

April 6, 2010

The City Council of the City of Fort Morgan, Colorado, met this day in the Council Chambers of City Hall. The Honorable Mayor Terry L. McAlister called the regular meeting to order at 5:30 p.m.

The Pledge of Allegiance was given.

Roll Call: Present: Honorable Mayor Terry L. McAlister  
Councilmember Scott Bryan  
Councilmember Sharol Lyn Deal  
Councilmember Debra J. Forstedt  
Councilmember Brent M. Nation  
Councilmember Ronald Shaver

Absent: Councilmember James A. Powers

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### **EXECUTIVE SESSION**

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Councilmember Forstedt offered a motion for a conference with the City Attorney for the purpose of receiving legal advice on specific legal questions under C.R.S. Section 24-6-402(4)(b), concerning Councilmembers' responsibility with confidential information. Her motion was seconded by Councilmember Shaver and duly carried.

Mayor McAlister announced the time in now 6:25 p.m., and we now conclude the executive session and return to the open meeting. The participants in the executive session were Mayor McAlister; Councilmembers Bryan, Deal, Forstedt, Nation, Shaver, 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 Forstedt to report on the executive session.

Councilmember Forstedt stated that the Council received legal advice on the specific topic concerning Councilmembers' responsibility with confidential information.

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### **EXECUTIVE SESSION**

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At 6:27 p.m. Councilmember Forstedt moved to go into executive session for the purpose of a conference with the City Attorney for the purpose of receiving legal advice on specific legal questions under C.R.S. Section 24-6-402(4)(b), concerning potential claims against the City. Her motion was seconded by Councilmember Nation and duly carried.

Mayor McAlister announced the time in now 6:50 p.m. and we now conclude the executive session and return to the open meeting. Upon returning to the open meeting, Mayor McAlister announced. The participants in the executive session were Mayor McAlister; Councilmembers Bryan, Deal, Forstedt, Nation, Shaver, 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 Forstedt to report on the executive session.

Councilmember Forstedt stated that the Council received legal advice on the specific topic concerning potential claims against the City.

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, Director of Human Resources & Risk Management Jody Prentice, Marketing Director Kevin Wilkins, Treasurer Terri Schafer and City Clerk Andrea Strand.

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**CONSIDERATION OF AN ORDINANCE FOR FIRST READING ENTITLED, "AN ORDINANCE GRANTING CERTAIN ECONOMIC INCENTIVES FOR BUSINESS EXPANSION TO FURNITURE MART, INC., BY THE CITY OF FORT MORGAN, COLORADO"**

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Attorney Wells noted for Council consideration on first reading, an Ordinance regarding economic incentives requested by Furniture Mart, Inc. He stated that that there was a correction that would need to be made on item 5. (a) to reflect the written dollar amount of \$2,625.00. Said Ordinance being in words, letters and figures as follows, to-wit:

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE GRANTING CERTAIN ECONOMIC INCENTIVES  
FOR BUSINESS EXPANSION TO FURNITURE MART, INC.  
BY THE CITY OF FORT MORGAN, COLORADO.**

WHEREAS, Furniture Mart, Inc. (hereinafter "Furniture Mart") has applied for certain tax and economic incentives for the expansion of its furniture business, at an anticipated cost of \$170,000, at 505 Main Street, in the City of Fort Morgan, Colorado (hereinafter the "Project"); and,

WHEREAS, the real property upon which the Project will be located is within an enterprise zone and Furniture Mart, in accordance with the provisions of the Urban and Rural Enterprise Zone Act, C.R.S. § 39-30-101, et seq., referred to hereinafter as the "Act", has requested the Council of the City of Fort Morgan, Colorado, to provide certain tax and economic incentives upon or for the benefit of the taxable property of the Furniture Mart resulting from such expansion; and,

WHEREAS, Furniture Mart represents that it will qualify for a credit or refund on taxes in accordance with the requirements of C.R.S. § 39-30-105, and has presented certification from the Zone Administrator of the Northeast Colorado Enterprise Zone that the Project would constitute a "new business facility" in an enterprise zone as defined by C.R.S. § 39-22-508.2 (3), excluding subparagraph (b); and,

WHEREAS, the Council finds that among the purposes of the Act is the encouragement, development and expansion of opportunities for employment in the private sector; to provide

incentives for private enterprise to expand and for new businesses to locate in economically depressed areas; to provide more job opportunities for residents of such areas; and to establish tax incentives and other assistance for such private enterprises; and,

WHEREAS, the Council finds that the Project proposed by Furniture Mart would be of benefit to the City by providing new employment opportunities; and,

WHEREAS, the Council finds that the general welfare of the residents of the City would be promoted by granting or approving the tax incentive payments, as hereinafter set forth.

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

1. Refund of Sales Taxes levied by the City. Furniture Mart shall be entitled to apply for and receive a refund of sixty percent (60%) of all sales taxes levied by and paid to the City of Fort Morgan for the purchase of equipment, machinery, machine tools, or supplies used in the construction of or incorporated into the improvements constructed as the Project in the Northeast Colorado Enterprise Zone. Such refund shall be payable by the City Treasurer upon presentation of Receipts by Furniture Mart upon completion of the Project for all such sales taxes paid and verification by the City Treasurer that such sales taxes have, in fact, been levied and paid to the City. This refund shall not apply to any use tax levied by and paid to the City. No refunds under this paragraph will be paid for purchases made after January 1, 2012.

Statutory Reference: C.R.S. § 39-30-107.5 (2)

2. Refund of General Property Taxes. Commencing with Tax Year 2010 (taxes payable in 2011) and continuing for Tax Years 2011, 2012, and 2013, Furniture Mart shall be entitled to an annual incentive payment in the form of a refund equal to sixty percent (60%) of the increase in assessed value for general property taxes paid to the City upon the improvements and improvement fixtures constructed to allow for the expansion of retail furniture warehousing and sales facilities on Furniture Mart's existing property located at 505 Main Street and any adjacent property acquired as part of the expansion. This refund shall be for improvements and improvement fixtures only; the Land upon which the improvements and improvement fixtures are located and that portion of general property taxes attributable to Land shall *not* be included in the refund. Within thirty (30) days after receipt of proof of payment of the current year's taxes (starting with Tax Year 2010) provided to the City Treasurer by Furniture Mart, the City shall make an annual incentive payment to Furniture Mart as set forth above, excluding interest and penalty, if any. No refunds under this paragraph will be paid after the year for which a refund has been budgeted by the City.

Statutory Reference: C.R.S. § 39-30-107.5 (1)

3. Refund of Personal Property Taxes. Commencing with Tax Year 2010 (taxes payable in 2011) and continuing for Tax Years 2011, 2012, and 2013, Furniture Mart shall be entitled to an annual incentive payment in the form of a refund equal to thirty percent (30%) of the amount of taxes levied by the City upon the increase in assessed value of taxable personal property located at or within this new business facility and used in connection with the operation of such new business facility, reduced by depreciation of ten (10%) percent from the base amount for each succeeding Tax Year. The term of this agreement as to personal property taxes shall not exceed four (4) tax years. Within thirty (30) days after receipt of proof of payment of the current year's personal property taxes (starting with Tax Year 2010) provided to the City Treasurer by

Furniture Mart, the City shall make an annual incentive payment to Furniture Mart as set forth above, excluding interest and penalty, if any. No refunds under this paragraph will be paid after the year for which a refund has been budgeted by the City.

Statutory Reference: C.R.S. § 31-15-903

4. Additional Incentives

Furniture Mart shall also be entitled to a waiver of the building permit for the construction of the new business facility up to \$480.00. No refunds under this paragraph will be paid for construction permits obtained after January 1, 2012.

5. Limitations. The incentive payments provided in Paragraphs 1, 2, 3 and 4 above shall be subject to the following limitations:

(a) The total of all sales tax refunds and annual tax incentive payments due hereunder shall not exceed Two-Thousand-Six-Hundred-Twenty-Five and 00/100 (\$2,625.00) Dollars;

(b) The annual tax incentive payments shall apply only to the construction and equipping of that portion of the Project which is completed, used and/or occupied by December 31, 2010.

(c) The annual incentive payments shall be made only if all taxes and assessments levied and assessed by the City during each and every year that a payment is made are paid on time and in full.

(d) Payments shall not be made if a Court of competent jurisdiction declares any material section of the Act or this Ordinance or any Resolution setting policy for incentive payments to be invalid, unconstitutional, or violative of any statute.

(e) Payments shall only be made to the extent revenues are available and appropriated in each of the tax years specified above. The Council has no obligation to appropriate funds to make the annual incentive payments.

(f) Payments shall only be made if Furniture Mart qualifies for a credit or refund on taxes in accordance with the requirements of C.R.S. § 39-30-105, and the Project must qualify as a "new business facility" in an enterprise zone as defined by C.R.S. § 39-22-508.2. These qualifications must be demonstrated annually to the City's satisfaction by submission by Furniture Mart of a Certification of Qualified Enterprise Zone Business from the Administrator of the Northeast Colorado Enterprise Zone for each tax year in which Furniture Mart requests an incentive payment.

(g) Payments shall only be made if the City of Fort Morgan, Colorado continues to be in a designated enterprise zone.

6. Binding Effect. By its acceptance and approval of this Ordinance, Furniture Mart agrees to be bound by the terms and provisions hereof. This Ordinance shall become effective upon its final publication and its acceptance by Furniture Mart through its authorized officer and shall thereupon become a binding agreement between the City and Furniture Mart. This agreement shall not be assignable without the written consent of the non-assigning party.

INTRODUCED, READ AND PASSED UPON FIRST READING this 6th day of April, 2010, 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/ Terry L. McAlister  
Mayor

ATTEST:

/s/ Andrea Strand  
City Clerk

FINALLY PASSED, ADOPTED AND APPROVED this \_\_\_ day of April, 2010 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 6<sup>th</sup> day of April, 2010. Said Ordinance, as proposed, was duly read at length at said regular meeting, and thereafter the same was, on the \_\_\_\_ day of \_\_\_\_\_, 2010, 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 20<sup>th</sup> day of January, 2004. 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

**APPROVAL AND ACCEPTANCE**

The terms and provisions of Ordinance No. \_\_\_\_\_ are hereby accepted and approved this \_\_\_\_ day of \_\_\_\_\_, 2010.

Furniture Mart, Inc.

By: \_\_\_\_\_  
Josh Becker, Owner

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

**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 Ordinance again be presented to this Council at the expiration of said period of publication for final action thereof.

PASSED, APPROVED AND ADOPTED this 6<sup>th</sup> day of April 2010, the vote upon roll call being as follows: Ayes: Mayor McAlister; Councilmembers Bryan, Deal, Forstedt, Nation and Shaver. Nays: None. Absent/Abstain: Councilmember Powers.

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**CONSIDERATION OF AN ORDINANCE FOR FIRST READING ENTITLED, "AN ORDINANCE OF THE CITY OF FORT MORGAN, COLORADO, ADOPTING THE COUNCIL RULES OF PROCEDURE"**

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Attorney Wells presented for Council consideration on first reading. Said Ordinance being in words, letters and figures as follows, to-wit:

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF FORT MORGAN, COLORADO,  
ADOPTING THE COUNCIL RULES OF PROCEDURE.**

WHEREAS, the City Council previously adopted the Council Rules of Procedure, to establish and codify the rules of procedure for Council; and,

WHEREAS, the most recent version of these rules was adopted on March 17, 2009; and,

WHEREAS, City Council has now recommended minor changes be made to the Rules of Procedure to further facilitate Council business.

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

SECTION 1. The Council Rules of Procedure, City of Fort Morgan, Colorado, which are set forth in Exhibit A attached hereto and incorporated herein by this reference, are hereby amended accordingly.

READ, PASSED ON FIRST READING AND ORDERED PUBLISHED the 6<sup>th</sup> day of April, 2010.

THE CITY COUNCIL OF THE CITY OF  
FORT MORGAN, COLORADO

[ SEAL ]

BY: /s/ Terry L. McAlister  
Mayor

ATTEST:

/s/ Andrea J. Strand  
City Clerk

PASSED, APPROVED AND ADOPTED ON FINAL READING AND ORDERED PUBLISHED by title only the \_\_\_ day of April, 2010.

THE CITY COUNCIL OF THE CITY OF  
FORT MORGAN, COLORADO

[ SEAL ]

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 6<sup>th</sup> day of April, 2010. Said Ordinance, as proposed, was duly read at length at said regular meeting, and thereafter the same was, on the \_\_\_\_\_ day of \_\_\_\_\_, 2010, 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 \_\_\_\_\_, 2010. 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.

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City Clerk

CITY OF FORT MORGAN  
COUNCIL POLICY  
By Ordinance, First Reading: 04/06/2010

COUNCIL RULES OF PROCEDURE  
CITY OF FORT MORGAN, COLORADO

Charter Authority

Purpose and Declaration of Policy

- Rule 1 Meetings
- Rule 2 Consent Agenda
- Rule 3 Conduct of Meetings
- Rule 4 Conflicts of Interest
- Rule 5 Role and Responsibilities
- Rule 6 Attendance
- Rule 7 Compliance and Enforcement
- Rule 8 Amendments
- Rule 9 Effective Date and Term
- Rule 10 Communication with Staff
- Rule 11 Committee Interaction
- Rule 12 Budget

Council Rules of Procedure

Charter Authority

“The council shall consist of the Mayor elected at large and two councilmembers from each ward chosen by the electors of such ward. It shall be the judge of the election and qualification of its own members, *shall determine its own rules of procedure*, may punish its members for violation of such rules and may compel the attendance of members.” (Article III, Sec. 1, *Charter of the City of Fort Morgan* (2008); emphasis added) Upon adoption by the Council, the following set of rules shall be in effect until such time as they are amended or new rules are adopted in the manner provided by these rules.

## Purpose and Declaration of Policy

The proper operation of democratic government requires that elected officials be independent, impartial and responsible to the people; that government decisions and policy be made within the proper channels of the governmental structure; that public office not be used for personal gains; and that the public have confidence in the integrity of its government. In recognition of these goals, these Rules of Procedure for all elective officers of the City of Fort Morgan are hereby adopted. The purpose of these Rules of Procedure is to establish guidelines for ethical standards of conduct for all such officers by setting forth those acts or actions that are compatible with the best interest of the City and by directing disclosure by such officers of private financial or other interests in matters affecting the City. By eliminating conflicts of interest and providing a guide for their conduct in City matters, the City Council hopes to promote the faith and confidence of the citizens in their government.

The holding of a public office is a public trust created by the confidence which the electorate has in the integrity of its elected officials. Elected officers serve their government in a fiduciary capacity and must not bestow special consideration upon any person or group, but should carry out their official duties for the benefit of all the people of the City of Fort Morgan. These elective officers have sworn an oath to uphold the Constitution of the United States, the Constitution of the State of Colorado and the *Charter* and ordinances of the City of Fort Morgan.

The citizens of Fort Morgan have adopted the principles of the Manager-Council form of city government and to that end have declared that the principles of that form of government require that the City Council appoint the principal employees of the City to administer the administrative functions of the City, subject to the City Council's direction, free from the direction of any individual member of the City Council in the day-to-day administrative operations of the City. The citizens of Fort Morgan have granted all policy making and legislative power to the City Council which shall act as a body. Except by City Council delegation, no member of the City Council has any authority to exercise the power of his or her office except as set forth in the *Charter* and *Municipal Code*. (The Manager-Council form of government also requires an informed Council and therefore, it is consistent with the Manager-Council form of government for members of the Council to inquire of appointed officials as provided for in the *Charter* for the purpose of obtaining information.) Finally, the purpose of these Rules of Procedure is to provide clear conduct guidelines and necessary enforcement procedures, and to fully implement the provisions of Article III Sec. 1 of the *Charter of the City of Fort Morgan* (2008).

The City Council is composed of individuals with a wide variety of backgrounds, personalities, values, opinions, and goals. Despite this diversity, all have chosen to serve in public office in order to preserve and protect the present and future of the City of Fort Morgan. In all cases, this common goal should be acknowledged even as members of the Council may "agree to disagree" on contentious issues. These Rules of Procedure are established to make public meetings and the process of governance run smoothly. Governance of the City relies on the cooperative efforts of the members of the Council, who set policy, and the City Staff, who implement and administer those policies.

### Rule 1 Meetings

The regular term of office of all elective officers of the City of Fort Morgan shall commence on the second Tuesday of January next after their election (Sec. 17, Article VIII, *Charter of the City of Fort Morgan* (2008)). An Organizational Meeting of the Council shall be held on the second Tuesday of January in every even-numbered year for the purpose administering an oath of office to newly elected members of the Council, appointing the principal employees of the City,

and confirming the Mayoral appointments required to the various Boards and Commissions of the City. Each council at its first regular meeting, and thereafter when a vacancy in the office shall occur, shall elect one of the councilmembers Mayor Pro Tem (Article III, Sec. 2, *Charter of the City of Fort Morgan* (2008)). Within the first month of being sworn into office all newly elected members of the Council must attend a new Council member training presented by the City Manager and City Attorney.

1a Regular Meetings. The Council shall meet the first and third Tuesday of each month at the City Hall at the hour of 7:00 p.m., or at a time as otherwise determined by the Council. (Article III, Sec. 3, of the *Charter*, Sec. 2-14, *Fort Morgan Municipal Code* (1994)). The Mayor shall preside at all meetings of the Council. (Sec. 1, Article IV, *Charter of the City of Fort Morgan* (2008) The Mayor shall meet and/or confer with the City Manager, City Attorney, and any other appointed official necessary to prepare and give notice of the Agenda for each Regular Meeting. Any member may add an item to the agenda by contacting the Mayor, no later than twenty-four (24) hours prior to the time of the scheduled regular meeting. At the beginning of every regular meeting any member may move that an Agenda item be removed from consideration and such removal shall require an affirmative vote of the Council. Items shall not be added to the Agenda unless the item has been approved by the Mayor, who will then communicate the change to the City Manager who will notify the City Clerk and other affected appointed officials prior to the Regular Meeting. Discussion of action items not on the Agenda shall be deferred to future Agendas.

Any meeting of the City Council at a time other than on the first and third Tuesday of each month shall be considered a Special Meeting of the City Council and may be called or scheduled by the City Council or the Mayor in accordance with the requirements of the *Code* (Sec. 2-14 (b), *Fort Morgan Municipal Code* (1994)). An ordinance may be read, approved or passed at a Special Meeting.

1b. Work sessions. Shall generally be held on the second and fourth Tuesday of each month at the hour of 7:00 p.m., or as may otherwise be scheduled by the Council. The purpose of each work session shall be to hear, study and discuss matters that are to be expected to be presented for action at a Regular Meeting and to schedule such matters for formal action. Work sessions are meetings and shall be open to the public. The Mayor shall meet and/or confer with the City Manager, City Attorney and any other appointed official necessary to prepare and give notice of the Agenda for each Work Session. Any member may add an item to the agenda by contacting the Mayor, no later than twenty-four (24) hours prior to the time of the scheduled regular meeting. Items shall not be added to the Agenda unless the item has been approved by the Mayor, who will then communicate the change to the City Manager who will notify the City Clerk and other affected appointed officials prior to the Work Session. Members of the public may address the Council about a pending matter that is scheduled for discussion during a work session. No business shall be transacted and no formal action may be taken at a work session. However, the Council may provide appointed City Staff with directions concerning agenda related items.

1c. Public Hearings. Shall be scheduled and notice thereof published as required by law to invite citizen comments on a specific subject. The Mayor shall direct the City Clerk to prepare an Agenda for the Public Hearing to establish the order in which issues will be considered, including objections to the action proposed. The Clerk is responsible for making a record of the Public Hearing. The Mayor shall conduct the Public Hearing as hearing officer and shall rule on all matters which arise during the Public Hearing. If necessary, Special Counsel shall be designated to advise the Mayor during the Public Hearing. Time limits may be established by

the Mayor for each speaker. Persons who wish to speak at a Public Hearing shall first state their name and address. Members of the Council shall not express opinions during a Public Hearing, except to ask pertinent questions of a speaker or the City Staff. The Mayor is authorized to require that all public officials and citizens conduct themselves in a civil and businesslike manner. Disruptive behavior or personal attacks shall not be permitted during the Public Hearing. Members of the public who do not conduct themselves properly after a warning during a Public Hearing may be banned from further testimony or removed from the Council Chambers. Members of the Council should also refrain from arguing or debating with the public during a Public Hearing. The Chief of Police or his designee may be authorized by the Mayor to remove any person who is disrupting a Public Hearing. Any Public Hearing may be continued to a future date and time without requiring publication of additional notice. After the adjournment of the Public Hearing, the Council, Enterprise Board, Local Licensing Authority or Board of Adjustment shall determine what action if any, shall be taken.

1d. Executive Sessions. May be convened upon motion and the affirmative vote of two-thirds of the quorum present. An Executive Session may only be held at a Regular or Special Meeting and in accordance with the provisions of C.R.S. § 24-6-402. The topic for discussion in the Executive Session shall be announced to the public, including a specific citation to the provision of C.R.S. § 24-6-402(4) authorizing the Council to meet in an executive session and identification of the particular matter to be discussed in as much detail as possible without compromising the purpose for which the Executive Session is authorized. The form of the Motion for an Executive Session shall be set forth in the Agenda for the Meeting from which the Executive Session will be called and that Motion shall be read in full by the member moving for an Executive Session. The form and substance of this Motion shall be as set forth in the Executive Session Motion Form attached hereto as Exhibit "A". Except for determining its position in matters subject to negotiations, developing strategy for negotiations and instructing negotiators, no formal action shall be taken in an executive session to adopt a proposed policy, position, resolution, rule, regulation, or ordinance. Performance Reviews of individual appointed officials shall be conducted by the Council as a personnel matter in executive session, unless the employee whose performance is being reviewed has requested discussion in an open meeting; unless otherwise requested, the attendance of the appointed official shall not be required. Executive Sessions shall not be open to the public. A script of the announcements to be made at the beginning and at the end of the Executive Session by the Presiding Officer shall be prepared by the Clerk in advance. The form and substance of these announcements shall be as set forth in Exhibit "C", Exhibit D-1, Exhibit D-2 or Exhibit "E" attached hereto, as appropriate in the circumstances. These announcements shall be made at the beginning and at the end of the Executive Session by the Presiding Officer. At the conclusion of the Executive Session, the Council may return to the open meeting and may act on any matter as is deemed appropriate or adjourn the Meeting as provided in Exhibit "D-2". The confidentiality of the matters discussed in Executive Session shall be preserved by all persons present. Other procedures for the Executive Session shall be as provided in Exhibit "B".

1e. Administrative Hearings/Appeals. The Council from time to time shall meet in quasi-judicial proceedings to hear evidence related to code violations or appeals. When such a hearing or appeal is scheduled the Council shall direct the City Attorney to hire or otherwise obtain conflict free legal counsel to represent the Council on legal issues related to the process. Where members have questions concerning the process of the hearing they shall meet with the City Attorney and educate themselves on what constitutes appropriate conduct for members sitting as judges in these meetings.

1f. Journal of Proceedings. An account of all proceedings of the Council meetings shall be kept by the City Clerk and shall be entered in a book constituting the official record of the Council. (Article III, Sec. 4, *Charter of the City of Fort Morgan* (2008)).

- a. The minutes for Council meetings should be primarily a record of the action taken at a meeting, not what was said by members of the Council. The minutes shall contain a separate paragraph for each subject matter and, at a minimum, reflect each subject or item considered and the language of and disposition of each motion, resolution, ordinance, or matter on which action is taken. With respect to annexation and zoning hearings, considerably more detail may be needed.
- b. The minutes for Council work sessions should be primarily a record, in summary, of the discussion and any direction provided. The record for executive sessions shall be as provided by ordinance. The minutes may be corrected or amended after they have been approved, if an error or material omission is reasonably established. In this case, the motion "to amend something previously adopted" may be used.

## Rule 2 Consent Agenda

The Consent Agenda allows the Council to approve several items of routine business with one vote. Items presented by Staff at a work session may include a recommendation, if appropriate, that the item be included on the Consent Agenda for a Regular Meeting. If appropriate documentation is presented in the packet for a Liquor License Renewal or an appointment to a Board or Commission, such an item may be included on the Consent Agenda for a Regular Meeting without further presentation or discussion at a work session, unless discussion is requested by a member of the Council. The Council shall determine those items to be included as consent items on the Agenda for any Regular Meeting. After the City Clerk reads the Consent Agenda, all of the consent items shall be voted on as a group. If the vote to approve the consent items is not unanimous when they are voted on as a group, each item shall be voted on separately. Prior to accepting the motion for adoption of the consent items, the Mayor shall ask the members of the Council and any members of the public in attendance, if they wish to discuss any of the consent items. If a Council Member requests discussion or requests that any item(s) be removed from the consent items, such item(s) shall be acted upon after consideration of the remaining consent items by the Council. The individual items will then be considered for adoption.

Consent Agenda items may include, but are not limited to:

- Approval of the Minutes of prior meetings;
- Receipt and referral of applications and scheduling of public hearings;
- Approval of Liquor License Renewals, if no violations have been noted;
- Approval of bids or contracts previously presented in a work session;
- Approval of payment of the monthly bills;
- Approval of appointments to Boards and Commissions;

- Approval of a Resolution previously presented in a work session;
- Approval and passage of an Ordinance on second reading, if such Ordinance passed unanimously on first reading and if no amendments are required, and publication will be by title only.

The consent items will be listed as separate items on the Agenda for the Regular Meeting with the following explanation for the general public:

“All matters listed under Item \_\_\_\_\_, Consent Agenda, are considered to be routine business matters by the Council and will be enacted with a single motion and a single vote. 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.”

### Rule 3 Conduct of Meetings

A majority of the members of the Council shall constitute a quorum to do business (Article III, Sec. 3, *Charter of the City of Fort Morgan*, (2008)).

In all executive and legislative matters coming before it, the Council shall act only by ordinance, resolution or motion. Every member, when present, must vote, and every resolution and motion shall require for passage a majority vote of the Council. (Article III, Sec. 4, *Charter of the City of Fort Morgan*, (2008)).

Every ordinance shall require on final passage the affirmative vote of four members of the Council. (Article III, Sec. 4, *Charter of the City of Fort Morgan*, (2008); emphasis added).

All contracts involving in the aggregate an expenditure of ten thousand dollars or more that correlate with budget line item that was appropriated by the City Council in the adopted budget shall be ratified by Resolution (Article III, Sec. 4, *Charter of the City of Fort Morgan*, (2008)).

Every proposed ordinance before its final passage shall be read in at least two Regular Meetings of the Council, may be amended on its first and second readings, and be published in full at least once in a newspaper of the City at least ten days before its final passage (Article III, Sec. 4, *Charter of the City of Fort Morgan*, (2008)). Ordinances may be read by title only and summarized where a copy of the proposed ordinance has been made available to each member of the City Council in advance of the Regular Meeting. After proper publication, an ordinance shall be referred to by title only on second reading.

Voting on motions shall be by ayes and nays, unless a roll call is requested by any member of the Council. Voting on ordinances and resolutions shall be on the voting light system available in Council Chambers. Each member of the Council shall activate either a “yes” vote or a “no” vote from his or her seat and the City Clerk shall light the votes on the board once each Member has voted. The votes shall be announced by the City Clerk and entered upon the Minutes of the meeting. If the voting light system is not available, a roll call vote shall be conducted by the City Clerk by first calling on each councilmember in a rotational order.

In case of a tie vote on any motion or resolution, the motion or resolution shall be considered lost.

In the event an applicant or proponent is present for the matter in question on which an even number of Members would be voting, the Mayor shall ask such individual whether because an even number of Council Members are present, the applicant or proponent wishes to continue the matter until all members of the Council are present. The decision of the applicant or proponent shall be determinative. In the event the applicant or proponent is not present, the members of the Council present shall decide whether to proceed on the item despite the presence of an even number of members.

#### Rule 4 Conflicts of Interest

Charter Authority: "The elective officers of this city under this *Charter* shall be the mayor and councilmembers, and these shall be the only officers of this city." (Article V, Sec. 1, *Charter of the City of Fort Morgan* (2008))

Members of the Council shall work for the common good of the people of the City of Fort Morgan and not for any private or personal interest, and they will assure fair and equal treatment of all persons, claims and transactions coming before the City Council. In accordance with the law, members of the Council shall disclose investments, interests in real property, sources of income, employment and gifts and they shall excuse themselves from the room and from participating in deliberations and decision-making where a conflict of interest may exist.

A member of the Council who has a conflict of interest in any matter proposed or pending before the Council shall disclose the conflict of interest to the other members prior to action on the matter by the Council. The member shall be excused from voting on any matter on which he or she has a conflict of interest. The member who has the conflict of interest shall refrain from attempting to influence the other members of the Council who are or will be voting on the matter. The member excused from voting because of a conflict of interest shall leave his or her seat during the deliberations and the vote on the matter. These provisions concerning disclosure and stepping down shall be in addition to any requirement of state law.

Members of the Council shall not attempt to individually direct City Staff on employment matters, awarding of contracts, selection of consultants, processing of development applications, or the granting of City licenses or permits.

A member of the Council shall not use his or her official position to secure a special privilege, exemption or service for himself or herself or for others, nor shall any member of the Council seek or grant any special consideration, treatment or advantage to or for any citizen beyond that which is generally available to every other citizen. This provision shall not be interpreted to prohibit or hinder a member from presenting citizen concerns to the Council or to City Staff and requesting a response to the citizen concern.

A member of the Council who, in the course of his or her private business, desires to enter into a contract with the City, or who has such a contract at the time he or she takes office, shall disclose such contract to the other members of the Council and shall require that such contract receive the approval of the Council at a Regular Meeting. If the member's interest is disclosed, if the City's procurement policy has been followed, and if the contract is in the best interest of the City, the Council may approve the contract for the City. The member shall not vote on any contract in which he or she has a financial interest and shall not attempt to influence the other members of the Council or the City Staff in the process of awarding the contract.

A member of the Council shall not take any special advantage of services or opportunities for personal gain, by virtue of his or her public office, that are not available to the public in general. Members shall refrain from accepting any benefit or promises of future benefits which compromises their independence of judgment or action or give the appearance of being compromised.

A member of the Council shall not use public resources not available to the public in general, such as City Staff time, equipment, supplies or facilities, for private gain or personal purposes, except for privileges generally available or granted to employees of the City.

Rule 5 Roles and Responsibilities of the Mayor, Mayor Pro Tem, and all of the Members of the Council

The Mayor of the City of Fort Morgan is,

- Elected at large and shall reside in the City (Article II, *Charter of the City of Fort Morgan* (2008));
- A member of the Council and is required to vote on every motion, resolution and ordinance that comes before the Council (Article III, Sec. 4, *Charter of the City of Fort Morgan* (2008));
- Required to sign all ordinances and resolutions within three days after their final passage (Article III, Sec. 5, *Charter of the City of Fort Morgan* (2008));
- When present, shall preside at all meetings of the Council (Article IV, Sec. 1, *Charter of the City of Fort Morgan* (2008));
- Recognized as the head of the City Government for all ceremonial and dignitary purposes, by the courts for serving civil process, and by the state and federal governments for purposes of military law. (Article IV, Sec 2(a), *Charter of the City of Fort Morgan* (2008));
- Empowered to administer oaths (Article IV, Sec. 2(c), *Charter of the City of Fort Morgan* (2008));
- Required to sign all warrants, contracts, bonds or other instruments requiring the signature of the Mayor (Article IV, Sec. 2(b), *Charter of the City of Fort Morgan* (2008));
- Charged with such powers and as responsibilities as may be provided by ordinance (Article IV, Sec. 2(e), *Charter of the City of Fort Morgan* (2008));
- Authorized to make appointments to various boards and commissions, subject to confirmation by the Council;
- Empowered to call a Special Meeting of the Council (Sec. 2-14(b)(2), *Fort Morgan Municipal Code* (1994));
- The designated representative of the Council to speak and correspond with others on behalf of the Council concerning the official City position in matters that have been considered by the Council;

- Authorized to sign documents on behalf of the City;
- Authorized to act as liaison between the Council and members of the City Staff;
- The person who leads the Council in its governance of the City.

The Mayor Pro Tem of the City of Fort Morgan is,

- A member of the Council elected at the first regular meeting after Organizational Meeting and thereafter when a vacancy in the office shall occur (Article III, Sec. 2, *Charter of the City of Fort Morgan (2008)*);
- Empowered to act as Mayor and to exercise all the powers and responsibilities of the Mayor during the absence of, or the inability of the Mayor to act (Article IV, Sec. 3, *Charter of the City of Fort Morgan (2008)*);
- Authorized to chair Council meetings at the request of the Mayor.

All members of the Council have,

- The right and the duty to vote on every motion, resolution or ordinance that comes before the Council (Article III, Sec. 4, *Charter of the City of Fort Morgan (2008)*);
- Equal powers in acting as a member of the Council and all should be treated with equal respect;
- The obligation to prepare in advance and be familiar with issues on the Agenda in order to participate in any meeting of the Council;
- The obligation to stay focused and to act efficiently during public meetings by honoring the efforts by the Mayor to focus discussion on current Agenda items;
- To make sure that informational materials provided to one member will be provided to all members of the Council so that all have equal access to the same informational materials;
- The obligation to make no promises or commitments on behalf of the Council or the City, either overtly or implicitly;
- An obligation to support the formal actions of the Council, and the official position of the City, even if the member voted in the minority;
- Before sending correspondence, the obligation to check with the Mayor to determine if an official City response has already been sent or is being prepared;
- The right to express a personal point of view in their individual correspondence, but shall not make any reference therein to their official position as Mayor, President of the Council or Councilmember;

- Unless directed to do so by the Council or unless compelled to do so by operation of law, an obligation not to knowingly disclose information which he or she knows or reasonably should know is confidential information, regardless of the source of the information;
- An obligation not to knowingly use or disclose any confidential information gained in the course of or by reason of his or her official position and which has not been made public in order to advance his or her financial interests or to further the financial interests of any family member;
- The obligation to serve as a model of leadership and civility to the community;
- The obligation to inspire public confidence in Fort Morgan government by demonstrating honesty and integrity in every action and statement.

## Rule 6 Attendance

Charter Authority: The council “may compel the attendance of members.” (Article III, Sec. 1, *Charter of the City of Fort Morgan*, (2008)).

“A vacancy shall exist when an elective officer . . . fails to be sworn as provided in Article III, Section 1 within ninety days after the election., . . .” (Article II, Sec. 3, *Charter of the City of Fort Morgan*, (2008)).

Governance of the City requires that all of the elected or appointed members of the Council attend all Regular Meetings of the Council in order to fulfill each member’s obligation to the citizens of the City to fully participate in the process of government. The Council must have a quorum to do business. Each member of the Council has an obligation to his or her fellow members to be informed and attend the Regular Meetings of the Council. As a courtesy and when time permits, a member shall notify the Mayor or the City Clerk that he or she will not be able to attend a Meeting. The Council may determine whether an absence is excused or unexcused based upon the information provided by the Mayor or City Clerk. Unless otherwise determined by a vote of the Council, each absence shall be noted as “excused” by the Clerk in the Minutes. Any member of the Council shall have the right at the meeting at which the absence occurs to move for a determination that the absence is “unexcused”. If such a motion is seconded, a roll call vote shall be taken and if a majority votes in favor of the motion, the absence shall be noted by the Clerk as “unexcused” in the Minutes. Repeated failures to attend Regular Meetings of the Council may be cause for the Council to declare a vacancy in the office of the absent member.

Should the attendance of any member of the Council become an issue, the Council shall first review the member’s history of attendance since becoming a member of the Council based upon the records of the City Clerk. The Council may consider issues related to the member’s physical or mental health, if appropriate. If a member of the Council is found to have violated the provisions of this Rule because of the number of excused or unexcused absences, or both, the Council may declare the member’s position vacant by motion and the affirmative vote of at least four (4) of the remaining members of the Council. If a vacancy is so declared, the Council shall appoint an eligible person to fill such vacancy in accordance with the provisions of Sec. 3, Article II of the *Charter*.

## Rule 7 Compliance and Enforcement

The Council may sanction any member whose conduct does not comply with these Rules of Procedure. Sanctions may include a reprimand or a formal censure of the member by the Council. Declaration of a vacancy may result from a violation of Rule 6, Attendance.

If a violation of these Rules of Procedure is alleged to have occurred it shall be reported to the Mayor, or to the Mayor Pro Tem if the member alleged to be in violation is the Mayor. If deemed necessary by the Mayor, or the Mayor Pro Tem, he or she may request an outside agency or special counsel to investigate the allegation(s), and shall make a written report of his or her findings to the Council. Special Counsel, if hired to undertake the investigation, shall make a recommendation to Council concerning the alleged violation. The member shall have the opportunity to respond to the allegation during a public meeting or in writing to other members of the Council. Thereafter, if there is a reasonable basis to believe a violation has occurred, the matter may be placed on the Agenda for discussion at a Regular Meeting.

At the Regular Meeting, the Council shall review the investigative report and the findings of the investigator concerning the alleged violations(s). The member shall have the opportunity to rebut the allegation(s) through his or her own statement, the testimony of other witnesses or by the presentation of documentary evidence. The member may be represented by legal counsel of his or her choice and at his or her own expense. Upon motion made, seconded and passed by a majority vote of the other members of the Council, a member may be sanctioned as herein provided. If the motion fails or a motion is passed stating that there has been no violation of these Rules of Procedure, then the member shall be deemed not to have been in violation of these Rules, and any attorney's fees paid by the member shall be reimbursed by the City.

A violation of these Rules of Procedure shall not be considered a basis for challenging the validity of a Council decision or determination.

The City Clerk shall provide a copy of these Rules of Procedure to any person who may request a petition of nomination for a position on the Council.

## Rule 8 Amendments

These Rules of Procedure may be amended or new rules adopted by Resolution passed by a majority vote of all members of the Council. Any such amendment shall be submitted in writing at a work session or a Meeting preceding formal action to amend. The proposed amendment(s) shall then be placed on the next Agenda for approval.

## Rule 9 Effective Date and Term

These Rules of Procedure are hereby declared to be effective as of January 4, 2008, and shall be in effect until such time as the Rules are rescinded, amended or new rules are adopted by resolution. Any rescission or amendment shall not change any of the requirements of the *Charter* or *Municipal Code*, or State or Federal law.

## Rule 10 Communication with Staff

Governance of a City relies on the cooperative efforts of elected officials, who set policy, and City staff, who implements and administers the Council's policies. Therefore, every effort

should be made to be cooperative and show mutual respect for the contributions made by each individual for the good of the community.

10a. Treat all staff as professionals. Clear, honest communication that respects the abilities, experience, and dignity of each individual is expected. As with Council colleagues, practice civility and decorum in all interactions with City staff.

10b. Channel communications through the appropriate senior City staff. Questions and requests for information should be directed only to the City Manager, City Attorney, Municipal Judge, Fire Chief or their designees. All appointed officials shall provide a memo to Council at the organizational meeting held after each election detailing their preference and guidelines regarding communication with their respective employees. The City Manager should be copied on or informed of any request to Department Heads. When in doubt about what staff contact is appropriate, Councilmembers should ask the City Manager or the affected appointed official for direction.

10c. Respect the City Manager's work program. Councilmembers are encouraged to continually share ideas, suggestions, and feedback. The time and resources needed to develop and implement these ideas and suggestions, however, can sometimes compete with the time and financial resources needed to fulfill Council's established goals and priorities. To assist in balancing these competing requests, Councilmembers should consider handling petitions, generally categorized, as follows:

1. Routine requests for action or information made directly to staff.
  - a. For routine requests for action (i.e. reports of property nuisance or safety concerns), Councilmembers should depend on staff to respond by contacting the City Manager's Office with information about the request. This type of request can be forwarded to the City Manager at any time rather than waiting for a formal referral at a Council meeting.
2. Significant requests requiring Council consensus.
  - a. Requests for additional information or reports that may take more than one hour to fulfill should be presented as a formal petition at a Council meeting so the information project, or modification of current reporting practices, can be considered by the Council as a whole and agreed upon as something that merits an investment of staff time.
  - b. Policy or program modifications. Requests to research and analyze the viability of new or modified legislation, policies, or programming should be presented as a formal petition at a Council meeting so the matters can be considered by the Council as a whole and agreed upon as something that merits an investment of staff time.

10d. Refrain from soliciting political support from staff. Refrain from soliciting any type of political support (financial contributions, display of posters or lawn signs, name on support list, etc.) from city staff at work. Staff certainly may, as any other citizen, support political candidates away from the workplace. The City will distribute campaign literature to City employees at work if it arrived by mail and includes the employee's department/division in the mailing address. The City as an employer, however, prefers that personal mail for employees, including campaign material, be sent to their home address.

10e. Do not get involved in administrative functions. Avoid any staff interactions that may be construed as trying to shape staff recommendations. Councilmembers shall refrain from coercing staff in making recommendations to the Council as a whole.

10f. Do not attend staff meetings unless requested by staff. Even if the Councilmember does not say anything, the Councilmember's presence may imply support, show partiality, intimidate staff, or hamper staff's ability to do its job objectively.

10g. All Councilmembers should have the same information to make decisions. Council may expect that staff will make every attempt to provide each member of Council with the same information (i.e. requests made of staff for information will be distributed to all; correspondence to one Councilmember will be distributed to all).

10h. Whistleblower. In the event a member is approached by an employee with concerns that there is an illegal activity, including the violation of City policy, the member shall direct that complaint to the Mayor. The Mayor will provide the information to the appropriate appointed official for investigation. If the complaint is made against an appointed official, then the Mayor shall determine what action should be taken. Where the Mayor desires legal advice he or she should use the City Attorney, or if the complaint is against the City Attorney, then he or she has the authority to obtain outside legal counsel to assist with investigation and advice.

#### RULE 11 COUNCIL CONDUCT WITH BOARDS AND COMMISSIONS.

The City Council has established several Boards and Commissions as a means of gathering more community input. Citizens who serve on Boards and Commissions become more involved in government and serve as advisors to the City Council. They are a valuable resource to the City's leadership and should be treated with appreciation and respect.

11a. Maintain an active liaison relationship. Appointed Council liaisons are encouraged to attend all regularly scheduled meetings of their assigned Board or Commission.

11b. Attending board meetings, generally. Councilmembers may certainly attend any board or commission meeting, which are open to any member of the public. Remember, however, that a Councilmember's presence can affect the conduct of the meeting and limit the board's role and function.

1. Any comments made at a meeting of a board for which the Councilmember is not an appointed liaison should be identified as the Councilmember's personal views or opinions and not the official position of the Council.
2. Since the attendance of 3 or more Councilmembers constitutes a legal Council meeting, timely public notification must be prepared and posted for all Board and Commission meetings.

11c. Limit contact with Board and Commission members to questions of clarification. It is inappropriate for a Councilmember to contact a Board or Commission member to lobby on behalf of an individual, business, or developer, or to advocate a particular policy perspective. To clarify a position taken by a board, Councilmembers should contact staff.

11d. Boards are advisory to the Council as a whole. The Council as a whole, and not individually, appoints individuals to serve on boards and any removal of a boardmember is also

Council's responsibility as a group. Appointments should be based solely on established diversity goals and membership parameters. An appointment should not be used as a political "reward."

11e. Be respectful of diverse opinions. A primary role of the City's boards is to represent many points of view in the community and to provide Council with advice based on a full spectrum of concerns and perspectives. Councilmembers must be fair and respectful of all residents serving on boards.

11f. Keep political support away from public forums. Boardmembers may offer political support to a Councilmember but only in a forum outside the official duties of the board. Conversely, Councilmembers may support boardmembers who are running for office but not in an official forum in their capacity as a Councilmember.

11g. Concerns about an individual Board or Commission member should be pursued with tact. Inappropriate behavior by a boardmember should be brought to the attention of the Mayor by the Council representative or any member on that board or commission. The Mayor shall contact the chairman of the board and they shall determine what action should be taken to address the behavior. If the behavior continues, the Chairman shall forward the matter to Council to consider whether the member should be removed from the Board, pursuant to 11h below.

11h. Procedure for appointing and removing members of Boards and Commissions. Unless otherwise specified in state statutes all persons selected to serve on a City Board and/or Commissions shall be appointed as follows:

1. The City Clerk shall cause notice of vacancy to be published to the public, after he/she is notified of a vacancy by the director appointed to oversee the Board or Commission. Notice and publication requesting applicants shall be given by any means **determined** appropriate by the City Clerk. However, publication must run at a minimum of two weeks.

2. After the deadline to submit applications has passed, the Clerk shall forward all applications to the Councilperson appointed to sit on the Board or Commission. The Councilmember shall then review the applications, confer with the board or commission at a publicly noticed meeting regarding the applicants, and make recommendations to City Council through the City Clerk.

3. The City Clerk shall then take the Councilmember's recommendation and put it in memo format and forward the recommendation and all of the applications to the other members of City Council.

4. The Mayor shall then cause the vacancy to be placed as an item for consideration by City Council on a City Council meeting agenda. The City Council will then consider and discuss all applications and the recommendations provided by the City Clerk at a public meeting.

5. If a member of a board violates the bylaws of the board, City *Charter*, City law or policy, state law, or if the behavior of board member impedes the function and purpose of the board he/she shall be subject to removal by the Council. Removal by Council shall be done by a majority vote of the Council, after a recommendation by the board is made to City Council for removal of the member.

11i. Appointment of Council Members to Boards and Commissions. At the organizational meeting after each election, or at the time of vacancy, the Mayor shall appoint a member of council as liaison for all of the Boards or Commissions not regulated by state statute.

#### RULE 12 BUDGET PROCESS.

Council shall meet annually to adopt the budget of estimated amounts required to pay the expenses of the City. (Article VI, Sec. 9, *Charter of the City of Fort Morgan, (2008)*). In order to establish appropriate oversight of the expenditures of public's money each member's involvement in the process is important and essential. The proposed budget process shall be determined by the City Manager, and he shall present a unitary budget to the Council.

12a. Budget Calendar. The City Manager shall present a budget calendar for Council's consideration no later than the first scheduled work session in March. Council shall consider the proposed calendar, and if it is acceptable it shall be placed upon the consent agenda for the next consent agenda at a regular meeting. The calendar that is adopted by Council shall comply with all deadlines set in the *Charter* and by the Council. The calendar shall also include proposed meeting dates for budget presentations and deadlines for requesting additional information regarding the budget.

12b. Budget Objections. Each appointed official shall have the right to submit his/her own proposed budget if he/she does not agree with the budget allocations presented by the City Manager. At the time the City Manager presents the budget to City Council, the presentation shall include a cover sheet with the position of each appointed official's signature. Each Appointed official shall either agree or disagree with their portion of the budget being presented by the City Manager. City Council shall then allow a presentation of the appointed official's justification of his/her proposed budget for his/her department before the final budget is passed.

12c. Budget Committees. Upon the City Manager's submission of the proposed budget the Mayor may assign members of Council to committees made up of two (2) members, to review the budget and provide feedback to the entire Council before the final budget can be considered for passage.

12d. Budget Presentations. The City Council shall determine what parts of the budget requires clarification and additional justification. If any part of the budget needs clarification, or if the Council needs additional information, it shall direct the City Manager to prepare that information for the entire Council. The deadlines for providing the information shall be set by Council.

12e. Schedule of Fees. City Council shall consider the proposed schedule of fees for all general fund services that charge fees at the same time as the budget. This Schedule of Fees shall be submitted to City Council at a time determined by the Manager in the Budget Calendar. Council, at its discretion may request a written report from the City Manager on how the Fees will impact the budget of the various departments.

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

## 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 Ordinance again be presented to this Council at the expiration of said period of publication for final action thereof.

PASSED, APPROVED AND ADOPTED this 6<sup>th</sup> day of April 2010, the vote upon roll call being as follows: Ayes: Mayor McAlister; Councilmembers Bryan, Deal, Forstedt, Nation and Shaver. Nays: None. Absent/Abstain: Councilmember Powers.

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## CONSENT AGENDA

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

- A. Approve the minutes from the March 16, 2010, regular meeting.
- B. Approve the minutes from the March 23, 2009, special meeting.
- C. Second and Final Reading of Ordinance No. 1099 entitled, "An Ordinance Extending a Moratorium on Medical Marijuana Dispensaries in the City of Fort Morgan," and request to publish by title only.

## ORDINANCE NO. 1099

### AN ORDINANCE EXTENDING 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, On October 20, 2009, City Council imposed a one-hundred and eighty day (180) moratorium for 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 to 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, City Council has determined that the imposition of an additional one-hundred and 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 be necessary to allow the City to fully 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, the State legislature is currently working on legislation that could impact regulations adopted by the City, and the process is better served if the City understands the State's regulatory scheme before adopting the local regulatory scheme.

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 at the end of the current moratorium which will expire on April 9, 2010, and shall expire one-hundred and 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 PASSED UPON FIRST READING this 16<sup>th</sup> day of March, 2010, 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/ Terry L. McAlister  
Mayor

ATTEST:

/s/ Cheryl Winberg  
Deputy City Clerk

FINALLY PASSED, ADOPTED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2010 for publication once in the newspaper of the City of Fort Morgan, Colorado, within five days of the final passage, to take effect upon its passage.

[ SEAL ]

THE CITY COUNCIL OF THE CITY OF  
FORT MORGAN, COLORADO

BY: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

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

I, Andrea Strand, the duly appointed, qualified and acting Clerk of the City of Fort Morgan, Colorado, do hereby certify and attest that the foregoing Ordinance No. 1099 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 16<sup>th</sup> day of March, 2010. Said Ordinance, as proposed, was duly read at length at said regular meeting, and thereafter the same was, on the 19<sup>th</sup> day of March, 2010 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 \_\_\_\_\_, 2010. 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.

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City Clerk

- D. Approve the renewal of the Hotel & Restaurant Liquor License for Escorza Family LLC, dba El Rancho Alegre, located at 131 W. Kiowa Avenue, with a clear police investigation report.

All matters listed under Item 7, 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 6<sup>th</sup> day of April, 2010, the vote upon roll call being as follows: Ayes: Mayor McAlister; Councilmembers Bryan, Deal, Forstedt, Nation, and Shaver. Nays: none.

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

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Ann lungerich, who resides at 102 Aspen in Fort Morgan, was present to speak about the Mural Project she is involved with. She encouraged everyone to get involved and paint a square. She announced upcoming workshops to be held at the School of Performing Arts located at 914 State Street. They will be held on the second Saturday of each month from 9:00 a.m. to noon, the second Monday of each month from 7:00 p.m. to 9:00 p.m. and each Tuesday from 11:30 a.m. to 3:00 p.m.

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#### **REPORTS**

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The following Directors provided written reports to Council:

City Manager Merrill; in addition to his written report he announced that the City received another award for the downtown project from NMPP. He also stated that he had treats at his office to distribute to any child that did not receive something at the recent Easter Egg Hunt sponsored by the City.

Police Chief Kuretich

Water Resources/Wastewater Treatment Director Dreessen

Municipal Engineer Curtis

Community Development Director Callahan

Human Resources and Risk Management Director Prentice

City Clerk Strand

Attorney Wells stated that the current filing date is April 8 to Morgan County District Court involving a lawsuit with the City He is in contact with the attorney for the plaintiff and they are trying to resolve the dispute.

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

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Clerk Strand announced the open bid and upcoming meetings.

Mayor McAlister adjourned the April 6, 2010, regular meeting at 7:33 p.m.

*/s/ Terry L. McAlister*  
Mayor

*/s/ Andrea Strand*  
City Clerk