

August 17, 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 Brent M. Nation
Councilmember James A. Powers
Councilmember Ronald Shaver
Councilmember Debra J. Forstedt

EXECUTIVE SESSION

At approximately 5:33 p.m., Councilmember Forstedt moved to go into Executive Session. For the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators, under C.R.S. Section 24-6-402(4)(e). Her motion was seconded by Councilmember Shaver and duly carried.

Mayor McAlister announced, "The time is now 7:00 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 Forstedt, Bryan, Deal, Nation, Powers, Shaver, City Attorney Jeff Wells, City Manager Pat Merrill and Marketing Director Kevin Wilkins.

"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. I will now ask Councilmember Forstedt to report on the Executive Session."

Councilmember Forstedt stated the Council met to discuss land acquisition and offered a motion to instruct the City Manager authorization to negotiate for the property acquisition based on the parameters discussed in the executive session. Her motion was seconded by Councilmember Shaver and duly carried.

The Regular Meeting was also attended by City Manager Pat Merrill, City Attorney Jeffrey Wells and Treasurer Terri Schafer.

MAYOR'S APPOINTMENT TO THE HISTORIC PRESERVATION BOARD

Mayor McAlister asked for a motion to appoint Councilmember Deal as the Council Liaison to the city historic preservation board. A motion was offered by councilmember Powers. Seconded by councilmember Nation and duly carried.

FEE WAIVER – FORT MORGAN BOOSTER CLUB

Director of Community Services Evins addressed the Council stating that the Fort Morgan Booster Club is requesting the waiver of fees and delivery of 40 picnic tables for a special event this weekend celebrating the beginning of the fall sports season. Councilmember Powers offered a motion to waive the fees of the tables and the delivery fee for the Fort Morgan Booster Club. His motion was seconded by Councilmember Forstedt and duly carried.

PRESENTATION FOR A FIRST READING OF AN ORDINANCE AMENDING THE FORT MORGAN MUNICIPAL CODE TO INCLUDE UPDATES REQUIRED UNDER FEDERAL LAW

Attorney Wells stated that there were extensive modifications to the lengthy chapter of the municipal code dealing with garbage, refuse and sewage to include updates required under federal law. Water Resources Director Dreessen has worked on the revisions along with the federal EPA for two years. He stated the changes were set off by violations of the limits on certain contaminants, including mercury coming into the city's wastewater treatment plant in 2006 and 2008. Attorney Wells noted that now that Council has approved the first reading the Ordinance will be sent to the EPA which will publish the Ordinance and take comments on it.

Councilmember Powers offered a resolution for the adoption of an Ordinance on first reading and an ordinance amending Chapter 13 of the Garbage, Refuse and Sewage, Articles (2) two and (3) three of the code of the city of Fort Morgan. His motion seconded by Councilman Shaver resolution passes unanimously.

PRESENTATION FOR A FIRST READING OF AN ORDINANCE AMENDING CHAPTER 27 OF THE FORT MORGAN MUNICIPAL CODE TO REMOVE EX OFFICIO MEMBERS FROM THE PLANNING COMMISSION

Attorney Wells explained that this item had been brought before the Council a few weeks earlier at that time council directed staff to develop an Ordinance that would modify the code to remove the mayor and councilmember as ex-officio members on that board. The other modification was that of the member of the board also sitting on the boards. I provided the entire Section 27-3 with those changes and for your review. Councilmember Powers commented on the Planning Commission is a 7 member commission and without the Mayor and Councilmember we will now need two more members of the community par take in this important committee the city has.

Discussion followed on mandatory meetings being held once a month if the Commission did not have business.

Councilmember Nation offered an Ordinance on the first reading amending Section 27-3 under the code of the City of Fort Morgan with the one change under sub paragraph C removing the word “**shall**” and changing it to the word “**should**”. Seconded by Councilman Powers and duly carried.

PRESENTATION FOR A FIRST READING OF AN ORDINANCE ADOPTING PROVISIONS WITHIN THE FORT MORGAN MUNICIPAL CODE PROHIBITING THE COMMERCIAL SALE AND PRODUCTION OF MEDICAL MARIJUANA

Attorney Wells noted that the Ordinance does not prohibit the use of medical marijuana by people with state approval to use the drug, only growing or retail selling of marijuana from storefront-type operations within the city limits. The ordinance defines the legal basis for the banning of commercial medical marijuana operations in the city, stating that they would have “an adverse effect on the health, safety and welfare of the city” and its residents. He also stated that the city held a public hearing on the medicinal marijuana issue two weeks ago and one person spoke in favor of allowing the dispensaries in the city.

Councilmember Nation offered a motion to approve the ordinance on first reading to amend the city of Fort Morgan municipal code by the addition thereto of a new article concerning the retail sale, distribution, cultivation and dispensing of medical marijuana. Seconded by Councilmember Bryan and duly carried.

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE CITY OF FORT MORGAN MUNICIPAL CODE BY THE ADDITION THERETO OF A NEW ARTICLE CONCERNING THE RETAIL SALE, DISTRIBUTION, CULTIVATION AND DISPENSING OF MEDICAL MARIJUANA

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, the City Council previously adopted an ordinance imposing a moratorium on the processing and approval of all applications for permits and licenses by the City related to what were referred to as "Medical Marijuana Dispensaries" in order to allow the City staff, working with the City Attorney, to evaluate and prepare appropriate regulations concerning such dispensaries within the City (the "Moratorium Ordinance");

WHEREAS, during the pendency of the Moratorium Ordinance, the Colorado Legislature during the 2010 legislative session considered and adopted legislation which in pertinent part added a new Article 43.3 to Title 12 of the Colorado Revised Statutes, to be known as the Colorado Medical Marijuana Code;

WHEREAS, the Colorado Medical Marijuana Code clarifies Colorado law regarding the scope and extent of Amendment 20 to the Colorado Constitution ("Article XVIII, Section 14"), and at the same time authorizes a mechanism for the retail sale, distribution, cultivation and dispensing of medical marijuana known as a "Medical Marijuana Center," and further authorizes licensing mechanisms known as an "Optional Premises Cultivation Operation" and a "Medical Marijuana-Infused Products Manufacturers' License";

WHEREAS, C.R.S. § 12-43.3-106 of the Colorado Medical Marijuana Code specifically authorizes in part that the governing body of a municipality may "vote to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana infused products manufacturers' licenses";

WHEREAS, C.R.S. § 12-43.3-310 of the Colorado Medical Marijuana Code further specifically authorizes a municipality in part "to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses based on local government zoning, health, safety, and public welfare laws for the distribution of medical marijuana that are more restrictive than this article;"

WHEREAS, C.R.S. § 12-43.3-308(1)(c) of the Colorado Medical Marijuana Code also provides that the state and local licensing authorities shall not receive or act upon a new application pursuant to the Colorado Medical Marijuana Code "for a location in an area where the cultivation, manufacture, and sale of medical marijuana as contemplated is not permitted under the applicable zoning laws of the municipality, city and county, or county";

WHEREAS, the City Council has carefully considered the provisions of the Colorado Medical Marijuana Code, Article XVIII, Section 14 of the Colorado Constitution, and the impact of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses on the health, safety and welfare of the City and the inhabitants thereof, and has determined as an exercise of its local land use authority that such medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses shall not be located within the corporate limits of the City; and

WHEREAS, the City Council further recognizes the protections afforded by Article XVIII, Section 14 of the Colorado Constitution, and desires to affirm the ability of patients and primary caregivers to otherwise be afforded the protections of Article XVIII, Section 14 of the Colorado Constitution and C.R.S. § 25-1.5-106, as the same may be amended from time to time.

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

Section 1. Chapter 20 of the Fort Morgan Municipal Code is hereby amended by the addition of an Article II, entitled "Medical Marijuana, to read as follows:

**ARTICLE II
Medical Marijuana**

Sec. 20-39 Findings and Legislative Intent.

The City Council makes the following legislative findings:

(1) The City Council finds and determines that the Colorado Medical Marijuana Code, C.R.S. § 12-43.3-101, et seq., clarifies Colorado law regarding the scope and extent of Amendment 20 to the Colorado Constitution.

(2) The City Council finds and determines that the Colorado Medical Marijuana Code specifically authorizes in part that the governing body of a municipality may "vote to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses."

(3) The City Council finds and determines that the Colorado Medical Marijuana Code further specifically authorizes a municipality in part "to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses based on local government zoning, health, safety, and public welfare laws for the distribution of medical marijuana."

(4) The City Council finds and determines after careful consideration of the provisions of the Colorado Medical Marijuana Code, Article XVIII, Section 14 of the Colorado Constitution, and after evaluating, inter alia, the potential secondary impacts associated with the retail sale, distribution, cultivation and dispensing of medical marijuana through medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses, that such land uses have an adverse effect on the health, safety and welfare of the City and the inhabitants thereof.

(5) The City Council therefore finds and determines that as a matter of the City's local land use and zoning authority as a home rule municipality pursuant to the provisions of Article XX, Section 6 of the Colorado Constitution, and consistent with the authorization provided by the Colorado Medical Marijuana Code, that no suitable location exists within the corporate limits of the City of Fort Morgan for the cultivation, manufacture, and sale of medical marijuana by the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses.

(6) The City Council recognizes and affirms the protections afforded by Article XVIII, Section 14 of the Colorado Constitution, and desires to affirm the ability of patients and primary caregivers to otherwise be afforded the protections of Article XVIII, Section 14 of the Colorado Constitution and C.R.S. § 25-1.5-106, as the same maybe amended from time to time.

Sec. 20-40 Authority.

The City Council hereby finds, determines and declares that it has the power and authority to adopt this Article pursuant to:

- (1) The Colorado Medical Marijuana Code, C.R.S. § 12-43.3-101, et seq.,
- (2) The authority granted to home rule municipalities by Article XX of the Colorado Constitution;
- (3) The powers contained in the City of Fort Morgan Home Rule Charter.
- (4) The Local Government Land Use Control Enabling Act, article 20 of title 29, C.R.S.;
- (5) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal zoning powers);
- (6) Section 31-15-103, C.R.S. (concerning municipal police powers);
- (7) Section 31-15-401, C.R.S. (concerning municipal police powers);
- (8) Section 31-15-501, C.R.S. (concerning municipal authority to regulate businesses).

Sec. 20-41 Definitions.

- (1) For purposes of this Article, the following terms shall have the following meanings:
- (2) Medical marijuana means marijuana that is grown and sold for a purpose authorized by Section 14 of Article XVIII of the Colorado Constitution.
- (3) Medical marijuana center means a person authorized to be licensed to operate a business as described in the Colorado Medical Marijuana Code that sells medical marijuana to registered patients or primary caregivers as defined in Section 14 of Article XVIII of the Colorado Constitution, but is not a primary caregiver, and which a municipality is authorized to prohibit as a matter of law.
- (4) Medical marijuana-infused products manufacturer means a person licensed pursuant to the Colorado Medical Marijuana Code to operate a business known as a Medical Marijuana-Infused Products Manufacturing License, and which a municipality is authorized to prohibit as a matter of law.

- (5) Optional premises cultivation operation means a person licensed pursuant to the Colorado Medical Marijuana Code to operate a business known as an optional premises grow facility in order to grow and cultivate marijuana for a purpose authorized by Section 14 of Article XVIII of the Colorado Constitution, and which a municipality is authorized to prohibit as a matter of law.
- (6) Person means a natural person, partnership, association, company, corporation, limited liability company, or organization, or a manager, agent, owner, director, servant, officer, or employee thereof.
- (7) Patient has the meaning provided in Section 14(1)(c) of Article XVIII of the Colorado Constitution.
- (8) Primary caregiver has the meaning provided in Section 14(1)(f) of Article XVIII of the Colorado Constitution.

Sec. 20-42 Medical Marijuana Centers, Optional Premises Cultivation Operations, and Medical Marijuana-Infused Products Manufacturers' Licenses Prohibited.

It is unlawful for any person to operate, cause to be operated, or permit to be operated a medical marijuana center, optional premises cultivation operation, or facility for which a medical marijuana-infused products manufacturers' license could otherwise be obtained within the City, and all such uses are hereby prohibited in any location within the City, or within any area hereinafter annexed to the City.

Sec. 20-43 Patients and Primary Caregivers.

Nothing in this Chapter shall be construed to prohibit, regulate or otherwise impair the use of medical marijuana by patients as defined by the Colorado Constitution, or the provision of medical marijuana by a primary caregiver to a patient in accordance with the Colorado Constitution, and consistent with C.R.S. § 25-1.5-106, and rules promulgated thereunder, as the same statute and rules may be amended from time to time.

Sec. 20-44 Penalty.

A violation of the provisions of this Article shall be punishable as follows:

- (1) By a fine of not less than two hundred fifty dollars (\$250.00) but not more than one thousand dollars (\$1,000.00);
- (2) Each and every day a violation of the provisions of this section is committed, exists or continues shall be deemed a separate offense;

- (3) The City Attorney is specifically authorized to seek an injunction, abatement, restitution or any other remedy necessary to prevent, enjoin, abate, or remove the violation; and
- (4) Any remedies provided for herein shall be cumulative and not exclusive, and shall be in addition to any other remedies provided by law or in equity.

Section 2. The Fort Morgan Municipal Code will be amended upon adoption of the new Zoning Code to establish medical marijuana centers, optional premises cultivation operations, or medical marijuana-infused products manufacturing facilities as prohibited uses within the City.

Section 3. Safety Clause. The City Council hereby finds, determines, and declares that this ordinance is promulgated under the general police power of the City of Fort Morgan, that it is promulgated for the health, safety, and welfare of the public, and that this ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 4. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance and the sections added to the code are 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 and shall not affect application to other persons or circumstances.

INTRODUCED, READ AND PASSED UPON FIRST READING this 17th day of August 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: _____
Mayor

ATTEST:

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:

Deputy City Clerk

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

CERTIFICATE

I, Yolanda L. Eurich, the duly appointed, qualified and acting Deputy Clerk of the City of Fort Morgan, Colorado, do hereby certify and attest that the foregoing **Ordinance No.** ____ was, as a proposed **Ordinance** duly and legally presented to the City Council of the City of Fort Morgan, Colorado, at a Regular Meeting on the ____ day of _____, 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.

Deputy City Clerk

DISCUSSION AND/OR ACTION AUTHORIZING STAFF TO INVESTIGATE AND PREPARE A PROPOSAL FOR THE REFINANCING OF DEBT IN THE WATER FUND

Attorney Wells reported that the city has two goals to achieve by refinancing some of the bonds that are in the enterprise fund. By obtaining a lower interest rate would save City taxpayers money and also refinancing debt that restricts the City from incurring further debt in the Water Fund. The other important part is the City look for ways to finance its involvement in the NISP project for its future water supply. We are asking Council to authorize the city manager, treasurer and myself to bring back a proposal for council to consider refinancing. Councilmember Bryan asked what amount of money we are talking about. Treasurer Schafer stated, "approximately 26 million dollars".

Councilmember Powers offered a motion to allow the city manager, treasurer and attorney to investigate refinancing the debt in the water fund. His motion seconded by Councilmember Nation and duly carried.

**SCHEDULE A PUBLIC HEARING FOR A SPECIAL EVENTS PERMIT FOR THE ELKS CLUB
SEPTEMBER 7, 2010**

Attorney Wells reported that the Elks Club has requested a special events permit for September 17th and 18th and council would need to direct city manager or deputy city clerk to call a public hearing for September 7, 2010.

Councilman Powers offered a motion to post the Elks Club, located at 430 State Street and schedule a Public Hearing for September 7, 2010. His motion seconded by Councilmember Nation and duly carried.

CONSENT AGENDA

Treasurer Schafer presented the Consent Agenda for Council consideration. Councilmember Deal offered a Resolution to approve the Consent Agenda as presented. Her motion was seconded by Councilmember Shaver said Consent Agenda being in words, letters and figures as follows, to wit:

CONSENT AGENDA

- A. Approved the minutes from the August 3, regular meeting.
- B. Approve disbursements from July 2010.
- C. Approve the Liquor License application for the Renewal and Modification of Premises for Acapulco Bay, located at 204 Main Street.
- D. Approve the 3.2% Beer Liquor License for Pizza Hut 4850, located at 1200 W. Platte Avenue.
- E. Approve the Report of Changes for the Elks Lodge No. 1143, located at 430 State Street, who holds a Liquor License.

All matters listed under Item 11, 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 17th day of August 2010, the vote upon roll call being as follows: Ayes: Mayor McAlister; Councilmembers Bryan, Deal, Nation, Powers and Shaver. Nays: none.

PUBLIC COMMENT / AUDIENCE PARTICIPATION

None.

BIDS, MEETINGS AND ANNOUNCEMENTS

No upcoming bids.

Mayor McAlister adjourned the August 17, 2010, regular meeting at 7:45 p.m.

/s/ Terry L. McAlister
Mayor

/s/ Yolanda I. Eurich
Deputy City Clerk