

February 12, 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 special meeting to order at 5:30 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

EXECUTIVE SESSION

Councilmember Powers offered a motion to go into Executive Session 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); and the following additional details are provided for identification purposes: Litigation settlement parameters proposed by *The Fort Morgan Times*. His motion was seconded by Councilmember McAlister and duly carried.

Upon returning to the open meeting, Mayor Darnell announced, "The time is now 7:02 p.m. and the Executive Session has concluded. The participants in the Executive Session were Mayor Darnell; Councilmembers Deal, McAlister, Powers, Schafer, Shaver and Simmons; and City 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." None were mentioned. Mayor Darnell continued, "Seeing none, City Attorney Wells will report on the Executive Session."

Attorney Wells stated that Council met to receive legal advice on specific settlement parameters required by *The Fort Morgan Times*. He stated they will not conduct any settlement negotiation unless the City agrees to pay their legal fees which are over \$6,000 and to prepare sworn affidavits of each Councilmembers' numerical rating of the City Manager. It is difficult to agree to these terms.

Councilmember Schafer offered a motion to authorize the City Attorney to continue to work toward settlement negotiations and continue to have a judge determine the status of the documents related to the evaluation of the City Manager. Her motion was seconded by Councilmember McAlister and duly carried.

7:00 P.M. – SPECIAL MEETING

The meeting was also attended by City Manager Michael Nagy, City Attorney Jeffrey Wells, Police Chief Keith Kuretich, City Treasurer Pixie Jones, Utility Director Gary Dreessen, Director of Human Resources/Risk Management Jody Prentice and City Clerk Andrea Strand.

PUBLIC HEARING ON WATER CONSERVATION PLAN

Mayor Darnell announced the Public Hearing concerning the Water Conservation Plan. Director Dreessen provided information to the Council and public stating that this was an update to the previous Plan adopted in 2004 by the City of Fort Morgan. He stated that the Plan requires every entity to complete an updated plan and have it available to the public. He stated it has been posted on the City's website and he informed Council that the Water Advisory Committee has approved the Plan. He stated that the Plan will be reviewed annually and changes will be made, if necessary. He added that this Plan was initiated by the State of Colorado after the drought.

Mayor Darnell called for any comments from the public. Dennis Hall, of 512 Maple Street in Fort Morgan, asked Council when the public may vote on the \$34 million project for the Northern Conservation Issue.

Director Dreessen added that Collette Brost put this Plan together.

Mayor Darnell called for any comments from City Council. Councilmember Shaver added that Staff had put a lot of time into this presentation and provided excellent information and stated that this Plan is necessary if the City wants to apply for any future grant funding for any future water projects.

The City Clerk stated that there were no written communications submitted by the public.

Councilmember McAlister offered a motion to close the Public Hearing and schedule the adoption of the Water Conservation Plan for February 19. His motion was seconded by Councilmember Powers and duly carried.

PRESENTATION OF A SEWER BACKUP POLICY

Attorney Wells stated that the draft policy introduced at this meeting was a result of sewer backup claims the City received last year and as an Executive Session directive by Council to create a policy addressing sanitary sewer backups and offering a good faith payment. He also stated that Director of Human Resource/Risk Management Prentice also provided input to create the policy. He provided general information about the policy. Councilmember Powers made an announcement to the public asking citizens to look in their backyard and see if there are any obstructions to the manholes, because it is necessary to have access to sewer lines. Attorney Wells stated that other cities also provide a "good faith" policy in regards to sewer backups. He stated the City does have a maintenance plan in effect which has been adhered to for many years. Discussion continued with Councilmember Shaver stating that there are areas that have limited access and Councilmember Powers stated that we have approved the

opening up and clean up of Circle Drive easements. It was suggested that the policy be placed on the City's website for citizens to review. Approval of the Sewer Backup Policy will be placed on the agenda for February 19.

BID FOR A SANITATION REFUSE TRUCK AND COMPACTOR

Director Dreessen provided information to Council to support a request from Staff to approve a bid from McCandless International of Aurora, Colorado, in the amount of \$73,129 for a sanitation truck chassis; and to approve a bid from American Transportation in the amount of \$83,271, less a \$15,500 trade-in allowance, for a total bid of \$67,771 for an HLR 29 Compactor. The total cost for the chassis and compactor with the acceptance of these two bids would be \$140,900. He provided the funding source as the 2008 approved Sanitation Capital Improvement Budget and stated that the advertisement for bids was placed in *The Fort Morgan Times* and was made available at the City's website and at the City's Sanitation Department's Office.

RESOLUTION:

Councilmember Shaver offered the following Resolution and moved for its adoption. His motion was seconded by Councilmember Schafer; 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 to authorize the approval of a bid to McCandless International of Aurora, Colorado, in the amount of \$140,900 for a sanitation truck chassis; and for approval to accept the bid from American Transportation in the amount of \$83,271, minus a \$15,500 trade-in allowance, for a total of \$67,771 for the HLE 29 Compactor, for a total price of \$140,900.

PASSED, APPROVED AND ADOPTED this 12th day of February, 2008, the vote upon roll call being as follows: Ayes: Mayor Darnell; Councilmembers Deal, McAlister, Powers, Schafer, Shaver and Simmons.

EMPLOYMENT/CONTRACT FOR CITY MANAGER NAGY

City Manager Nagy presented an employment contract for his position to City Council for consideration. He stated that he had circulated a draft copy to Council on Saturday and that he had provided a copy to Attorney Wells. Discussion continued on how best to review the contract and it was determined to address each section individually.

Section 1 – NATURE OF EMPLOYMENT, DUTIES AND AUTHORITY

City Manager Nagy requested a current job description be attached to the contract since it had changed with the recent Charter revision. Councilmember Simmons stated that she had compared this with the current Charter and she would suggest his contract reflect the wording in the Charter as to the responsibilities and duties for the City Manager and delete the last paragraph relating to full-time.

Section 2 – TERMINATION PROCESS AND SEVERANCE PAY

Councilmember Schafer stated that the contracted needed to state the same as the Charter language with the appointment of the City Manager every two years. City Manager Nagy stated that he had not taken the time to compare the City's Charter to the IIMC documents.

Section 3 – TERMINATION AND SEVERANCE PAY

Councilmember Simmons stated the proposed contract stated that a 2/3 majority vote of its members will give the employee sixty (60) days of notice of intention to terminate. She felt that it should comply with the Charter she also questioned the conciliation process. Councilmember Schafer stated she would like to see the severance pay stay at three months not nine months as he had requested.

Section 4 - DISABILITY

It was discussed to keep this contract consistence with the current personnel determined by PERA.

Section 5 – SALARY

No discussion.

Section 6 – PERFORMANCE EVALUATION

Councilmember Schafer thinks that with all the trouble we are having we need to follow the same procedure as with all appointed officials, not just the City Manager, and state that they have an annual evaluation, which is reflected in the Charter.

Section 7 – HOURS OF WORK

No discussion.

Section 8 – CONSULTING, SPEAKING, OUTSIDE ACTIVITIES, OR TEACHING OPPORTUNITIES

It was suggested to review the Charter for any conflicts it was also discussed that the inviting party should pay the expenses or the expense should be remitted to the City.

Section 9 – LEAVE

Discussion was to stay as presently offered to all City staff.

Section 10 – BENEFITS

No changes.

Section 11 – RETIREMENT

As entitled to all full-time employees.

Section 12 – DUES AND SUBSCRIPTION

No changes.

Section 13 – PROFESSIONAL DEVELOPMENT

No changes.

Section 14 – INDEMNIFICATION

City Attorney Wells was asked to review the current language in the City's insurance policy.

Section 15 – TERMINATION

No changes.

Section 16 – HOME SALE AND PURCHASES

Councilmembers McAlister and Simmons recommended this section be removed.

Section 17 – BONDING

City Attorney Wells will review and speak to City Manager Nagy.

Section 18 – GENERAL

Councilmember Schafer stated she felt the notice section (e) should have specific language identified. She also stated that moving expenses should be considered and language to reflect that they would be repaid subject to a two-year period.

General discussion followed and Councilmember McAlister stated that he is frustrated with the proposed contract presented by City Manager Nagy. He felt it was pieced together and appeared to be a last minute thought by the City Manager. He stated that Council could not take action on this contract. He stated that there have been jump-starts and wrecks in his job performance as City Manager. This proposed contract is a wreck and he offered a motion to terminate Michael Nagy's employment with the City effective immediately and offer a severance package that includes three months of salary to be paid in one lump sum with health benefits. He requested that Mr. Nagy sign a release within 72 hours. His motion was seconded by Councilmember Schafer. Councilmember Simmons asked for clarification and it was stated that Mr. Nagy would not receive a severance package if he did not sign the release.

The Mayor called for a vote on the motion offered by Councilmember McAlister. The motion carried, the vote by roll call being: Ayes: Mayor Darnell; Councilmembers Deal, McAlister, Schafer and Simmons. Nays: Councilmembers Powers and Shaver.

BIDS, MEETINGS AND ANNOUNCEMENTS

Clerk Strand announced that bids are being accepted for three parcels of land in Industrial Park and for a portable air compressor. She informed Council and the public that the City's web site now has information concerning sales tax licensing. She also announced the upcoming

meetings and activities of the City and that tomorrow we would post the information on the Declaratory Judgment Action regarding the lawsuit with *The Fort Morgan Times*.

Mayor Darnell adjourned the February 12, 2008, meeting at 8:35 p.m.

Mayor

City Clerk