

June 3, 2008

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**5:30 P.M.**

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The City Council of the City of Fort Morgan, Colorado, began the meeting this day at City Hall. The Honorable Mayor Jack L. Darnell called the regular meeting to order at 5:32 p.m.

The Pledge of Allegiance was given.

Roll Call: Present: Honorable Mayor Jack L. Darnell  
Councilmember Sharol Lyn Deal  
Councilmember Terry McAlister  
Councilmember James A. Powers  
Councilmember Terri P. Schafer  
Councilmember Alberta M. Simmons

Excused Absence: Councilmember Ron Shaver

There was discussion regarding which evaluation form should be utilized for City Attorney Jeffrey Wells's evaluation.

Councilmember Powers offered a Motion that due to the pending litigation, the evaluation of Jeffrey Wells will be based upon goals and objectives provided to the City Attorney, Jeffrey Wells, at his six-month evaluation in discussion forum. His motion was seconded by Councilmember McAlister and carried unanimously.

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**5:40 P.M. – EXECUTIVE SESSION**

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Councilmember McAlister moved to go into Executive Session for the purpose of discussion of a personnel matter under C.R.S. Section 24-6-402(4)(f) and not involving: any specific employees who have requested discussion of the matter in open session; any member of this body or any elected official; the appointment of any person to fill an office of this body or of an elected official; or personnel policies that do not require the discussion of matters personal to particular employees; and the following additional details are provided for identification purposes: Personnel evaluation of City Attorney Jeffrey Wells. His motion was seconded by Councilmember Powers and duly carried.

The Executive Session occurred.

Mayor Darnell announced the time in now 6:38 p.m. and we now conclude the Executive Session and return to the open meeting.

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**7:00 P.M – REGULAR MEETING**

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Upon returning to the open meeting, Mayor Darnell announced, "The time is now 7:02 p.m., and the Executive Session has concluded. The participants in the Executive Session were Mayor Darnell; Councilmembers Deal, McAlister, Powers, Schafer, Simmons and Attorney Jeffrey Wells.

"For the record, if any person who participated in the Executive Session believes that any substantial discussion of any matters not included in the motion to go into Executive Session occurred during the Executive Session, or that any improper action occurred during the Executive Session in violation of the Open Meetings Law, I would ask that you state your concerns for the record. Hearing none, the Executive Session is concluded and I will ask Councilmember McAlister to report on the Executive Session."

Councilmember McAlister stated that the City Attorney's overall evaluation highly exceeds Council's expectations and he moved to approve a full step increase in pay. His motion was seconded by Councilmember Schafer and carried unanimously.

The regular meeting was also attended by Acting City Manager Keith Kuretich, City Attorney Jeffrey Wells, Police Lieutenant Darin Sagel, City Treasurer Pixie Jones, Utility Directors Gary Dreessen and Bob Weimer, Community Development Director Pat Merrill, Community Service Director Don Shedd, Director of Human Resources & Risk Management Jody Prentice and City Clerk Andrea Strand.

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**CONSENT AGENDA**

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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 McAlister; said Consent Agenda being in words, letters and figures as follows, to wit:

- A. Approve the minutes from the regular meeting on May 20, 2008.
- B. Approve the minutes from the special meeting on May 27, 2008.
- C. Second and final reading of Ordinance No. 1067 entitled, "An Ordinance Amending Ordinance No. 1049 Entitled 'An Ordinance Adopting Section 22A-22 Disposition of City-Owned Real Property,'" and publish by title only.

**ORDINANCE NO. 1067**

**AN ORDINANCE AMENDING ORDINANCE NO 1049 ENTITLED  
"ADOPTING SEC. 22A-22 DISPOSITION OF CITY-OWNED REAL PROPERTY."**

**WHEREAS**, Ordinance No. 1049 was previously adopted by City Council to provide a clear procedure of the disposition of City owned property; and,

**WHEREAS**, the procedure in the previous ordinance required clarification of the procedures related to the sale of property in the Industrial Park and for the sale of surplus property; and,

**WHEREAS**, Article IV, Sec. 16 of the *Charter of the City of Fort Morgan* (1914) provides that the Council shall have the power to sell and dispose of real and personal property; and,

**WHEREAS**, the Mayor and City Council desire to amend Ordinance 1049.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF FORT MORGAN, COLORADO** that Sec. 22A-22 is hereby amended in entirety as follows:

**22A-22          Disposition of City-Owned Real Property**

- 22A – 22.1      Purpose.
- 22A – 22.2      Objectives.
- 22A – 22.3      Procedure.
- 22A – 22.4      Determination of bids.
- 22A – 22.5      Post-bidding procedure.
- 22A – 22.6      Awarding of bid.
- 22A – 22.7      Disposition contract.
- 22A – 22.8      Applicability.

**22A – 22.1      Purpose.**

The purpose of this Section is to set forth the rules and regulations to enable the Mayor and Members of Council to establish a uniform procedure for the disposition of city-owned surplus or unused real property, including such land located in the Fort Morgan Industrial Park, to ensure that disposition of such property will be developed in the most appropriate use for the public.

**22A – 22.2      Objectives.**

The objectives of this Section are as follows:

- A. To establish a uniform procedure for the disposition and sale of city-owned real property, including land located in the Fort Morgan Industrial Park;

- B. To encourage the development and sale of real property in a manner beneficial to the residents of the City of Fort Morgan;
- C. To encourage development that will maximize the public investment in existing and future capital improvements;

**22A – 22.3 Procedure for Surplus Property.**

The following procedure shall govern the sale of city-owned surplus or unused real property.

- A. The City Manager shall determine whether the city-owned land is surplus or unused in accordance with the *Charter* of the City of Fort Morgan and by recommendation to the City Council request the sale or disposition of such real property.
- B. The City Manager shall prepare a list of surplus property annually and recommend to Council the approval of placing the property for sale to the public for no less than the fair market value.
- C. Upon approval of the surplus property list, the City Manager shall have authority to authorize the appraisal and sale of surplus property at or above the fair market value without further approval from Council. The cost of the appraisal shall be included in the sale price at closing.
- D. The approved list shall be provided to the public and the City Manager shall consider offers on the property at any time following the appraisal. Upon receipt of an offer, the City Manager shall not accept the offer until thirty (30) days has expired and no higher offers have been received.
- E. When a final offer has been accepted by the City Manager, he shall notify the City Attorney who shall memorialize the agreement through a contract for the sale of the property. All requirements associated with the sale of surplus property shall be determined in the sale's contract and subsequent deed provided to the purchaser at closing.

**22A – 22.4 Procedure for Industrial / Business Park Properties.**

- A. The City Council may approve the sale or disposition of such property, and direct the City Manager to publish a notice inviting sealed bids.
- B. A notice inviting bids shall be provided to the public not less than **thirty (30) days** prior to the deadline for closing bids. Such notice shall identify the specific property to be sold, the legal description of the parcel, bid package requirements, and the minimum bid price as determined by the City Manager.
- C. The City Manager shall establish the manner in which all bids shall be submitted in response to the notice. All bids shall contain sufficient information to specifically address the items as set forth in this section.
- D. All bids made for the purchase of land under this section, shall be accompanied by a statement which includes the following:
  - I. The demonstrated financial and legal ability of the person making the bid to purchase the property including the name, and contact information of the lender or other financier for the purchase;
  - II. The significance of the positive economic impact on the City of Fort Morgan including the number of jobs (number of full-time, part-time and seasonal), average salary, benefits etc.;
  - III. The potential of the development for providing quality employment opportunities;
  - IV. The monetary value offered for the land, as well as the monetary value of the proposed development upon completion. The minimum bid for property under this section shall be the Industrial Park Rates adopted by City Council. Under no circumstances will the Industrial Park Rates limit the maximum amount that can be offered for the purchase of the property;

- V. A preliminary Site Plan for the property which shall consist of a description of all proposed uses and the type of development proposed for the property, including the preliminary design of all proposed building and structures, including a site plan of the proposed building or structures and all amenities proposed to be developed therewith;
- VI. Additional criteria the City Council may wish to consider to make its determination.
- E. No bid shall be accepted for less than the acceptable minimum bid as determined by council and full amount of the bid must accompany each bid. The City of Fort Morgan reserves the right to reject any and all bids, or to award the bid most advantageous to the City.

In the event a bidder intends to apply for economic incentives provided under City policy, that application will be considered separate from the bid.

**22A – 22.5 Determination of bids.**

After all bids have been opened and all information reviewed and compiled, City Staff shall review all bids for completeness. The City Manager shall then present the information to the City Council within ten (10) business days of the bid opening and make recommendations to Council. The City Council shall then consider the following:

- A. The demonstrated financial and legal ability of the person making the bid to implement the proposal;
- B. The significance of the positive impact on the City of Fort Morgan;
- C. The potential of the development for providing employment opportunities;
- D. The monetary value offered for the land, as well as the monetary value of the proposed development upon completion;
- E. A preliminary development plan for the property which shall consist of a description of all proposed uses and the type of development proposed for the property, including the preliminary design of all proposed building and structures, including a site plan of the proposed building or structures and all amenities proposed to be developed therewith;
- F. Any other criteria the City Council may wish to consider to make its determination.

**22A – 22.6 Post-bidding procedure.**

After City Council review, the City Council shall decide whether to proceed to award the sale of the property by Resolution and a disposition contract to the successful bidder pursuant to Sec. 22A – 22.5 or to reject the bid.

Should the bid originally accepted by Council be rejected for any reason, and at the recommendation of the City Manager, Council may award the bid to the second highest bidder. This process will be followed until there are no acceptable bids .

**22A – 22.7 Awarding of bid.**

Upon selection of the successful bid to purchase property in the Industrial Park the City Council shall make an award by Resolution and proceed to sell or dispose of the property pursuant to the terms of a disposition contract. The disposition contract for the sale of the property shall contain the requirements of Section 22A – 22.8(A) and such other specific requirements as determined by the City Council deemed necessary to accomplish this sale under the terms of this chapter. As a condition prior to the City’s obligation to convey the property, the purchaser shall submit to the City adequate evidence that the Purchaser has the equity capital and commitment for mortgage financing necessary for the construction of the improvement to the property. No conveyance of the property shall be made prior to the execution of the disposition contract and the acceptance of such contract by the City Council.

Upon the award of a bid, it shall be the responsibility of the bidder to:

- A. Guarantee payment of the bid amount. The successful bid check shall be deposited within **forty-eight (48) hours** of the bid approval. The bid check must be in the form of a cashier's / certified check. If the check does not clear for any reason, the bid will be rejected, and the property will be awarded to the second approved bidder or resubmitted to the bid process.

**22A – 22.8 Disposition contract.**

- A. In addition to the regulations set forth in the *Zoning and Land Use Code of the City of Fort Morgan*, the building code, and other applicable codes and ordinances, the following shall be applied by the provisions contained in the disposition contract:
  - I. The purchaser shall devote such parcel to the uses as specified in the Site Plan which was submitted with the bid; additionally, if the purchaser has been awarded Economic Incentives, the purchaser must utilize the property under the requirements of the Economic Incentive Policy.
  - II. Within one (1) year of closing, the purchaser shall complete the project as set forth in the approved Site Plan. Failure to complete the project shall cause the property to revert to the City with any incomplete improvements. This covenant shall be included in the deed. Extensions will be granted upon showing to the Director of Community Development that the purchaser has substantially complied with the Site Plan review or failure to complete was a result of force majeure.
  - III. Closing shall be made within **thirty (30) days**, with the conveyance of property to be made by Warranty Deed or by a deed reflection the City's interest in the property. Such closing date may be by mutual agreement of the parties.
  - IV. Such deed conveying the property shall expressly provide that the agreements and covenants provided for in the development plan shall be covenants running with the land and shall be binding on the land for the benefit and in favor of the City;
  - V. A current commitment for title insurance in an amount equal to the purchase price shall be furnished to the purchaser, and the title shall be merchantable in the seller, or made merchantable prior to the date for closing and the conveyance of the property.
  - VI. Purchaser shall agree that no warranties or representations with regards to the condition of the property have been made. Purchaser acknowledges that an adequate inspection has been made and the purchaser has been informed of the condition of the property and accepts the property "as is" without warranty, either express or implied.
  - VII. Purchaser agrees that all said final plans for structures, site improvements, landscaping, parking, etc., shall be approved as required by Code and shall be approved by the City Council, including landscaping requirements that may apply in the Fort Morgan Industrial Park.
  - VIII. The purchaser and the seller shall agree that in the event either party is in default or in violation of the terms of the disposition contract, the remedies as set forth in the disposition contract shall be applied.
  - IX. The purchaser shall agree for itself and its successors and assigns and any successor in interest to the property or any part thereof, and the deed shall contain covenants that the purchaser and any such successors or assigns shall devote the property to and only to and in accordance with the use specified and approved in the development plan.
  - X. None of the provisions of this chapter or the disposition contract are intended to or shall be merged by reason of any deed transferring title to the property to the purchaser or to any successor in interest.
  - XI. The purchaser shall agree that interest in the property shall not be assignable without the prior written consent of the City of Fort Morgan.

XII. The disposition contract for sale of the property may be modified, including provisions pertaining to land use, building and site modification, before and after the transfer of property with prior written consent of the City Council by Resolution.

**22A – 22.9 Applicability.**

The requirements and covenants in the disposition contract and subsequent deed shall be applicable to an entire tract when a purchaser combines their adjacent real property it intends to purchase from the city with city-owned surplus or real property for development, subject to waiver or modification by the Mayor and City Council.

INTRODUCED, READ AND PASSED UPON FIRST READING this 20<sup>th</sup> day of May, 2008, for publication once in a newspaper of the City of Fort Morgan, Colorado, at least ten days before its final passage.

THE CITY COUNCIL OF THE CITY OF  
FORT MORGAN, COLORADO

[ SEAL ]

BY: /s/ Jack L. Darnell, Mayor

ATTEST:

/s/ Andrea J. Strand, City Clerk

FINALLY PASSED, ADOPTED AND APPROVED this 3<sup>rd</sup> day of June, 2008, 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.

THE CITY COUNCIL OF THE CITY OF  
FORT MORGAN, COLORADO

[SEAL]

BY: /s/ Jack L. Darnell, Mayor

ATTEST:

/s/ Andrea J. Strand, City Clerk

D. Second and Final Reading of Ordinance No. 1068 entitled, "An Ordinance Amending Sec. 20-12 Entitled 'Fireworks; Public Display Permit Required,'" and publish by title only.

**ORDINANCE NO. 1068**

**AN ORDINANCE AMENDING SEC. 20-12 ENTITLED  
"FIREWORKS; PUBLIC DISPLAY PERMIT REQUIRED."**

**WHEREAS**, Sec. 20-12 of *The Fort Morgan Municipal Code*, was previously adopted to address public displays of fireworks within the City of Fort Morgan; and,

**WHEREAS**, City Staff including the Fire Department and the Police Department have recommended that this section be reconstructed to provide a more comprehensive section; and,

**WHEREAS**, it is the intent of this amendment to safeguard the health, safety, and welfare of the citizens of the City of Fort Morgan and to eliminate the harm to health and property within the City; and,

**WHEREAS**, the Mayor and City Council desire to amend Sec. 20-12, Fireworks; Public Display Permit Required in its entirety.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF FORT MORGAN, COLORADO** that Sec. 20-12 be hereby amended in entirety as follows:

## **Sec. 20-12. Fireworks.**

**Section 1. Purpose.** The purpose of this ordinance is to eliminate the harm to health and property within the City and is designed to safeguard the health, safety, and welfare of the citizens and protect property.

**Section 2. Scope of Authority.** Unless exempted by provisions contained herein, the provisions of this ordinance shall apply to all persons within the City.

**Section 3. Definitions.** As used in this ordinance, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:

- (a) **City:** The City of Fort Morgan
- (b) **Fire chief:** The fire chief of the City of Fort Morgan.
- (c) **Fireworks:** Any combustible or explosive composition, or any substance or combination of substances, or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation, and shall include blank cartridges, toy pistols, toy cannons, toy canes, or toy guns in which any such explosives are used, the type of unmanned balloons which require fire underneath to propel the same, firecrackers, lady fingers, torpedoes, skyrockets, Roman candles, Day-Glo bombs, sparklers, or other device containing any such explosive substance. The term "fireworks" shall not include model rockets and model rocket engines which are designed, sold, and used for the purpose of propelling recoverable aero models, when actually used for that purpose and used under the supervision of the science instructor or other competent adult and when the place and time of firing the sky rockets or missiles has been approved by the fire chief. The term "fireworks" shall not include toy pistols, toy canes, toy guns or other devices in which paper or plastic caps manufactured in accordance with the United States Department of Transportation regulations for packing and shipping of toy paper or plastic caps are used and such toy paper or plastic caps are manufactured as provided therein except that no toy paper or plastic cap shall contain more than twenty-five hundredths of a grain of explosive composition per cap. Each package containing toy paper or plastic caps offered for retail sale shall be labeled to indicate the maximum explosive content per cap. The sale and use of these toy paper or plastic caps shall be permitted at all times. Nothing in this section shall be construed as applying to the manufacture, storage, sale, or use of signals necessary for the safe operation of railroads or other classes of public or private transportation, nor applying to the military or naval forces of the United States or of this state, or to peace officers. Nothing in this section shall be construed as forbidding the sale and use of blank cartridges for ceremonial, theatrical or athletic events.
- (d) **Person:** Any individual, firm, organization, partnership, unincorporated association or corporation.
- (e) **Sell or Display:** Selling, offering to sell, exhibiting, or possessing with intent to give away, sell, or offer to sell within the City.
- (f) **Use:** Purchasing, possessing, setting off or otherwise causing to explode or discharge or burn, any firecrackers, torpedo, rocket, or other fireworks or explosives of inflammable material, or to discharge them or throw them from land, air, or highway into any area of the City. This prohibition includes any substance, compound, mixture, or article that in conjunction with any other substance or compound would be dangerous from any of the foregoing standpoints. This provision shall also mean and include casting, throwing, lighting, or firing any squib, rocket, cracker, torpedo, grenade, gun, revolver, pistol, cap or cartridge, or other fireworks or combustible firecrackers of any kind.

**Section 4. Prohibitions, Unlawful Acts.** Except as provided herein, it shall be unlawful for any person to sell or display, offer to sell, possess, give away, store, or use fireworks within the City. It shall be unlawful for a person to allow or permit fireworks to be used or exploded on his premises or premises under his control. It shall be unlawful for any person to mishandle or misuse fireworks. The following constitute unlawful mishandling or misuse of fireworks:

- (a) It shall be unlawful to throw any firework, whether such firework is burning or not.

- (b) It shall be unlawful to throw or otherwise use fireworks from an automobile or other motor vehicle, whether the vehicle is moving or standing still.
- (c) It shall be unlawful to store, keep, sell, or use any fireworks within 50 feet of any gasoline pump, gasoline filling station, gasoline bulk station or any building in which gasoline or volatile liquids are sold in quantities in excess of one gallon.
- (d) It shall be unlawful to discharge or use any fireworks within 1,000 feet of any hospital, sanitarium, nursing home, or infirmary.
- (e) It shall be unlawful to discharge or use any fireworks in, under, or on an automobile or other motor vehicle, whether moving or standing still.
- (f) It shall be unlawful to discharge or use fireworks within 50 feet of any retail fireworks stand or facility where fireworks are sold.
- (g) It shall be unlawful to mishandle or misuse fireworks in any other way.
- (h) It shall be unlawful for anyone under the age of sixteen (16) to purchase fireworks.
- (i) It shall be unlawful for any person to sell fireworks to anyone under the age of sixteen (16).

**Section 5. Exceptions.** The following exceptions shall apply:

- (a) It shall be lawful for a person to possess the fireworks, specified in paragraph (c) below, on and between the dates of June 1 and July 15 of each year. Provided that, nothing in this provision shall be construed to allow the sale or display of any fireworks.
- (b) Between the dates of June 1 and July 15, excluding July 4, it shall be lawful for a person to use fireworks, herein specified between the hours of 8:00 a.m. and 10:00 p.m. On July 4, it shall be lawful for a person to use fireworks specified herein between 8:00 a.m. to 11:59 p.m.
- (c) The following fireworks may be possessed or used, as listed in this section, provided that nothing in this section shall be construed to allow the possession or use of any firework that is not a Class 1.4G formally known as Class C firework as defined by federal law or as prohibited under state law:
  - (1) Cylindrical fountains, with total pyrotechnic composition not exceeding 75 grams in weight, and inside tube diameter not exceeding three-fourths inch.
  - (2) Cone fountains, with total pyrotechnic composition not exceeding 50 grams each in weight.
  - (3) Wheels, with total pyrotechnic composition not exceeding 60 grams for each driver unit or 240 grams for each wheel, and with inside tube diameter or driver units not exceeding one-half inch.
  - (4) Illuminating torches and colored fire in any form, with total pyrotechnic composition not exceeding 100 grams each.
  - (5) Dipped sticks, the pyrotechnic composition of which contains any chlorate or perchlorate not exceeding five grams, and all sparklers.
  - (6) Smoke devices known as smoke balls, or tubes containing a pyrotechnic mixture, which upon ignition produces a visible cloud of black, white or colored smoke.
- (d) Nothing in section 6 shall be construed as forbidding the possession or use of any fireworks by those in charge of a public exhibition. Such an exhibition may be held on any day or days of the year provided that it is held at a location which does not endanger persons or property, and provided that a pyrotechnic expert is used, and provided that those in charge of the exhibition obtain a permit and comply with section 8 and 9 herein and all applicable state laws or regulations. As used in this section "pyrotechnic expert" means an individual who by experience and training has demonstrated the required skill and ability for safely setting up and discharging displays of fireworks or as otherwise defined by state law.

**Section 6. Use of Fireworks in Public Parks and on Public Land.** It shall be unlawful for any person to discharge or possess any fireworks upon public land or in any public park, owned by the City, provided, however, that such use shall be permitted under the following circumstances:

- (a) This provision shall not apply to possession of fireworks in the otherwise lawful use of public rights of way such as sidewalks and planting strips. This subsection shall not be a defense to a charge of obstructing traffic or otherwise obstructing a public right of way.
- (b) The Superintendent of Parks may designate limited areas for use during the hours permitted by the Chapter for the discharge of fireworks as allowed by section 6 of this Chapter. Otherwise, lawful discharge and possession of fireworks as allowed by section 6 in such areas shall not be a violation of this section. In doing so, the Superintendent shall consider:
  - (1) The sensitivity of the area's environment, wildlife and wildlife habitat;
  - (2) The inconvenience and nuisance to abutting property owners;
  - (3) The safety and suitability of the area as a place for the discharge of fireworks; and
  - (4) Danger of fire or other destruction of public property and improvements from the use of the fireworks.
- (c) Upon designation of any area, it may be signed by the City Manager or his designee and posted by July 1 of each year for use on July 4 between the hours of 8:00 a.m. and 11:59 p.m.
- (d) Nothing in this ordinance shall be deemed to limit the authority of the City Manager or the Police Chief to allow public exhibitions or display of fireworks under a permit issued in accordance with the provisions of this ordinance.
- (e) The use of fireworks permitted under this ordinance may be suspended at anytime by order of the Fire Chief or his designee when it is determined that the use of fireworks pose a threat to the community as the result of drought or any other condition.

**Section 7. PUBLIC EXHIBITIONS—PERMIT APPLICATIONS—CONTENT.** An applicant for a permit for a public exhibition or display of fireworks shall file with the City Clerk a written application therefore, duly subscribed and sworn by the applicant. Such application shall set forth the following:

- (a) The name of the association, organization, or corporation sponsoring the display, together with the names of the persons to be in charge of the display.
- (b) The date and time of day at which the display is to be held.
- (c) The exact location planned for the display.
- (d) A description setting forth the name, age, address, and experience of the persons who are to do the actual firing and discharging of the fireworks.
- (e) The number and kinds of fireworks to be discharged.
- (f) The manner and place of the storage of such fireworks between the date of purchase and the date of display.
- (g) A diagram or sketch of the grounds on which the display is to be held, showing the point at which the fireworks are to be discharged, the location of all buildings, streets, trees, telephone, or telegraph lines or overhead obstructions within a distance of 50 yards of the point of discharge, and the lines behind which the public will be restrained.

**Section 8. Public Exhibitions—Permit Applications—Filing.** An application for a permit for a public exhibition or display of fireworks shall be filed with the City Clerk at least 20 days before the date set for the display. A copy of such application shall be sent at once to the Fire Chief or his designee, who shall make or cause to be made, an investigation of the site of the proposed

display and investigate the competence and skill of the persons in charge of the firing and discharge of the fireworks. If satisfied that the display will be conducted lawfully and in accordance with this ordinance, he shall so advise the City Clerk within 10 days, who shall issue the permit. The applicant for a permit shall at the time of filing application, pay to the City Clerk a fee of \$250, the sum of which shall be refunded in the event the application for such permit is denied. Each applicant shall also pay to the City Clerk a nonrefundable investigation fee of \$50.

- (a) City Manager may sign the application/permit if he finds that the display proposed in the application meets all safety requirements and obtains the recommendation of the Fire Chief.
- (b) The applicant shall have a valid and current license issued by the State of Colorado authorizing the holder to engage in public fireworks display.
- (c) The applicant shall procure and maintain a policy or policies of public liability and property damage insurance issued by a company or companies authorized to do business in the State of Colorado in the following minimum amounts: \$500,000 for injuries to any one person in one accident or occurrence; \$1,000,000 for injuries to two or more persons in any one accident or occurrence; \$500,000 for damage to property in any one accident or occurrence; \$1,000,000 combined single limit for any one accident or occurrence. In addition, the City is to be an additional named insured and the policy shall provide for the immediate notification of the City by the insurer of any cancellation of any policy.

**Section 9. Application For Seller's Permit—Conditions For Issuance.** Applications for seller's permits shall be made to the City Clerk at least twenty (20) days prior to the start of any permitted activities. Applications shall be signed by the retail seller, if an individual, or by the duly authorized officer, if an association or corporation. It is unlawful for a fireworks manufacturer, wholesaler or supplier to make application for or to obtain a retail sales permit on behalf of any retailer. Seller's permits for the sale of those fireworks allowed pursuant to section 6 of this Chapter shall be issued only to applicants meeting the following conditions:

- (a) The retailer or person in charge and responsible for the retail operation shall be 18 years of age or older, of good moral character and of demonstrated responsibility.
- (b) The applicant shall have a valid and current license issued by the State of Colorado authorizing the holder to engage in the retail sale of fireworks.
- (c) The applicant shall own or have the right to possess a temporary fireworks stand complying with the requirements of this ordinance.
- (d) The applicant shall procure and maintain a policy or policies of public liability and property damage insurance issued by a company or companies authorized to do business in the State of Colorado in the following minimum amounts: \$500,000 for injuries to any one person in one accident or occurrence; \$1,000,000 for injuries to two or more persons in any one accident or occurrence; \$500,000 for damage to property in any one accident or occurrence; \$1,000,000 combined single limit for any one accident or occurrence. In addition, the City is to be an additional named insured and the policy shall provide for the immediate notification of the City by the insurer of any cancellation of any policy.
- (e) The permit holder's location or place of business shall be only in those areas or zones within the City where commercial activities are authorized under applicable zoning law.
- (f) The applicant shall post with the City a performance bond or a cash deposit in an amount not less than \$200 conditioned upon the prompt removal of the temporary fireworks stand and the cleaning up of all debris from the site of the stand, which deposit shall be returned to the applicant only in the event that the applicant removes the temporary stand and cleans up all debris to the satisfaction of the City. In the event the applicant fails to do so, the performance bond or cash deposit shall be forfeited. In no event shall the applicant be entitled to the return of the performance bond or cash deposit if he or she has failed to remove the stand and clean up all debris by the tenth (10<sup>th</sup>) of July following the sales period.
- (g) No seller's permit shall be issued for a location that fails to meet the criteria set forth in Section 10 of this Chapter, including the minimum stand separation requirement. When necessary, in order to determine priority as to a proposed location, the earliest

date and time of filing of an application for a seller's permit with the City Clerk shall be controlling.

- (h) The application fee for a permit described in this Chapter shall be \$250.00

**Section 10. Standards for Firework Vending Facilities.** The facilities of all seller's permit holders shall conform to the following minimum standards and conditions:

### **Temporary Firework Stands**

- (a) Temporary fireworks stands need not comply with all provisions of the building code; provided, however, that all such stands be erected under the supervision of the City Building Inspector, who shall require all stands to be constructed in a safe manner ensuring the safety of attendants and patrons. In the event any temporary stand is wired for electricity, the wiring shall conform to the electrical code.
- (b) No temporary fireworks stand shall be located within 50 feet of any other building or structure, nor within 100 feet of any gasoline station, oil storage tank or premises where flammable liquids or gases are kept or stored.
- (c) Each temporary fireworks stand must have at least two exits that shall be unobstructed at all times.
- (d) Each temporary fireworks stand shall have, in a readily accessible place, at least two, 2A rated pressurized water fire extinguishers that are in good working order.
- (e) All weeds, grass, and combustible material shall be cleared from the location of the temporary fireworks stand and the surrounding area to a distance of not less than 25 feet, measured from the exterior walls of the temporary fireworks stand.
- (f) No smoking shall be permitted in or near a temporary fireworks stand for a distance of not less than 50 feet measured from the exterior walls of the temporary fireworks stand. Signs stating:

***No smoking within 50 feet***

shall be posted on the exterior of each wall of the temporary fireworks stand.

- (g) Each temporary fireworks stand shall have a person who is 18 years old or older in attendance at all times the stand is stocked. Stock from the stand shall not be removed and stored in any other building during the sales period without the express approval of the City Fire Marshal.
- (h) All unsold stock and accompanying litter shall be removed from the temporary fireworks stand by 12:00 noon on the fifteenth (15<sup>th</sup>) day of July of each year.
- (i) No temporary fireworks stand shall be located within 500 feet of any other temporary fireworks stand.
- (j) Each temporary fireworks stand shall have provisions for sufficient off-street parking, at least 15 spaces, to avoid impeding a continuous flow of traffic at entrances and exits from the premises.
- (k) No person shall discharge any fireworks within two hundred fifty feet of the exterior walls of any temporary fireworks stand. Signs stating:

***No discharge of fireworks  
within 250 feet***

shall be posted on the exterior of all walls of the temporary fireworks stand.

- (l) Signs stating that no person under the age of sixteen (16) can legally purchase or possess fireworks within the City limits of the City of Fort Morgan.

### **Retail Vending Facilities**

- (a) Any retail establishment that obtains a permit to sell fireworks must comply with all federal, state and local fire codes with regard to the construction and maintenance of its building and storage of fireworks.

- (b) All public safety notice requirements found in the temporary fireworks requirements set forth above shall apply to Retail Vending Facilities.

**Section 11. Standards for Public Fireworks Displays.** All public fireworks displays shall conform to the following minimum standards and conditions:

- (a) All public fireworks displays must be planned, organized and discharged by pyrotechnician, "Pyrotechnician" means an individual who by experience and training has demonstrated the required skill and ability for safety setting up and discharging displays of special fireworks or as otherwise defined by state law.
- (b) A permit must be obtained from the City as required by section 8 of this Chapter.
- (c) When, in the opinion of the Chief of Police or Fire Marshal, such requirement is necessary to preserve the public health, safety and welfare, the permit may require that a City Fire Department pumper and a minimum of two trained City Firefighters shall be on site thirty (30) minutes prior to and after the shooting of the event. The exhibitor shall repay the City for all costs and wages due to firefighters for such time. All compensation for City Fire Department apparatus will be set by the Fire Chief and shall be designated to the City's general fund.
- (d) All combustible debris and trash shall be removed from the area of discharge for a distance of three-hundred (300) feet in all directions.
- (e) All unfired or "dud" fireworks shall be disposed of in a safe manner.
- (f) A minimum of two 2A-rated pressurized water fire extinguishers and one fire blanket shall be required to be at the fireworks discharge site.
- (g) The permit shall be immediately revoked at any time the Chief of Police or Fire Marshal or a designee deems such revocation is necessary due to noncompliance, weather conditions such as, but not limited to, extremely low humidity or high winds. The display shall also be cancelled by accidental ignition of any form of combustible or flammable material in the vicinity due to falling debris from the display.
- (h) Areas of public access shall be determined by the Chief of Police, Fire Chief, or a designee and maintained in an approved manner.

**Section 12. Penalty.** Any person, firm or corporation violating any provision of this ordinance shall be fined not less than Fifty (\$50) Dollars or more than One-Thousand (\$1,000) Dollars for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

INTRODUCED, READ AND PASSED UPON FIRST READING this 20th day of May, 2008, for publication once in a newspaper of the City of Fort Morgan, Colorado, at least ten days before its final passage.

THE CITY COUNCIL OF THE CITY OF  
FORT MORGAN, COLORADO

[ SEAL ]

BY: /s/ Jack L. Darnell, Mayor

ATTEST:

/s/ Andrea J. Strand, City Clerk

FINALLY PASSED, ADOPTED AND APPROVED this 3<sup>rd</sup> day of June, 2008, 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.

THE CITY COUNCIL OF THE CITY OF  
FORT MORGAN, COLORADO

[SEAL]

BY: Jack L. Darnell, Mayor

ATTEST:

/s/ Andrea J. Strand, City Clerk

- E. Approve the bid from Transwest Trucks of Commerce City, Colorado, in the amount of \$63,250 for the chassis and \$47,572.48 for the body for a total of \$110,822.48 for a single axle sander/salt plow truck to be utilized by the Street Department.
- F. Authorize the Mayor to sign a Resolution Amending the Zoning Regulations of the City of Fort Morgan to Change the Board of Adjustment to the Zoning Board of Appeals and to Clarify the Variance Procedure.

**RESOLUTION NO. 08 06 01**

**AMENDING THE ZONING REGULATIONS OF THE CITY OF FORT MORGAN TO CHANGE THE BOARD OF ADJUSTMENT TO THE ZONING BOARD OF APPEALS AND TO CLARIFY THE VARIANCE PROCEDURE**

**WHEREAS**, Zoning and Land Use Code of the City of Fort Morgan was revised in 2006; and,

**WHEREAS**, the Director for Community Development and the City Attorney have examined the current procedure for citizens to obtain a variance; and,

**WHEREAS**, the current practice under the procedure consists of the City Council's referral of an applicant to the Planning Commission for a recommendation and return to City Council for a Hearing; and,

**WHEREAS**, this current practice is lengthy and cumbersome to the applicant, the Council and to Staff; and,

**WHEREAS**, the current procedures do not require this double referral between Council and the Planning Commission; and,

**WHEREAS**, the Community Development Director has determined that the regulations could be clarified by revising the term Board of Adjustment to Zoning Board of Appeals.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FORT MORGAN, COLORADO:**

**Sec. 1:** The term Board of Adjustment within the Zoning Regulations shall be revised to the Zoning Board of Appeals.

**Sec. 2:** All future zoning variance requests shall be brought by Staff directly to City Council, acting as the Zoning Board of Appeals.

INTRODUCED, PASSED, APPROVED AND ADOPTED this 3<sup>rd</sup> day of June, 2008, the vote upon roll call being as follows:

Ayes: Mayor Darnell; Councilmembers Deal, McAlister, Powers, Schafer and Simmons.

Nays:

Absent /Abstain: Councilmember Shaver.

THE CITY COUNCIL OF THE CITY OF  
FORT MORGAN, COLORADO

[ SEAL ]

BY: /s/ Jack Darnell, Mayor

ATTEST:

/s/ Andrea Strand, City Clerk

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

ss.

**CERTIFICATE**

I, Andrea Strand, City Clerk of the City of Fort Morgan, Colorado, do hereby certify that the above and foregoing **Resolution** is a true, perfect and complete copy of the **Resolution** adopted by the City Council and is identical to the original thereof appearing in the official

records of the City of Fort Morgan, Colorado, and that the same has not been, since its adoption, in any respect, rescinded or amended.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the City of Fort Morgan this 3<sup>rd</sup> day of June, 2008.

*/s/ Andrea Strand, City Clerk*

- G. Authorize the Mayor to sign a 2008 Amended Agreement for Water Rate and Charges between the City of Fort Morgan, Colorado, Water Works and Distribution Enterprise and Cargill f/k/a Excel Corporation.

**RESOLUTION No. 08 06 02**

**AUTHORIZING THE MAYOR TO EXECUTE  
THE 2008 AMENDED AGREEMENT WATER RATES AND CHARGES  
CONTRACT BETWEEN CARGILL MEAT SOLUTIONS F/K/A THE EXCEL CORPORATION  
AND THE CITY OF FORT MORGAN**

**WHEREAS**, the parties originally entered into the **Agreement, Water Rates and Charges**, dated July 6, 1999, to fix a portion of the rates and charges for C-BT water supplied to Cargill Meat Solutions f/k/a Excel; and,

**WHEREAS**, on November 1, 2002, the parties amended and restated the 1999 agreement under the **Amended Agreement Water Rates and Charges** to address the then existing drought conditions; and,

**WHEREAS**, since the City no longer suffers from drought conditions, City Staff has recommended that the 2002 Amended Agreement be amended to include water usage caps and other conditions in the 1999 Agreement as set forth in the **2008 Amended Agreement Water Rates and Charges** (attached hereto and incorporated herein by this reference); and,

**WHEREAS**, after meeting with City Staff, the General Manager of Cargill Meat Solutions, Mike Chabot has reviewed and agreed to the terms of this agreement.

**WHEREAS**, Staff has recommended the approval of the **2008 Amended Agreement Water Rates and Charges** between the City of fort Morgan and Cargill Meat Solutions.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FORT MORGAN, COLORADO:**

**SEC. 1:** The Mayor is hereby authorized to execute the contract for the **2008 Amended Agreement Water Rates and Charges**.

INTRODUCED, PASSED, APPROVED AND ADOPTED this 3<sup>rd</sup> day of June 2008, the vote upon roll call being as follows:

Ayes: Mayor Darnell; Councilmembers Deal, McAlister, Powers, Schafer and Simmons.

Nays:

Absent /Abstain: Councilmember Shaver.

THE CITY COUNCIL OF THE CITY OF  
FORT MORGAN, COLORADO

BY: */s/ Jack L. Darnell, Mayor*

[ SEAL ]

ATTEST:

*/s/ Andrea Strand, City Clerk*

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

ss.

**CERTIFICATE**

I, Andrea Strand, City Clerk of the City of Fort Morgan, Colorado, do hereby certify that the above and foregoing **Resolution** is a true, perfect and complete copy of the **Resolution**

adopted by the City Council and is identical to the original thereof appearing in the official records of the City of Fort Morgan, Colorado, and that the same has not been, since its adoption, in any respect, rescinded or amended.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the City of Fort Morgan this 3<sup>rd</sup> day of June, 2008.

*/s/ Andrea Strand, City Clerk*

All matters listed under the 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 3<sup>rd</sup> day of June, 2008, the vote upon roll call being as follows: Ayes: Mayor Darnell; Councilmembers Deal, McAlister, Powers, Schafer and Simmons. Nays: none. Absent: Councilmember Shaver.

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### **PUBLIC COMMENT / AUDIENCE PARTICIPATION**

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None.

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### **REPORTS**

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The following Directors provided written reports to Council:

Acting City Manager Kuretich  
Police Lieutenant Sagel  
Utility Director Dreessen  
Utility Director Weimer  
Community Service Director Shedd  
Community Development Director Merrill  
Human Resources and Risk Management Director Prentice  
Treasurer Jones  
Municipal Court  
Fort Morgan Volunteer Fire Department

Lieutenant Sagel added that the Fort Morgan Police Department and Morgan Federal Bank will be holding a Safe & Secure Community Shred Event on June 7, 2008, from 10:00 a.m. to 2:00 p.m. located at 321 Ensign Street in Fort Morgan.

Director Shedd added that the Library will be closed from June 16 to June 19 for the conversion to the new automated library system.

Director Merrill informed Council that he will attend a meeting for Board of Realtors to educate them about alleys.

Director Prentice stated that the search committee for the City Manager met this morning and selected seven candidates for telephone screening. They will present the semi-finalists to Council on June 24.

City Attorney Wells stated that the results of his recent evaluation were due to a positive atmosphere with the City Staff and added that staff is moving forward.

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### **BIDS, MEETINGS AND ANNOUNCEMENTS**

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Clerk Strand announced three bids and upcoming meetings in June.

Mayor announced that the current goals and objectives from Council are being projected in the Council Chambers.

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**ADJOURNMENT**

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Mayor Darnell adjourned the June 3, 2008, regular meeting, at 7:25 p.m.

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Mayor

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City Clerk