

ORDINANCE NO. 1251

AN ORDINANCE CREATING A STORMWATER DEPARTMENT TO OPERATE WITHIN THE WASTEWATER UTILITY FUND; DETERMINING AND PROVIDING FOR THE PURPOSES AND FUNCTIONS OF SUCH STORMWATER DEPARTMENT; PROVIDING FOR ADMINISTRATION OF THE STORMWATER DEPARTMENT; AND ESTABLISHING PROCEDURES FOR ADMINISTRATIVE AND JUDICIAL REVIEW.

WHEREAS, the City of Fort Morgan, Colorado (the "City") is a Colorado home rule municipality, duly organized and existing pursuant to Section 6 of Article XX of the Colorado Constitution, and

WHEREAS, the City Council (the "Council") has authority pursuant to the Home Rule Charter and C.R.S. §31-16-101, et seq. to adopt and enforce all ordinances; and

WHEREAS, the City is responsible for stormwater management in the City; and,

WHEREAS, the Council is authorized by the Constitution of Colorado and the City's home rule Charter to establish a Stormwater Department and to adopt a system of charges to fund the implementation of stormwater facilities and systems; and,

WHEREAS, the City wishes to establish a Stormwater Department and to enact a stormwater management fee system that will generate funding to undertake projects and create infrastructure to remedy the periodic stormwater flooding that occurs in the city; and,

WHEREAS, all real property in the City, including property owned by public and tax-exempt entities, contributes to runoff and either uses or benefits from the stormwater system; and,

WHEREAS, a stormwater management fee system offers additional financial management options that could assist the City to improve stormwater and drainage services and to comply with future federal and state mandates and other requirements concerning the control and management of stormwater and runoff; and,

WHEREAS, it is in the interests of the public to fund stormwater management with a user fee system that allocates the costs of stormwater management to all property owners in the City and that further seeks to charge property owners based on their property's zoning classification and the extent to which a typical property in that zoning classification contributes to the need for stormwater management; and,

WHEREAS, the City Charter, at Article V, Section 4(g), establishes the procedure for the creation of departments with the recommendation of such consolidation and/or

creation from the City Manager and final approval by ordinance from the City Council.

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

SECTION 1. Findings. The above and foregoing findings are hereby incorporated by this reference as specific findings and determinations of the Council.

SECTION 2. The Stormwater Department is hereby established and the City Manager is given charge to develop a budget, positions within the organizational structure, and the purpose of the department in line with policies set by the City Council.

SECTION 3. The Fort Morgan Municipal Code is hereby amended by the enactment and addition of the following new Article 8 of Chapter 17, to read in its entirety as follows:

CHAPTER 17 ARTICLE 8

STORMWATER DEPARTMENT

Sec 17-8-10. - Findings, Legislative intent and purpose, and Authority.

(a) The City Council finds and determines that:

- (1) Due to its general terrain and geographical location, property within the City is particularly subject to damage from floods and stormwater which, from time to time, overflow existing watercourses and stormwater facilities; and that the City's existing stormwater facilities are inadequate to control such overflow and other runoff or to prevent flooding in many parts of the City during and following certain storm events.
- (2) The City maintains a system of storm and surface water management facilities including, but not limited to, inlets, conduits, manholes, channels, ditches, drainage easements, retention and detention basins, and other components.
- (3) The stormwater system in the City needs regular maintenance and improvements.
- (4) Water quality is degrading due to erosion and the discharge of nutrients, metals, oil, grease, toxic materials, and other substances into and through the stormwater system.
- (5) The public health, safety, and welfare are adversely affected by flooding that results from inadequate management of the quantity of stormwater.
- (6) All real property in the City either uses or benefits from the maintenance of

the stormwater system.

- (7) The extent of use of the stormwater system by each property is influenced by factors that contribute to runoff, including land use and the amount of impervious surface typically found on properties in each zoning classification.
- (8) The costs of improving, maintaining, operating, and monitoring the stormwater system should be allocated, to the extent practicable, to all property owners based on the average impact of runoff from the typical property in their zoning classification on the stormwater management system.
- (9) Management of the stormwater system to protect the public health, safety, and welfare requires adequate revenues and it is in the interest of the public to finance stormwater management adequately with a user charge system that is reasonable and equitable so that each user of the system pays to the extent to which such user contributes to the need for it.

(b) It is the intent and purpose of the City Council in enacting this Article:

- (1) To promote the public health, safety and welfare by permitting the movement of emergency vehicles during storm or flooding periods and by minimizing storm and flood losses and the inconvenience and damage resulting from uncontrolled stormwater runoff in the City;
- (2) To provide for the establishment and implementation of a master drainage plan for effective stormwater and flood management;
- (3) To establish a stormwater utility enterprise to coordinate, design, construct, manage, operate and maintain the stormwater and flood management systems and stormwater projects and facilities;
- (4) To establish reasonable stormwater utility service charges based on the zoning designation and use of property; and
- (5) To encourage and facilitate urban water resources management techniques including without limitation, detention of floods and stormwater runoff, minimizing the need to construct stormwater facilities, reduction of pollution, and enhancement of the environment.

(c) The City's authority for the establishment of a Stormwater Department and for the adoption of a system of charges to fund the City's Stormwater Department

is derived from Section 6 of Article XX of the Colorado Constitution, and Section 4 of Article V of the Fort Morgan City Charter.

Sec. 17-8-20. - Definitions.

For purposes of this Article, the following words shall have the following meaning, unless the context clearly indicates otherwise:

- a. "Director" means the City Manager or the City Manager's Designee.
- b. "Impervious Surface" means a surface area which is compacted or covered with material that is resistant to infiltration by water, including, but not limited to, most conventionally surfaced streets, roofs, sidewalks, patios, driveways, parking lots, and any other oiled, compacted, or other surface which impedes the natural infiltration of surface water.
- c. "Property Owner" means the property owner of record as listed in the records of the Morgan County, Colorado Treasurer. A property owner includes any individual, corporation, firm, partnership, or group of individuals acting as a unit, and any trustee, receiver, or personal representative.
- d. "Property Action" is defined to include: annexations, redevelopments, zonings, rezonings, or sale or transfer of property rights.
- e. "Runoff" means that part of snowfall, rainfall or other stormwater which is not absorbed, transpired, evaporated, or left in surface depressions and which then flows controlled or uncontrolled into a watercourse or body of water.
- f. "Stormwater Facilities" means any one or more of the various devices used in the collection, disposition, or treatment of storm, flood or surface drainage waters, including manmade structures and natural watercourses for the conveyance of runoff, such as: conduits and appurtenant features, canals, ditches, streams, gulches, gullies, flumes, culverts, streets, curbs, gutters, detention areas, pumping stations, pipes and related equipment and appurtenances; all extensions, improvements, remodeling, additions and alterations thereof and any and all rights or interest in such stormwater facilities.
- g. "Stormwater System" means the system or network of stormwater facilities located in whole or in part within the City, including but not limited to inlets, conduits, manholes, channels, ditches, drainage easements, retention and detention basins, infiltration facilities and other components, as well as all natural waterways.

Sec. 17-8-30. - Stormwater department.

- (a) There is hereby created a stormwater department in the City.
- (b) The stormwater department shall constitute a department within the Sewer

enterprise empowered to coordinate, design, conduct, manage, operate and maintain the stormwater and flood management systems and stormwater facilities of the City, and to implement the provisions of this Article.

- (c) The stormwater department, as a department within the sewer utility enterprise, shall at all times and in all ways conduct its affairs so as to continue to qualify as a "water activity" within the meaning of Section 37-45.1-102, C.R.S.

Sec. 17-8-40. - Administration.

- (a) The administration of the provisions of this Article is vested in and shall be exercised by the Director who may prescribe forms and rules and regulations in conformity with this chapter for the proper administration and enforcement of this Article.
- (b) Every decision or determination of the Director shall be in writing and notice thereof shall be served upon or mailed by first class mail, postage prepaid to the affected person at his or her address shown on the records of the City. Service by first class mail as provided herein shall be conclusive evidence of service of such decision or determination. The decision or determination of the Director shall be final and conclusive upon the affected person unless he or she timely files a petition for hearing.
- (c) With the exception of appeals for reclassification pursuant to Section 17-8-60, any person aggrieved by any decision or determination of the Director may petition the Director for a hearing on revision or modification of such decision or determination no later than thirty (30) days after notice thereof is served on the aggrieved person
- (d) Such petition shall be verified in writing upon forms approved by the Director and specify in detail the aggrieved person's reasons and grounds for revision or modification. The petition shall be accompanied by all documents or other evidence supporting the petition.
- (e) The Director shall schedule a hearing on the petition not less than sixty (60) days from the date the Director receives the petition. The Director may designate a representative of the City as the hearing officer.
- (f) The hearing shall take place at the time, date and location specified by the Director in the notice of hearing. Notice of the hearing shall be given to the petitioner by first class mail addressed to the petitioner at his or her address shown in the petition. The hearing shall be conducted in accordance with the rules and regulations issued by the Director. The petitioner shall have the burden of proof. Failure to timely file a petition or the failure of the petitioner or his or her representative to appear at the hearing shall constitute and be

deemed to be a waiver of the right to a hearing by the aggrieved person.

- (g) Within thirty (30) days after the hearing, the Director or hearing officer shall make findings of fact based upon relevant and competent information and evidence submitted at the hearing. The Director shall make a decision or determination based upon such findings and, if appropriate, modify his/her prior decision or determination accordingly. The decision or determination by the Director after hearing shall be final and conclusive upon the petitioner, and may be appealed to the District Court in Morgan County.
- (h) A petition may be filed only once in connection with any decision or determination of the Director.

Sec. 17-8-50. - Designation of Stormwater Use Category.

- (a) Upon the passing of this enabling ordinance all property located within the corporate limits of the City of Fort Morgan, and any other property desiring to join in stormwater mitigation and control that can be served by the City's infrastructure, shall be assessed a fee collected on a monthly basis, as is customary with other utilities provided by the City of Fort Morgan, for stormwater collection, maintenance and expansion of stormwater infrastructure. Such fee rates and structure shall be adjusted from time to time by Resolution of the City Council of the City of Fort Morgan. Each property shall be assessed in accordance with the zoning designated on the City Official Zoning Map as amended through the Land Use Code.
- (b) Collection of charges for stormwater shall be handled in the same manner as charges for sewer charges provided in Section 17-5-20 of this Code.
- (c) The City Manager or his/her designee, upon notice of a Property Action as defined in this Article, shall reassess the stormwater classification of the property affected by the Property Action pursuant to the zoning or applicable use of the property. Once a determination has been made, the property shall be assessed stormwater fees in accordance with the fee schedule.

Sec. 17-8-60. – Appeal for Reclassification.

- (a) Reclassification Generally. Property owners may seek a reclassification of property subject to the stormwater fee. Such reclassification shall not affect any other designation of the property including but not limited to any other portion of this Code, zoning, land use, special use permits, variances, property tax assessments, liens, other assessments, etc. Such a reclassification, if granted, shall only apply to the collection of the stormwater fee associated with the property.
- (b) Process.
 - (1) Within sixty (60) days of the imposition of a new fee classification resulting from a Property Action defined above, property owners may file an

application with the City Manager or his/her designee for a reclassification of property subject to the stormwater fee.

- (2) All applications for reclassification shall be filed with the City Manager or his/her designee in writing.
- (3) All applications for reclassifications shall include the information addressing the Review Criteria in subsection (c) below and shall be reviewed by the City Manager or his/her designee in accordance with the Review Criteria.
- (4) The City Manager or his/her designee shall respond in writing to the applicant. An application shall be deemed incomplete if there are insufficient supporting documents, missing information, if inconsistencies are found during the review of the application, or if the applicant has not paid the application fee.
- (5) If the reclassification is granted, the City Manager or his/her designee shall inform the appropriate City Departments of the reclassification and direct that the reclassification is applied to the billing retroactively to the date the application was complete.
- (6) If the reclassification is denied, such action shall constitute the final determination of the City and may be appealed to the District Court in Morgan County.

(c) Review Criteria. The applicant or proponent of any reclassification carries the burden of proving that the granting of the reclassification is justified by reasons which are substantial, serious and compelling, and must be prepared to satisfy the City Manager or his/her designee that, to the extent applicable, the following criteria are met:

- (1) Use of the Property. The applicant may produce records and information concerning the current use of the property to illustrate that the use of the property constitutes a significant difference in use from the applied zoning. Such records may include photographs, county assessment records, building records, or similar records.
- (2) The specific conditions in detail which are not unique to the applicant's land and exist on other land in the surrounding area.
- (3) The conditions and circumstances are not the result of actions of the applicant taken subsequent to the establishment of the stormwater fee.

In granting a reclassification, the City Manager or his/her designee may attach conditions, time limits, or ongoing reporting by the applicant as necessary to protect

affected property owners and to preserve the intent of this Article. In considering any reclassification, the applicant and the City Manager or his/her designee must bear in mind that, unless great caution is used and reclassifications are granted only in proper cases, the whole City stormwater department will be in jeopardy of being underfunded resulting in insufficient maintenance of stormwater infrastructure.

Sec. 17-8-70. - Nonliability of City.

Runoff may occur which exceeds the capacity of the City's stormwater facilities. This Article does not imply that real property liable for the charges and fees established herein will be free from runoff or flood damage. Nor shall this Article create any liability on the part of, or cause of action against, the City or any officer or employee thereof for runoff or flood damage. This Article does not purport to reduce the need or necessity for obtaining flood insurance.

SECTION 4. If any section, provision, paragraph, clause or phrase of this Ordinance is held, or decided to be unconstitutional, invalid or unenforceable for any reason, such decision shall not affect the constitutionality, validity or enforceability of the remaining portions of this Ordinance.

SECTION 5. All other ordinances or portions thereof inconsistent or conflicting with this Ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

SECTION 6. The City Council finds that this Ordinance is necessary for the immediate preservation of the public peace, health and safety of the residents of the City.

**INTRODUCED, READ, ADOPTED ON FIRST READING AND ORDERED
PUBLISHED** on the 18th day of May, 2021.



THE CITY COUNCIL OF THE CITY OF FORT
MORGAN, COLORADO

By: Ronald Shaver
Mayor

Attest:

John Brennan
John Brennan
City Clerk

PASSED, APPROVED AND ADOPTED ON FINAL READING AND ORDERED
PUBLISHED this 1st day of June, 2021.

THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO




By: Ronald Shaver
Mayor

Attest:


John Brennan
City Clerk

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

I, John Brennan, the duly appointed, qualified Clerk of the City of Fort Morgan, Colorado, do hereby certify that the foregoing **Ordinance No. 1251** was, as a proposed Ordinance, duly and legally presented to the City Council of the City of Fort Morgan, Colorado, on the 18th day of May, 2021. Said ordinance, as proposed, was duly read at length at said meeting, and thereafter the same was, on the 21st day of May, 2021, 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 1st day of June, 2021. Within five (5) days after its final passage, said **Ordinance No. 1251** 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.


John Brennan
City Clerk