

February 5, 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 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 Terry P. Schafer
Councilmember Ron Shaver
Councilmember Alberta M. Simmons

EXECUTIVE SESSION

Alderman Powers moved to go into executive session for the purpose of receiving legal advice on specific legal questions under C.R.S. Section 24-6-402(4)(b); and 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); and the following additional details are provided for identification purposes; Mediation scheduled with the Colorado Civil Rights Division. His motion was seconded by Councilmember Schafer and duly carried.

Mayor Darnell announced the time is now 7:02 p.m., and we now conclude the executive session and return to the open meeting. 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; City Attorney Wells; and Marni Nathan and Andy Nathan representing CIRSA.

"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. [pause] Hearing none, the executive session is concluded and no action was taken."

Attorney Wells reported on the executive session and stated the he and the CIRSA attorneys have met with Council and received input on the settlement negotiation strategies for mediation at the Colorado Civil Rights Division.

The regular meeting was also attended by City Manager Michael Nagy, City Attorney Jeffrey Wells, Fire Chief Brad Parker, Police Chief Keith Kuretich, City Treasurer Pixie Jones, Utility Directors Gary Dreessen and Bob Weimer and City Clerk Andrea Strand.

FIRE DEPARTMENT ANNUAL AWARDS

Ken Breneman introduced Cynthia Arreola who is a student at Baker Central School in Fort Morgan. While at school, she noticed smoke coming from a home, she reported it to the teacher, who called 911. He stated that because of her observation and prompt reporting, the Fire Department was able to respond and prevent further damage to the home. Chief Parker presented her with a Certificate of Appreciation from the Fort Morgan Fire Department.

FIRE DEPARTMENT ANNUAL REPORT

Chief Parker presented the 2007 Annual Fire Department Report to Council. He highlighted the number of fire calls, hours of training and reported that there are 31 firefighters as of January 1, 2008. He also provided a report from the Fire Marshal. This report summarized the statistics from the Fire Marshal and the fire prevention education conducted throughout the year.

CONTRACT TO LEASE REAL ESTATE BETWEEN THE CITY OF FORT MORGAN AND BRIAN KEMBEL

Attorney Wells stated that the corrections had been made to the contract addressed at the last meeting. He asked for direction from Council on the issue of a well being drilled on the property. Community Services Director Shedd informed Council that he had contacted Mr. Kembel who stated that the maximum number of cattle he would place on the property would be 25 pairs (cow/calf). He also reported that Mr. Kembel signed the proposed contract and had paid the rent as outlined in the contract. He understands that it is being presented to Council and subject to their approval. Discussion of well use continued. Attorney Wells summarized that staff would need to determine the restrictions placed on the Conservation Easement relevant to drilling a well and to make sure we don't have any augmentation requirements and reflect this in the contact. Mayor Darnell asked that the item be placed on the March 4 agenda as a regular item to allow staff to research the well issue.

FIRST READING OF AN ORDINANCE ENTITLED "AN ORDINANCE AMENDING THE APPROPRIATION OF CERTAIN MONIES FOR THE BUDGET YEAR 2007 OF THE CITY OF FORT MORGAN, COLORADO, TO THE YEAR ENDING DECEMBER 31, 2007"

PRESENTATION STATEMENT:

Treasurer Jones noted for Council consideration on first reading, an Ordinance which would amend the 2007 Budget. The three funds affected are the Golf Fund, Fiber Network Fund and the Perpetual Care Fund. Said Ordinance being in words, letters and figures as follows, to-wit:

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE APPROPRIATION OF CERTAIN MONIES FOR THE BUDGET YEAR 2007 OF THE CITY OF FORT MORGAN, COLORADO, TO THE YEAR ENDING DECEMBER 31, 2007

UPON AND PURSUANT to the revised estimate of the probable revenue and expenses submitted to the City Council of the City of Fort Morgan, Colorado, and upon a budget made by said Council, and for the purpose of raising funds to defray all expenses of conducting the business of the government of the City and payment of all liabilities of the City falling due or accruing during the fiscal year ending December 31, 2007; and,

WHEREAS, the following expenditures from monies which are available for the purpose could not be foreseen or were not anticipated at the time of the adoption of the 2007 municipal budget in 2006.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT MORGAN, COLORADO:

Of the monies arising from electric, water, gas, sewer, and sanitation charges, taxes, fines, licenses and all other sources of monies of the City of Fort Morgan, the appropriation to the several funds of said City for the purposes of operations, debt service and capital outlays is amended as follows and attached hereto and incorporated herein by reference:

Fund	Original Appropriation	Amendment	Amended Appropriation
<i>Golf Fund</i>	\$ 818,677	\$ 5,000	\$ 823,677
<i>Fiber Network Fund</i>	\$ 27,000	\$ 1,000	\$ 28,000
<i>Perpetual Care Fund</i>	\$ 17,100	\$ 5,000	\$ 22,100
Total	\$ 862,777	\$ 11,000	\$ 873,777

FUND	Original Revenues	Amendment	Amended Revenues
<i>Golf Fund</i>	\$ 740,451	\$ 5,000	\$ 745,451
<i>Fiber Network Fund</i>	\$ 27,500	\$ 1,000	\$ 28,500
<i>Perpetual Care Fund</i>	\$ 19,500	\$ 5,000	\$ 24,500

Total	\$ 787,451	\$ 11,000	\$ 798,451
--------------	------------	-----------	------------

INTRODUCED, READ ON FIRST READING AND ORDERED PUBLISHED this 5TH day of February, 2008.

[SEAL]

THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

ATTEST:

By: /s/ Jack L. Darnell
Mayor

/s/ Andrea J. Strand
City Clerk

RESOLUTION:

Councilmember Powers offered the following Resolution and moved for its adoption. His motion was seconded by Councilmember Simmons; said Resolution being in words, letters and figures as follows, to-wit:

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 5th day of February, 2008 the vote upon roll call being as follows: Ayes: Mayor Darnell; Councilmembers Deal, McAlister, Powers, Schafer, Shaver and Simmons. Nays: None.

FIRST READING OF AN ORDINANCE ENTITLED "AN ORDINANCE AMENDING THE APPROPRIATION OF CERTAIN MONIES FROM THE BUDGET YEAR 2007 OF THE CITY OF FORT MORGAN, COLORADO, TO THE YEAR ENDING DECEMBER 31, 2008"

PRESENTATION STATEMENT:

Treasurer Jones noted for Council consideration on first reading, an Ordinance which would amend the 2008 Budget Appropriation. She explained these were capital outlay items from the 2007 budget year and needed to be moved to the 2008 budget. Said Ordinance being in words, letters and figures as follows, to-wit:

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE APPROPRIATION OF CERTAIN MONIES FROM THE BUDGET YEAR 2007 OF THE CITY OF FORT MORGAN, COLORADO, TO THE YEAR ENDING DECEMBER 31, 2008

UPON AND PURSUANT to the revised estimate of the probable revenue and expenses submitted to the City Council of the City of Fort Morgan, Colorado, and upon a budget made by said Council, and for the purpose of raising funds to defray all expenses of conducting the business of the government of the City and payment of all liabilities of the City falling due or accruing during the fiscal year ending December 31, 2007; and,

WHEREAS, the following expenditures from monies which were available in 2007 for the purpose have not been received even though they were ordered during the 2007 municipal budget process.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT MORGAN, COLORADO:

Of the monies arising from electric, water, gas, sewer, and sanitation charges, taxes, fines, licenses and all other sources of monies of the City of Fort Morgan, the appropriation to the several funds of said City for the purposes of operations, debt service and capital outlays is amended as follows:

Fund	Original Appropriation	Amendment	Amended Appropriation
<i>General Fund</i>	\$ 9,188,623	\$ 22,500	\$ 9,211,123
<i>After School Program Fund</i>	\$ 57,818	0	\$ 57,818
<i>Capital Improvement Fund</i>	\$ 3,243,623	\$ 95,000	\$ 3,338,623
<i>Golf Fund</i>	\$ 832,752	\$ 0	\$ 832,752
<i>Conservation Trust Fund</i>	\$ 103,150	\$ 0	\$ 103,150
<i>Electric Fund</i>	\$ 16,542,980	\$ 0	\$ 16,542,980
<i>Water Fund</i>	\$ 5,937,161	\$ 0	\$ 5,937,161
<i>Gas Fund</i>	\$ 5,369,291	\$ 0	\$ 5,369,291
<i>Sewer Fund</i>	\$ 1,923,665	\$ 26,690	\$ 1,950,355
<i>Sanitation Fund</i>	\$ 1,262,000	\$ 0	\$ 1,262,000
<i>Fiber Optic Network Fund</i>	\$ 27,100	\$ 0	\$ 27,100
<i>Perpetual. Care Fund</i>	\$ 15,200	\$ 0	\$ 15,200
<i>Self Insurance Fund</i>	\$ 2,500,025	\$ 0	\$ 2,500,025
Total	\$ 47,003,388	\$ 144,190	\$ 47,147,578

INTRODUCED, READ ON FIRST READING AND ORDERED PUBLISHED this 5th day of February, 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

RESOLUTION:

Councilmember Powers offered the following Resolution and moved for its adoption. His motion was seconded by Councilmember Shaver; said Resolution being in words, letters and figures as follows, to-wit:

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 5th day of February, 2008, the vote upon roll call being as follows:

Ayes: Mayor Darnell; Councilmembers Deal, McAlister, Powers, Schafer, Shaver and Simmons. Nays: None.

POSTING THE STATUS OF THE DECLARATORY JUDGMENT ON THE CITY'S WEBSITE

Attorney Wells stated that he felt the website had been a useful tool to provide information to citizens during the recent Charter change. He recommended that Council authorize the posting of open records and responses along with various filings by the parties in the Declaratory Judgment and counter suit involving The City of Fort Morgan and *The Fort Morgan Times*.

Councilmember Simmons offered a motion to post the various filings made by the parties in the declaratory judgment and counter suit on the City's website. Her motion was seconded by Councilmember Powers and duly carried.

Mayor Darnell stated that he would like to pursue a Resolution from the City of Fort Morgan to the Colorado Municipal League Policy Committee asking them to review legislation in 2009 regarding clarification to the language of executive sessions and attorney fees involved. Councilmember Powers asked that it be addressed at the February 19 meeting in order for him to take it to the Policy Committee meeting on February 28. It was decided to place the Resolution item for consideration on the February 19 agenda.

CONSENT AGENDA

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 Schafer; said Consent Agenda being in words, letters and figures as follows, to wit:

CONSENT AGENDA

- A. Approve the minutes from the January 8, 2008, meeting.
- B. Approve the minutes from the January 15, 2008, meeting.
- C. Approve the clarification of minutes from the August 21, 2007, meeting.
- D. Approve the application for renewal of a Hotel and Restaurant Liquor License for O'Sole Mio Inc., dba O'Sole Mio Trattoria Italiana, located at 322 Ensign Street, with a clear police investigation report.
- E. Approve the appointment to the Library Board of Lynn Pickering for a four-year term expiring on December 31, 2011.
- F. Approve the appointments to the Tree, Parks and Recreation Advisory Board of Steve Dunn for a term ending 2009, Cathy Shull for a term ending 2010, and Richard Reiber for a term ending 2010.
- G. Authorize the Mayor to sign the Application for Corporate Report of Changes for the Fort Morgan Municipal Golf Course, 3.2 Beer Liquor License. Direct Sharol Lyn Deal, Priscilla Jones, Andrea Strand and Michael Nagy to complete the Individual History Record and submit with finger print cards. Direct the City Clerk to file the completed application with the Morgan County Clerk as the Local Licensing Authority.
- H. Authorize the City Clerk to state the individual vote count for the Mayor Pro Tem position as voted on by City Council at the January 15 meeting. The vote count was Terry McAlister – 4 and James Powers – 3.
- I. Approve the bid from Westcrete Concrete of Fort Morgan, Colorado, in the amount of \$116,952.76 for the 2008 On-call Concrete Contractor Program.

All matters listed under Item 9, 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 5th day of February, 2008, the vote upon roll call being as follows: Ayes: Mayor Darnell; Councilmembers Deal, McAlister, Powers, Schafer, Shaver and Simmons. Nays: None.

PUBLIC COMMENT / AUDIENCE PARTICIPATION

None.

REPORTS

City Manager Michael Nagy reported that he is looking at the City's fiber optic utility and has been working with the State to clarify the Bean Pole project and the City auditor and a consultant to use this as a City utility. He reported that he is working with the County on the video conferencing for Municipal Court and also various other intergovernmental agency agreements with Morgan County. He has been in discussion with the ethanol plant and has replied to contract language; he is safeguarding water supply and looking at a fee for a cost structure. He stated it was more conservative than the parameters set by Council.

Community Development Director Merrill informed Council of the upcoming Planning Commission meeting. The committee will look at a new site plan review ordinance, abandoning a street near Colorado Plains Medical Center and acquiring an abandoned easement. He and staff have met concerning blighted properties and have attended meetings with the downtown business owners.

Utility Director Dreessen reported that payments on the Barlow Road Lift Station are being withheld until Barlow Road is repaired. He announced that Mitch Church has assumed the position of Water Distribution/Collection Superintendent. He reported that he spoke with Colorado Department of Health and Environment concerning emergency use of wells and reported that an inspection was completed at the plant by the Environment Protection Agency for air quality. He reported that ten water lines have frozen and he reminded citizens to trickle their water if they have had a history of frozen water lines.

Utility Director Weimer stated he is working with Doug Linton on resolving a potential hazardous electric meter socket on a commercial building and reported that the Street Department is working to reduce the ice. He began working with Mike McFadden on the year-end Electric and Gas data entries for finance in preparation of the 2007 audit. He also reported that the Light and Power Department began researching an energy conservation plan. The Gas Department began replacing meters and he provided the status of reminder and shut-off notices for the Utility Billing Department.

Police Chief Kuretich informed Council and citizens of the Crime of the Week which involved recent thefts of contents from purses and wallets. He also provided strategies to reduce risks of becoming a victim.

City Clerk Strand reported one City Sales Tax License was issued in January.

BIDS, MEETINGS AND ANNOUNCEMENTS

Clerk Strand announced that bids were being accepted for a four-inch trailer mounted self priming pump and for parcels of land in Industrial Park. She also announced the upcoming meetings for the Water Advisory Board, Health Fair, Senior Center Advisory Board, Council Meeting, Airport Advisory Committee and that City offices would be closed on Monday, February 18.

City Attorney Wells asked to announce the status on the newspaper. He is currently trying to work with *The Fort Morgan Times* to resolve the pending litigation which has been filed by both parties. He stated that *The Times* will not provide the City with a formal settlement offer, unless the City Council agrees to a settlement framework required by *The Times* and its attorney. Their attorney states, "I am not authorized to spend my client's time on settlement negotiations with you until we have an indication from the City that it is willing to conduct those negotiations within the framework that I have outlined several times, and that you have accurately

summarized in your email below.” He stated that, currently, *The Times* is demanding that the City must supply the newspaper with a sworn statement attesting to the performance ratings of the City Manager that each City Council member had established on individual Councilmembers’ evaluation forms which were legally disposed of and provide full payment of the newspaper’s attorney’s fees. However, unless the City first agrees to this framework, the newspaper will not tell us what additional conditions they will require. Next week, the City Council will meet to obtain legal advice on specific questions related to this proposed framework. He also informed Council that since *The Time’s* December 28th open records request, the City has received eight additional requests for records. The City has complied with all requests made by the newspaper as required by law. In a request dated January 30, 2008, *The Times* requested attorney-client privileged communications from the City Attorney to Council which were denied. He also stated that he appreciated the support of the community with regards to this issue. He received a nice letter from a local pastor which was asked to be published in *The Fort Morgan Times*, but has not been published yet. He also asked if anyone on Council has received a response from Dean Singleton. No one had. The Mayor spoke of sending a copy to the news media group. The Mayor stated that he has also had support from the community. Attorney Wells stated that in connection with Agenda Item 8, he will post the letter to Dean Singleton on the City’s website.

Mayor Darnell adjourned the February 5, 2008, meeting at 8:06 p.m.

Mayor

City Clerk