City being forced to allow the operation of a facility that sells medical marijuana in a location or in such a manner

that would be out of character with the community and which would negatively affect the cultural, environmental, and neighborhood areas of the City, and potentially present issues related to crime. The City Council further determines that the adoption of this ordinance as an emergency ordinance is in the best interest of the citizens of the City of Fort Morgan.

Section 7. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional in a court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and shall not affect the validity of the remaining portions thereof.

INTRODUCED, READ AND APPROVED UPON FIRST READING this 20th day of October, 2009, for publication once in a newspaper of the City of Fort Morgan, Colorado, at least ten days before its final passage.

[SEAL]

THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

BY: /s/ Jack Darnell, Mayor

ATTEST:

/s/ Andrea J. Strand, City Clerk

FINALLY PASSED, ADOPTED AND APPROVED this 3rd day of November, 2009, for publication once in the newspaper of the City of Fort Morgan, Colorado, to take effect upon the date passage.

[SEAL]

THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

BY: _____
Mayor

ATTEST:

City Clerk

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

CERTIFICATE

I, Andrea Strand, the duly appointed, qualified and acting Clerk of the City of Fort Morgan, Colorado, do hereby certify and attest that the foregoing Ordinance No. 1088 was, as a proposed Ordinance duly and legally presented to the City Council of the City of Fort Morgan, Colorado, at a Regular Meeting on the 20th day of October, 2009. Said Ordinance, as proposed, was duly read at length at said regular meeting, and thereafter the same was, on the 23rd day of October, 2009 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 3rd day of November, 2009. Within five (5) days after its final passage, said Ordinance 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.

City Clerk

All matters listed under Item 6, Consent Agenda, are considered to be routine business by the Council and will be enacted with a single motion and a single vote by roll call. There will be no separate discussion of these items. If discussion is deemed necessary, that item should be removed from the Consent Agenda and considered separately.

PASSED, APPROVED AND ADOPTED this 3rd day of November, 2009, the vote upon roll call being as follows: Ayes: Mayor Darnell; Councilmembers Deal, Forstedt, McAlister, Powers, Shaver and Simmons. Nays: none.

PUBLIC COMMENT / AUDIENCE PARTICIPATION

None.

REPORTS

The following Directors provided written reports to Council:

City Manager Merrill
Police Chief Kuretich
Water Resources/Wastewater Treatment Director Dreessen
Municipal Engineer Curtis
Human Resources and Risk Management Director Prentice
Community Services Director Shedd
Community Development Director Callahan
City Clerk Strand
Municipal Court Administrator Tadolini

BIDS, MEETINGS AND ANNOUNCEMENTS

Clerk Strand announced upcoming bids and meetings.

Mayor Darnell adjourned the November 3, 2009, regular meeting at 8:13 p.m.

Mayor

City Clerk