

September 2, 2008

The City Council of the City of Fort Morgan, Colorado, met this day in the Council Chambers of City Hall. The Honorable Mayor Jack L. Darnell called the regular meeting to order at 7:00 p.m.

The Pledge of Allegiance was given.

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

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

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**FIRST READING OF AN ORDINANCE ENTITLED, "AN ORDINANCE ADOPTING SECTION 20-38, ERADICATION OF GRAFFITI, CODE OF THE CITY OF FORT MORGAN (1994)"**

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Attorney Wells presented the ordinance for first reading and addressed two minor changes from when it was presented at the work session. Both items were on page 6 under item number 2; remove the extra period and change D to B.

Councilmember Shaver offered the following Resolution with the above changes and moved for its adoption. His motion was seconded by Councilmember Powers; 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 2<sup>nd</sup> day of September, 2008, the vote upon roll call being as follows: Ayes: Mayor Darnell; Councilmembers Deal, McAlister, Powers, Schafer, Shaver and Simmons. Nays: None.

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

**AN ORDINANCE ADOPTING SECTION 20-38, ERADICATION OF GRAFFITI,  
CODE OF THE CITY OF FORT MORGAN, (1994)**

WHEREAS, the City Council of Fort Morgan, Colorado finds that graffiti is a public nuisance and destructive of the rights and values of property owners as well as the community of the City of Fort Morgan; and

WHEREAS, unless the City acts to remove graffiti from public and private property, the graffiti remains thus other properties then become the target of graffiti. Thereafter affecting entire neighborhoods making them less desirable places to live, creating a further detriment of the City; and

WHEREAS, the City Council has requested that an Ordinance be established to help prevent the spread of graffiti vandalism and to establish a program for the removal of graffiti from public and private property; and

WHEREAS, the City Council intends, through the adoption of this Ordinance, to provide additional enforcement tools to protect public and private property from acts of graffiti vandalism and defacement; and

WHEREAS, the City Council is authorized to enact this Ordinance pursuant to its police powers, as specified in Article IV, Section 18 of the *Charter of the City of Fort Morgan*, that authorizes the City Council to “pass all such ordinances as shall be necessary to provide for the safety, preserve the health, promote prosperity, improve the morals, order, comfort and convenience of the city.”

THEREFORE, BE IT ORDAINED BY THE COUNCIL OF FORT MORGAN,

Section 1. That Fort Morgan Municipal Code, Chapter 20 is hereby amended, by the addition of Sec. 20-38 as follows:

SEC. 20-38. Eradication of Graffiti

(a) Legislative Intent.

The City Council finds and declares that the unauthorized inscription, word, figure or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any surface of public or private property by any graffiti implement, to the extent that the graffiti was not authorized in advance by the owner or occupant of the property, or, despite advance authorization, is otherwise deemed a public nuisance by the City of Fort Morgan.

(b) Definitions.

The following words, terms and phrases, when used in this Section, shall have the meanings as set forth, except where the context clearly indicates an alternative meaning:

*Agent* means an individual or entity that is authorized by a business or property owner to act on his or her behalf with regard to the business property.

*Deface* means to mar the external appearance or injure, impair or destroy by effacing significant details of something by removing, distorting, addition to or covering all or a part thereof.

*Graffiti* means the unauthorized inscription, word, sign, symbol, marking, design, figure or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any surface of public or private property, including but not limited to buildings, structures, fixtures, sidewalks or other improvements, whether permanent or temporary by any graffiti implement, and which is visible from the City’s public right-of-way, to the extent that the graffiti was not authorized in advance by the owner or occupant of the property, or, despite advance authorization, is otherwise deemed a public nuisance by the City Council.

*Graffiti implement* means an aerosol paint container, paint, a broad-tipped marker, gum label, paint stick or graffiti stick, etching equipment, brush or any other device capable of scarring or leaving a visible mark on any natural or manmade surface.

*Owner or Property Owner* means any person holding legal title to any property, real or personal, located within the City boundaries.

*Property* means any structure, building, premises, business, vacant lot, single family dwelling, multi-family dwelling or any other real or personal property located within the City.

*Service* means notification by posting upon the property, personal service, or delivery by registered, certified and/or first class letter. The date the notice is posted or the letter is deposited in the mail shall constitute the date of service.

*Tenant* means any person leasing, renting, using or in any other way occupying the property of another for any term with his or her assent, express or implied.

(c) Prohibited Acts

A. Defacement. It shall be unlawful for any person to apply graffiti to any natural or manmade surface on any city-owned property or, without the permission of the owner or occupant, on any non-city-owned property.

B. Possession of Graffiti Implements.

1. It shall be unlawful for any person to possess any graffiti implement while on any school property, grounds, facilities, buildings, or structures, or in areas immediately adjacent to those specific locations upon public property, or upon private property without the prior written consent of the owner or occupant of such private property. The provisions of this Section shall not apply to the possession of broad-tipped markers by a minor attending or traveling to or from a school at which the minor is enrolled if the minor is participating in a class at the school that formally requires the possession of broad-tipped markers. The burden of proof in any prosecution for violation of this Section shall be upon the minor student to establish the need to possess a broad-tipped marker.
2. It shall be unlawful for any person to possess any graffiti implement while in or upon any public facility, park, playground, swimming pool, recreational facility, or other public building or structure owned or operated by the City or while in or within fifty (50) feet of an underpass, bridge abutment, storm drain, or similar types of infrastructure unless otherwise authorized by the City.

(d) Signage of Graffiti Implements

- A. Signage Required. Every person who operates a retail commercial establishment selling graffiti implements shall:
  1. Place a sign in clear public view at or near the display of such products stating: "Graffiti is against the law. Any person who defaces real or personal property with paint or any other liquid or device is guilty of a crime punishable by imprisonment of up to thirty (30) days and/or a fine up to \$1000.00 for each offense."
- B. Notification of this requirement shall be given to all businesses by the City Clerk.

(e) Penalties.

- A. Fines and Imprisonment. Any person violating this Section shall be punished by a minimum fine of (\$50.00) and a maximum fine for one thousand (\$1,000), or by imprisonment for a term not to exceed thirty (30) days, or by both fine and imprisonment at the discretion of the court.
  1. In the case of a minor, the parents or legal guardian shall be jointly and severally liable with the minor for payment of all fines.
  2. Failure of the parents or legal guardian to make payment will result in either a contempt citation enforceable by the Court or the filing of a lien on the parents' or legal guardian's property that includes the fine and administrative costs.
- B. Restitution. In addition to any punishment specified in this Section, the court shall order any violator to make restitution to the victim for damages or loss caused directly or indirectly by the violator's offense in the amount or manner determined by the court. In the case of a minor, the parents or legal guardian shall be ordered jointly and severally liable with the minor to make the restitution.
- C. Community Service. In lieu of, or as part of the penalties specified in this Section, the Court may order a minor or adult to perform community service - which may include the following minimum requirements:
  1. The minor or adult shall perform at least fifteen (15) hours of community service.
  2. At least one parent or guardian of the minor shall be in attendance a minimum of fifty percent (50%) of the period of assigned community service.
  3. Reasonable effort shall be made to assign the minor or adult to a type of community service that is reasonably expected to have the most rehabilitative effect on the minor or adult, including community service that involves graffiti removal. If the offender is required to remove graffiti as part of the community service requirement, he/she shall purchase all materials necessary to remove or cover the graffiti. Said materials shall be approved by the public entity or private party for which the removal or cover is being provided.

- D. Any person who pleads or is otherwise found guilty of violating the provisions of this section or in violation of Section 20-9, Defacing Property shall pay a \$50.00 Graffiti Abatement Surcharge in addition to any other fine, cost or surcharge. Funds accumulated under the Graffiti Abatement Surcharge shall be used by the City to remove graffiti from public and private property as authorized by the City Manager or his designee.
- E. In addition, upon each conviction for violation under this section, the offender's driver's license may be revoked as provided in Section 42-2-125 C.R.S.

(f) Graffiti as Nuisance

- A. The existence of graffiti on public or private property in violation of this Section is expressly declared to be a public nuisance and, therefore, is subject to the removal and abatement provisions specified in this Section.
- B. It is the duty of both the owner of the property to which the graffiti has been applied and any person who may be in possession or who has the right to possess such property to at all time keep the property clear of graffiti.

(g) Removal or Covering of Graffiti

- A. Property Owner/Tenant Responsibility. If graffiti is not removed by the perpetrator as set forth in Paragraph A of this section, graffiti shall be removed pursuant to the following provisions:

It is unlawful for any person who is the owner or who has primary responsibility for control of property or for repair or maintenance of property in the City to permit property that is defaced with graffiti to remain defaced for a period of ten (10) days after receipt of notice of the defacement. Such notice shall be made as defined in Sec. 20-38(b). The notice shall contain the following information:

1. The street address and legal description of the property sufficient for identification of the property;
2. A statement that the property is a potential graffiti nuisance property with a concise description of the conditions leading to the finding;
3. A statement that the graffiti must be removed within ten (10) days after receipt of the notice. The existence of graffiti on any property after ten days shall be presumed a public nuisance;
4. A statement indicating that if additional time is necessary to clean the property the responsible person must contact the Police Department; and
5. A statement that failure to clean the identified property nuisance will establish a basis for the City to enter in an upon the property to abate the nuisance by any necessary means.

B. Right of City to Remove.

1. Use of Public Funds. Whenever the City becomes aware or is notified and determines that graffiti is located on publicly or privately owned property, the City Manager or his designee shall be authorized to use public funds for the removal of the graffiti, or for the painting or repairing of the graffiti, but shall not authorize or undertake to provide for the painting or repair of any more extensive an area than that where the graffiti is located.
2. Right of Entry on Private Property. If the property owner or responsible party fails to remove the offending graffiti within the time specified by this Section, or if the City has requested consent to remove or paint over the offending graffiti and the property owner or responsible party has refused consent for entry on terms acceptable to the City and consistent with the terms of this subparagraph B, the City shall have the right to enter upon any property in the City of Fort Morgan and abate the graffiti nuisance by whatever reasonable means are available to the City, as determined by the City Manager or his designee.

(h) Severability Provision.

Severability is intended throughout and within the provisions of the section. If any section, subsection, sentence, clause, phrase or portion of this Section is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this Section.

EFFECTIVE DATE.

This Ordinance shall be in full force and effect five (5) days after publication.

READ AND PASSED ON FIRST READING AND ORDERED PUBLISHED IN FULL on the 2<sup>nd</sup> day of September, 2008.

THE CITY COUNCIL OF THE CITY OF  
FORT MORGAN, COLORADO

[SEAL]

BY: /s/ Jack L. Darnell  
Mayor

ATTEST:

/s/ Andrea J. Strand  
City Clerk

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**LOCAL LIQUOR LICENCING AUTHORITY (COUNCIL ACTING AS)  
APPROVE THE RENEWAL OF A 3.2 PERCENT BEER RETAIL LIQUOR LICENSE FOR  
WAL-MART, LOCATED AT 1300 NORTH BARLOW ROAD**

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Clerk Strand reported that a complete application for renewal of a 3.2 Percent Beer Retail License for Wal-Mart had been received by the Clerk's office. The appropriate fees had been paid for the renewal.

Lieutenant Darin Sagel reported that a violation had occurred which involved the sale of alcohol to a minor on January 5, 2008. He reported that the Colorado Department of Revenue and Wal-Mart had entered into a Stipulation, Agreement and Order. He stated that staff recommended the renewal of this liquor license and introduced the manager of Wal-Mart.

The Manager, Damon Mussman, of 1300 Barlow Road, was present to answer questions. Councilmember Powers asked if a program was in place to instruct employees as to the sale of alcohol. Manager Mussman replied that they had revisited the training policy and reissued training to all employees and 350 people attended. He informed Council that Wal-Mart also initiated a policy that identification would be checked on anyone who appeared to be 40 years of age or under.

Councilmember Powers offered a motion to renew the application for a 3.2 Percent Beer Retail License for Wal-Mart, located at 1300 Barlow Road. His motion was seconded by Councilmember Shaver and carried unanimously.

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**THE APPOINTMENT OF A REPRESENTATIVE FROM THE CITY OF FORT MORGAN  
TO THE COLORADO MUNICIPAL LEAGUE POLICY COMMITTEE**

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Mayor Darnell stated that the City is entitled to designate one representative to the Colorado Municipal League Policy Committee. The appointment is made each fall and the member will serve one year. After discussion, Councilmember Powers was appointed and Clerk Strand was asked to notify Colorado Municipal League.

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**CONSENT AGENDA**

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Clerk Strand presented the Consent Agenda for Council consideration. Councilmember Simmons offered a Resolution to approve the Consent Agenda as presented and moved for its

adoption. Her motion was seconded by Councilmember McAlister; said Consent Agenda being in words, letters and figures as follows, to wit:

- A. Approve the minutes from the regular meeting on August 19, 2008.
- B. Approve the minutes from the special meeting on August 26, 2008.
- C. Approve the Application for Renewal and Report of Changes of a 3.2 Percent Beer Retail Liquor License for Seven Eleven Store No. 15203, located at 703 E. Platte Avenue, with a clear Police Department investigation report.
- D. Approve an economic incentive package to Morgan Community College for the Adult Basic Education Construction Project in the amount of \$24,652.35, which includes a refund of the deposit of \$6,725 for prepaid water and sewer tap fees.
- E. Approve the Request for Proposal as presented by City Staff to advertise for a consultant for a Comprehensive Plan/Zoning Ordinance, not to exceed \$25,000.

All matters listed under Item 6, 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 2<sup>nd</sup> day of September, 2008, the vote upon roll call being as follows: Ayes: Mayor Darnell; Councilmembers Deal, McAlister, Powers, Schafer, Shaver and Simmons. Nays: none.

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

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None.

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#### **REPORTS**

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The following Directors provided written reports to Council:

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

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

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Clerk Strand announced bids that were posted and upcoming meetings.

Mayor Darnell made comments about the recent news article in The Rocky Mountain News and The Fort Morgan Times, which compared the Mayor of Fort Morgan to Sarah Palin, who was a Mayor of a small town in Alaska. She was nominated as the Vice Presidential candidate for the Republican Party.

Mayor Darnell adjourned the September 2, 2008, regular meeting at 7:32 p.m.

/s/ Jack L. Darnell  
Mayor

/s/ Andrea J. Strand  
City Clerk