

ORDINANCE NO. 1067

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

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

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

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

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

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

22A-22 Disposition of City-Owned Real Property

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

22A – 22.1 Purpose.

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

22A – 22.2 Objectives.

The objectives of this Section are as follows:

- A. To establish a uniform procedure for the disposition and sale of city-owned real property, including land located in the Fort Morgan Industrial Park;
- B. To encourage the development and sale of real property in a manner beneficial to the residents of the City of Fort Morgan;
- C. To encourage development that will maximize the public investment in existing and future capital improvements;

22A – 22.3 Procedure for Surplus Property.

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

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

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

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

- E. No bid shall be accepted for less than the acceptable minimum bid as determined by council and full amount of the bid must accompany each bid. The City of Fort Morgan reserves the right to reject any and all bids, or to award the bid most advantageous to the City.

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

22A – 22.5 Determination of bids.

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

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

22A – 22.6 Post-bidding procedure.

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

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

22A – 22.7 Awarding of bid.

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

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

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

22A – 22.8 Disposition contract.

- A. In addition to the regulations set forth in the *Zoning and Land Use Code of the City of Fort Morgan*, the building code, and other applicable codes and ordinances, the following shall be applied by the provisions contained in the disposition contract:
 - I. The purchaser shall devote such parcel to the uses as specified in the Site Plan which was submitted with the bid; additionally, if the purchaser has been awarded Economic Incentives, the purchaser must utilize the property under the requirements of the Economic Incentive Policy.
 - II. Within one (1) year of closing, the purchaser shall complete the project as set forth in the approved Site Plan. Failure to complete the project shall cause the property to revert to the City with any incomplete improvements. This covenant shall be included in the deed. Extensions will be granted upon showing to the Director of Community Development that the purchaser has substantially complied with the Site Plan review or failure to complete was a result of force majeure.
 - III. Closing shall be made within **thirty (30) days**, with the conveyance of property to be made by Warranty Deed or by a deed reflection the City's interest in the property. Such closing date may be by mutual agreement of the parties.

- IV. Such deed conveying the property shall expressly provide that the agreements and covenants provided for in the development plan shall be covenants running with the land and shall be binding on the land for the benefit and in favor of the City;
- V. A current commitment for title insurance in an amount equal to the purchase price shall be furnished to the purchaser, and the title shall be merchantable in the seller, or made merchantable prior to the date for closing and the conveyance of the property.
- VI. Purchaser shall agree that no warranties or representations with regards to the condition of the property have been made. Purchaser acknowledges that an adequate inspection has been made and the purchaser has been informed of the condition of the property and accepts the property "as is" without warranty, either express or implied.
- VII. Purchaser agrees that all said final plans for structures, site improvements, landscaping, parking, etc., shall be approved as required by Code and shall be approved by the City Council, including landscaping requirements that may apply in the Fort Morgan Industrial Park.
- VIII. The purchaser and the seller shall agree that in the event either party is in default or in violation of the terms of the disposition contract, the remedies as set forth in the disposition contract shall be applied.
- IX. The purchaser shall agree for itself and its successors and assigns and any successor in interest to the property or any part thereof, and the deed shall contain covenants that the purchaser and any such successors or assigns shall devote the property to and only to and in accordance with the use specified and approved in the development plan.
- X. None of the provisions of this chapter or the disposition contract are intended to or shall be merged by reason of any deed transferring title to the property to the purchaser or to any successor in interest.
- XI. The purchaser shall agree that interest in the property shall not be assignable without the prior written consent of the City of Fort Morgan.
- XII. The disposition contract for sale of the property may be modified, including provisions pertaining to land use, building and site

modification, before and after the transfer of property with prior written consent of the City Council by Resolution.

22A – 22.9 Applicability.

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

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

THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

[SEAL]

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

ATTEST:

/s/ Andrea Strand
City Clerk

FINALLY PASSED, ADOPTED AND APPROVED this 3rd day of June, 2008, for publication once in the newspaper of the City of Fort Morgan, Colorado, within five days of the final passage, to take effect five days after final publication.

THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

[SEAL]

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

ATTEST:

/s/ Andrea Strand
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. 1067** was, as a proposed **Ordinance** duly and legally presented to the City Council of the City of Fort Morgan, Colorado, at a Regular Meeting on the 20th day of May, 2008. Said **Ordinance**, as proposed, was duly read at length at said regular meeting, and thereafter the same was, on the 23rd day of May, 2008, published in the *Fort Morgan Times*, a daily newspaper of general circulation published and printed in the City of Fort Morgan, Morgan County, Colorado. Said proposed **Ordinance** was again taken up and read a second time, duly and legally passed, approved and adopted at a Regular Meeting of the City Council held on the 3rd day of June, 2008. 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.

/s/ Andrea Strand
City Clerk