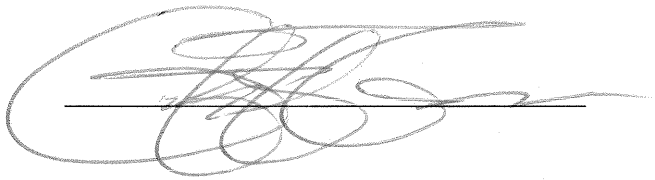
COURT OF APPEALS, STATE OF COLORADO 101 West Colfax Ave., Suite 800 Denver, Colorado 80202	
District Court, Morgan County, State of Colorado Case Number: 10-CV-38 The Honorable Judge Douglas R. Vannoy	▲COURT USE ONLY▲
Appellant-Plaintiff: RONALD E. HENDERSON, a citizen of the State of Colorado v. **Defendants/Appellees:** THE CITY OF FORT MORGAN, a municipal corporation and political subdivision of the State of Colorado, and THE CITY COUNCIL OF THE CITY OF FORT MORGAN, in its official capacity as a formally constituted public body.	Case Number: 10-CA-1409
Attorney for *Amicus Curiae* : Geoffrey T. Wilson, #11574 COLORADO MUNICIPAL LEAGUE 1144 Sherman Street Denver, Colorado 80203 Phone: (303) 831-6411 Fax: (303) 860-8175 Email: gwilson@cml.org	
BRIEF OF THE COLORADO MUNICIPAL LEAGUE AS *AMICUS CURIAE* IN SUPPORT OF THE CITY OF FORT MORGAN	

CERTIFICATE OF COMPLIANCE

I hereby certify that this *Amicus Curiae* Brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in the Rules. Specifically, the undersigned certifies that the following Brief complies with C.A.R. 28(g) in that it contains 7,537 words and incorporates by reference portions of the Answer Brief of the City of Fort Morgan that include a separate statement of whether the City agrees with the Appellant's statements concerning the standard of review, and if not, why not.



Geoffrey T. Wilson

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COMES NOW the Colorado Municipal League (the "League") by its undersigned counsel and, pursuant to Rule 29, C.A.R., submits this brief as amicus curiae in support of Appellee, the City of Fort Morgan (the "City").

INTRODUCTION

At the center of this appeal is the manner chosen by Fort Morgan voters to fill vacancies on their city council and in the municipal judge position. The general authority of voters to prescribe in their municipal charter the manner of filling these vacancies is not at issue in this appeal.

Nearly one hundred years ago, voters in the City of Fort Morgan adopted a home rule charter provision providing that vacancies will be filled by appointment of the city council, and that these appointments shall be by confidential ballot (as opposed to, say, by a show of hands). Local voters decided that, in this narrow circumstance only, the public interest of the City of Fort Morgan is best served by keeping who voted for whom confidential.

The League respectfully urges that the voters of the City of Fort Morgan had good public policy reasons for their choice and that there is nothing unlawful about the choice that they made. The decision of the Trial Court should be affirmed.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

The League hereby adopts and incorporates by reference the statement of the issues presented for review in the City's Answer Brief.

STATEMENT OF THE CASE

The League adopts and incorporates by reference the statement of the case in the City's Answer Brief, as well as the City's statement regarding the standard of review, which appears on page 8 of the City's Answer Brief.

SUMMARY OF ARGUMENT

The charter provision adopted by Fort Morgan voters to fill officer vacancies does not conflict with the plain text of the Colorado Open Meetings Law (COML). Fort Morgan's process also does not constitute an affront to the central purpose of the COML because the narrow facts of this case cannot fairly be said to involve "formation of public policy." Consequently, the decision of the Trial Court was correct and should be affirmed.

Should Fort Morgan's process nonetheless be viewed as at odds with the COML, then the narrow facts of this case – votes on municipal officer vacancy appointments – should be found to involve a matter of local and municipal

concern, and sustained as within the City's home rule authority. This was the determination of the Trial Court. Here again, we urge that the Trial Court was correct.

A narrow affirmance of the Trial Court, on these facts, need not and should not signal that votes on formation of public policy or on any of a myriad of other matters not presented by this appeal may suddenly be conducted in secret. Rather, an affirmance would simply permit the narrow, 97 year old vacancy appointment process that Fort Morgan voters have twice adopted to continue in effect, as will, presumably, the City of Fort Morgan's practice of scrupulous compliance with the requirements of the Colorado Open Meetings Law (COML) and its charter that are designed to assure openness in government.

ARGUMENT

I. IN PROVIDING HOW VACANCIES WILL BE FILLED IN THE CITY OF FORT MORGAN, CITY VOTERS WERE RELYING ON WELL-ESTABLISHED AUTHORITY.

As a home rule municipality, the City of Fort Morgan operates under a home rule charter adopted by its voters, as provided in Article XX (hereafter "Article 20") of the Colorado Constitution. Article 20 was adopted in 1902, and amended in 1912. The principal grants of authority to home rule municipalities are found in Section 6 of the Amendment; Sections 1, 4 and 5 are also sources of home rule

municipal authority. The portions of Section 6 most pertinent to the issues presented in this appeal are as follows:

> **Home rule for cities and towns.** The people of each city or town of this state, … are hereby vested with, and they shall always have, power to make, amend, add to or replace the charter of said city or town, which shall be its organic law and extend to all its local and municipal matters.
>
> Such charter and the ordinances made pursuant thereto in such matters shall supersede within the territorial limits and other jurisdiction of said city or town any law of the state in conflict therewith
> ….
>
> …[S]uch city or town, and the citizens thereof, shall have the powers set out in sections 1, 4 and 5 of this article, and all other powers necessary, requisite or proper for the government and administration of its local and municipal matters, *including power to legislate upon, provide, regulate, conduct and control:*
>
> *The creation and terms of municipal officers, agencies and employments; the definition, regulation and alteration of the powers, duties, qualifications and terms or tenure of all municipal officers, agents and employees;*
>
> ….

Colo. Const., Art. XX, Sec. 6 (emphasis added).

The Colorado Supreme Court recently described the power reserved to home rule municipalities under Article 20, §6(a) as follows:

> Article XX was adopted by a favorable vote of the Colorado electorate. *By adopting that amendment to our constitution, the people of Colorado specifically granted citizens of home rule municipalities*

> *the right to name their own officers and determine how those officers should be selected, their qualifications, and their tenure.*

Fraternal Order of Police v. City and Cnty. of Denver, 926 P.2d 582, 587 (Colo. 1996) (emphasis added; hereafter "*FOP*").

The Court has also pointed out that "our cases have supported a broad interpretation of this provision." *Denver v. State* 758 P.3d 764, 770 (Colo. 1990) (hereafter, "*Denver v. State*").

The reach of the power given to all municipalities under Article 20, §6(a), as with Article 20 generally, is measured by that possessed by the General Assembly.

> In numerous opinions handed down by this Court extending over a period of fifty years, it has been made perfectly clear that when the people adopted Article XX they conferred *every power* theretofore possessed by the legislature to authorize municipalities to function in local and municipal affairs... [such power] is determined 'by ascertaining whether the legislature, in the absence of article XX could have conferred upon the municipality the power in question.'

Four Cnty. Metro. District v. BOCC of Adams County, 149 Colo. 284, 294, 369 P.2d 67, 72 (Colo. 1962) (Emphasis in original); *see also*: *Denver v. State,* 788 P.2d at 767; *FOP*, 926 at 58.

That the General Assembly has the power to provide for appointment of local government officials by secret ballot is clearly illustrated by section 22-32-108(6), C.R.S., which provides that school board officers (president and vice president) shall be appointed in this manner. Fort Morgan's voters, possessed of

authority coextensive with that of the General Assembly, regarding selection of local officials, chose to fill vacancies in Fort Morgan in the same manner as that chosen by the General Assembly for school board officers.

Section 22-32-108(6) results in the appointment by confidential ballot of 356 public officers across Colorado every couple of years; use of secret ballots is thus routine for each of the 178 school boards statewide. Respondent dismisses this established illustration of the authority of the General Assembly as "largely inconsequential" (Opening Brief at 24), in apparent contrast to a 97 year old Fort Morgan charter provision which only comes into play *if* a vacancy happens to occur in the City. The League urges that, to the contrary, Section 22-32-108(6) serves as an important indicator of the extent of authority exercised by Fort Morgan under Article 20.

II. LEGITIMATE PUBLIC INTEREST OBJECTIVES SUPPORT THE CHOICE MADE BY FORT MORGAN VOTERS.

Transparency is a central value of our form of government. While transparency is a major consideration in serving the public interest, the League respectfully urges that it is neither the *only* consideration nor necessarily the *controlling* consideration for voters in home rule municipalities when they decide, in their wisdom, how local matters, such as these appointments, should be made.

Here, Fort Morgan voters directed that the ballots on vacancy appointments would be confidential.

At the outset, it is important to recognize that nothing in the facts of this case indicates that this appeal presents a contest between the defenders of transparency in government and its enemies. To the contrary, the record in this case reveals *scrupulous* compliance by the City with the requirements of the Colorado Open Meetings Law.[1] Furthermore, the same Article III or the City charter that directs that vacancy appointments be by confidential ballots in § 7 contains a variety of provisions explicitly embracing transparency in how the City conducts its business. See, for example § 3 (The council shall sit with open doors at all sessions, and shall keep a journal of its proceedings, which shall be a public record); § 4(a) (Ordinances shall be published in full at least ten days before final passage); § 5 (Every ordinance passed shall be published in the newspaper); § 6 (council shall cause to be published monthly a detailed statement of all expenditures of the City);

[1] Appellant warns darkly that the "animating principle that underlies every provision of the COML is that a public body may not use procedural sleight of hand to shield its decision-making from public view. (Opening Brief at 15). Happily, nothing in the record of *this* case reveals anybody doing anything of the kind; accordingly, nothing done by the City here runs afoul of this "animating principle." The Fort Morgan City Council's compliance with a charter provision is hardly "procedural sleight of hand"; it is obeying the law. Furthermore, this decision to shield this narrow species of vote from public view was made by Fort Morgan's *voters;* this was not a *choice* made by the Council.

§ 16 (clerk shall cause the list of nominations to be published in newspaper of general circulation). (See appendix B.)

No record exists as to what motivated Fort Morgan's voters to make the choice that they made regarding use of confidential voting on vacancy appointments. What is apparent is that voters decided that confidentiality of appointment ballots would best serve their interest – the public interest – just as they decided that appointments were preferable to elections, as a way to fill these vacancies.

The decision of Fort Morgan's voters could well reflect the common-sense recognition that their newly appointed council members might more promptly and more earnestly get about doing the public's business if they were unburdened by the knowledge of which of their new colleagues just voted against their appointment. After all, council members exercise public trust responsibility *collectively, as* members of the city council. It is reasonable that Fort Morgan citizens would not want personal conflicts arising out of the appointment to distract council members from their focus on that trust.

The narrow choice made by Fort Morgan voters at issue here, serves the public interest, rather than being antithetical to it. Indeed, by their choice, Fort

Morgan's voters defined their public interest. As in any election, there were doubtless voters who, like Appellant, disagreed with this approach; these voters may have favored some other approach. Their view, however, did not carry the day at the ballot box.

Here, the Fort Morgan city council held meetings in scrupulous compliance with the requirements of the COML, while also complying with a narrow confidentiality instruction set forth in the City charter, with respect to vacancy appointment ballots. The League respectfully urges that, not only was the choice made by Fort Morgan voters within in their Constitutional authority and supported by reasonable public interest considerations, that choice was at odds with neither the letter nor the overall purpose of the Colorado Open Meetings Law.

III. THE CHOICE OF FORT MORGAN VOTERS, AND THE COUNCIL VOTES IN COMPLIANCE THEREWITH, CONFLICT NEITHER WITH THE PLAIN LANGUAGE OF THE OPEN MEETINGS LAW, NOR UNDERLYING POLICY.

(a) Language of the statute – no conflict.

First and foremost, the text of the Colorado Open Meetings Law, 24-6-401-402 C.R.S., does not prohibit by its terms what the Fort Morgan Charter compels. As the District Court observed in its order: "... the undisputed facts do not

demonstrate the existence of a conflict between the City charter provision as applied by the city council, and the COML." (Order, at P.2; see Appendix A).

As the plain text of the of the COML does not forbid what Appellant invites this Court to prohibit, we respond not to an argument about what the law *says*, but rather what Appellant urges that it *means*.

The District Court declined Appellant Henderson's invitation to read into the law a prohibition that it does not contain. The League respectfully urges this Court to affirm the decision of the District Court.

Appellant complains that the Court below was "led into the error of hunting for a plain language" basis for the construction of the COML that Appellant again urges here (Opening brief at 13). Further alarm that this Court might, like the Trial Court, get too caught up in what the General Assembly actually enacted is evident in Appellant's sober instruction to this Court that, when the issues are of the sort advocated by Appellant "... a judge's job is not to hunt for a narrowly cabined, 'plain language' statement in the statutory text that explicitly speaks precisely to the question." Opening Brief, at 16.

The League respectfully urges that the fact that Appellant lacks of any direct textual support in the COML for his argument does not mean that it was "error" for

the Trial Court to look to the language of the statute in resolving this case. To the contrary, the Trial Court's focus on the "plain language" of the COML was entirely appropriate. See: *Martin v. Montezuma – Cortez School Dist. RE-1,* 841 P.2d 237, 246 (Colo. 1992) (a court should look first to the plain language of the statute and the words used should be given effect according to their plain and ordinary meaning); *Town of Telluride v. Lot Thirty-Four Venture L.L.C.*, 30 P.3d 30, 35 (Colo. 2000) (same).

Appellant, in the Introduction to his Opening Brief, forecasts this alarming scenario:

> The *necessary import* of the District Court's rulings are that for public bodies throughout the state, and certainly in *every* home rule charter community, all manner of contentious decisions may be relegated to black-box decision-making through the use of secret ballots, thereby ensuring that voters are unable to determine how their elected officials have voted.

Opening Brief at 1; emphasis added.

Amicus respectfully disagrees. The only "necessary import" of the Trial Court's decision would be that Fort Morgan could go back to making vacancy appointments as they have for the past 97 years, without controversy, presumably at meetings held in scrupulous compliance with the COML, as illustrated by the facts here. Such a result would be neither alarming nor inappropriate.

During the 97 years that the Fort Morgan charter provision here at issue has been on the books, Appellant reports that only two other home rule municipalities (Commerce City and Longmont) have adopted similar provisions, two municipalities prohibit such ballots, and the rest of the home rule charters don't address the issue. (Opening Brief at 38). Thus, there has hardly been a stampede by local voters to enact broad, "black-box decision-making" provisions into their local charters. Accordingly, neither have we witnessed widespread use of home rule authority to justify "secret ballots," on "all manner of contentions issues." The League urges that it may not be the mere absence of a decision in a case such as this one that has prevented Appellant's forecast tsunami of secrecy from washing over Colorado's home rule municipalities. Another possibility is that the vast majority of Colorado's municipal voters and their elected officials, like those in Fort Morgan, embrace transparency in government, including both the letter and the spirit of the COML. A decision in the case at bar affirming Fort Morgan's narrow procedure for filling vacancies need not propel us into a resurgent Dark Ages, here in Colorado.

Appellant's concern about where the Trial Court's decision "necessarily" leads is misplaced; it underestimates the precision with which judicial decisions can be tailored to the particular facts presented. For example, the "plain language"

based decision of the Trial Court had the effect of sustaining the voters' long-standing choice in Fort Morgan, without diminishing the overall requirements of the COML or its applicability to home rule municipalities. The Trial Court decision didn't throw open the door to "black box decision making" on "all manner of contentious decisions," because those facts were not before the Court (and they still aren't). Indeed, the Trial Court need not have addressed the home rule issues *at all*, given its decision finding no conflict between Fort Morgan's narrow charter provision and the COML.

Because the COML does not, by its terms, forbid what the Fort Morgan voters have by charter required of their council members in filling appointments, the decision of the Trial Court to dismiss Appellant's claim was appropriate and should be affirmed.

(b) Purpose of the statute – no conflict.

Central to Appellant's argument about what the COML means is the language in its legislative declaration stating that "the formation of public policy is public business and may not be conducted in secret." C.R.S.A. §24-6-401, The Supreme Court has described this language as declaring the "underlying policy" of the COML. *Town of Marble v. Darian* 181 P.3d 1148, 1152 (Colo. 2008).

Appellant reports in his Statement of the Case that "[i]n this case, Mr. Henderson sought a declaration from the District Court that such secret ballots violated the COML because their use prevents Colorado's citizens from observing the formation of public policy." (Opening Brief at 5.)

The League urges that Fort Morgan's charter provision, and the votes cast in compliance with it, are not at odds with this "underlying policy" of the COML because votes on vacancy appointments simply *do not* rise to the level of "formation of public policy," as those terms are commonly understood.

It is fundamental that "[w]hen construing the meaning of a statute, reviewing courts should first consider the statutory language, and give words their plain and ordinary meaning." *Town of Telluride v. Thirty-Four Venture, LLC*, 3 P.3d 30, 35 (Colo. 1993), citing: *Snyder Oil Co. v. Embree,* 862 P.2d 259, 262 (Colo. 1993). Black's Law Dictionary defines "public policy" as "[b]roadly, principles and standards regarded by the legislature or by the courts as being of fundamental concern to the state and the whole of society." Black's Law Dictionary (9th ed. 2009). In the same vein, Black's defines the term "policy" as "[t]he general principles by which a government is guided in its management of public affairs." *Id.* Webster's defines "policy" as "a high-level overall plan embracing the general

goals and acceptable procurement especially of a governmental body." MERRIAM-WEBSTER, http://www.merriam-webster.com/dictionary/policy (last visited Jan. 12, 2011. Ballantine's Law Dictionary defines "public policy" as "[t]he policy of the law, in relation to the administration of the law." Ballantines Law Dictionary (2010).

These definitions, referring to "broad" principles, "overall" plans, "the policy of the law," and the like, suggest something quite different from a vacancy appointment. A vote on a vacancy appointment is not the same thing as a vote on the "general principles" by which Fort Morgan is "guided in its management of public affairs." While some of those appointed may have the opportunity to be involved in the formation of public policy, once they take office, this possibility does not somehow transform the vote on a vacancy appointment – the subject of this case – into "formation of public policy." Based on the definitions quoted above, any characterization of the appointment process at issue here as the "formation of public policy" would not be according the terms "policy" or "public policy" their plain and ordinary meaning.

The COML's declaration that the "formation of public policy is public business and may not be conducted in secret" may also provide direction to

reviewing courts by implication. Notably, the language chosen by the General Assembly *does not* declare that "Everything is public business," which can't be conducted in secret. The language chosen by the General Assembly indicates that the focus of the COML is requiring notice of, and assuring the public's unfettered access to, meetings where "formation of public policy" may occur. If *everything* was "formation of public policy" or *everything* was "public business," the language chosen by the General Assembly wouldn't make sense. The implication is that there must be *some* things that government does that do not trigger the COML.

The League urges that Fort Morgan's narrow provision for confidential ballots on vacancy appointments is an example of something not at odds with the purpose of the COML. These votes did not involve "formation of public policy." Consequently, the use of confidential ballots, in this case, does not require a finding of conflict with the policy of the COML. Accordingly, the decision of the Trial Court was appropriate and ought to be affirmed.

IV. EVEN IF THE VACANCY APPOINTMENT PROCEDURE CHOSEN BY LOCAL VOTERS IS DEEMED AT ODDS WITH THE OPEN MEETINGS LAW, THAT CHOICE WAS LAWFUL, AS IT IS INVOLVED A MATTER OF LOCAL AND MUNICIPAL CONCERN TO THE CITY OF FORT MORGAN.

The Colorado Supreme Court recently described as "well-established" the law regarding how courts resolve conflicts between provisions of state statutes and home rule charters or ordinances. *City of Northglenn v. Ibarra* 62 P.3d 151, 155 (Colo. 2003) (hereafter "*Ibarra*").

Under this analytical framework, courts treat regulated matters as falling into one of three categories: matters of "local concern," matters of "statewide concern" and matters of "mixed" state and local concern. The *Ibarra* Court explained the consequences of this classification:

> Whether a matter is of local, state or mixed concern determines who may legislate in that area. First, in matters of local concern, both home-rule cities and the state may legislate. However, when a home-rule ordinance or charter provision and a state statute conflict with respect to a local matter, the home-rule provision supersedes the conflicting state statute. Second, in matters of statewide concern, the General Assembly may adopt legislation and home-rule municipalities are without power to act unless authorized by the constitution or by state statute. Third, some matters are not exclusively of local or statewide concern, but are properly of concern to both home-rule cities and the state. In these matters of "mixed" concern, local enactments and state statutes may coexist if they do not conflict.

Id. (internal citations omitted).

The classification of a matter as of local, mixed or statewide concern is a legal issue and is thus a determination to be made exclusively by the courts. *City of Commerce City v. State*, 40 P.3d 1273, 1280-81 (Colo. 2002). In making this classification, courts consider several factors described by the Colorado Supreme

Court in its seminal opinion in *Denver v. State*, 788 P.2d 764 (Colo. 1990). Since *Denver v. State*, these factors have been applied in numerous decisions (*see e.g.: Town of Telluride v. Lot Thirty-Four Venture LLC*, 3 P.3d 30 (Colo. 2000); *City of Commerce City v. State*, *supra.*), including *Ibarra*, where the Court summarized them as follows:

> We have identified several general factors to be considered when determining whether a matter is of state, local, or mixed concern, including the need for statewide uniformity, whether the municipal legislation has an extraterritorial impact, whether the subject matter is traditionally one governed by the state or local government, and whether the Colorado constitution specifically identifies that the issue should be regulated by state or local legislation.

Ibarra, 62 P.3d at 156.

While courts have since *Denver v. State* consistently applied these four factors, the *Ibarra* Court observed that this list is not exhaustive, and courts have from time-to-time considered other factors, including whether the statute in question includes a declaration of statewide concern and the need for coordination with the state to effectuate a local government scheme. *Id.*

The Supreme Court has emphasized that the determination of whether a matter is of local, mixed or statewide concern is made "on an ad hoc basis, taking into consideration the facts of each case." *Denver v. State*, 788 P.2d at 764; *Ibarra*, 62 P.3d at 155. This approach permits courts to reach a just, practical result that

precisely addresses the facts and circumstances before the Court. As the *Denver v. State* Court explained:

> Although we have found it useful to employ the "local," "mixed," and "statewide" categories in resolving conflicts between local and state legislation, these legal categories should not be mistaken for mutually exclusive or factually perfect descriptions of the relevant interests of the state and local governments. Those affairs which are municipal, mixed or of statewide concern often imperceptibly merge (citation omitted). *To state that a matter is of local concern is to draw a legal conclusion based on all the facts and circumstances presented by a case. In fact, there may exist a relatively minor state interest in the matter at issue but we characterize the matter as local to express our conclusion that, in the context of our constitutional scheme, the local regulation must prevail.* Thus, even though the state may be able to suggest a plausible interest in regulating a matter to the exclusion of a home rule municipality, such an interest may be insufficient to characterize the matter as being even of "mixed" state and local concern.

Denver v. State 788 P.2d at 767 (emphasis added).

Keeping in mind the fact based, ad hoc nature of this inquiry, we now turn to application of the factors.

Application of the Factors.

Denver v. State provides considerable guidance in this appeal, not just because it is the leading case in the recent jurisprudence of this area, but because, like the case at bar, *Denver v. State* concerned the reach of home rule authority under Art. 20, § 6(a). *Denver v. State* involved a contest between a state statute

barring residency as a condition of municipal employment and a conflicting provision of Denver's home rule charter. In the course of its holding that the charter provision involved a matter of local concern, and barring application of the conflicting statute to Denver, the Court noted that Denver's authority relating to the terms and conditions of municipal employment "finds direct textual support in § 6(a)" and that "our cases have supported a broad interpretation of this provision," *Denver v. State* 788 P.2d at 770, citing: *Local No. 127 Int'l. Brother of Policy Officers v. City and Cnty. of Denver*, 185 Colo. 50, 521 P.2d 916 (1974) and *Coopersmith v. City and Cnty. of Denver*, 156 Colo. 469, 399 P.2d 943 (1965).

A. Uniformity.

The first factor identified by the *Denver v. State* Court is "the need for statewide uniformity of regulation." *Denver v. State*, 788 P.2d at 768.

This appeal involves the narrow issue of the means chosen by Fort Morgan voters to fill council vacancies (for the unexpired portion of the departed council member's term) and the municipal judge position. Fort Morgan voters chose to have the members of the city council fill these positions by appointment, using confidential ballots. Voters in other municipalities could choose to fill such vacancies by other process of appointment or by special election.

Whatever process local voters may choose, it is difficult to imagine a real "need for statewide uniformity" in how local voters choose to fill these vacancies in their communities. What the Court said in *Denver v. State*, in connection with the "uniformity" factor, is pertinent here.

> In the appropriate case the need for uniformity in the operation of the law may be a sufficient basis for legislative preemption. But uniformity in itself is no virtue, and a municipality is entitled to shape its local law as it sees fit if there is no *discernible pervading state interest* involved.

Denver v. State, 788 P.2d at 769, (emphasis added).

The Court in *Denver v. State* identified *National Advertising Company v. Department of Highways* 751 P.2d 632 (Colo. 1988) and *Bennion v. City and County of Denver*, 180 Colo. 213, 504 P.2d 350 (Colo. 1972) as illustrating where the facts indicated a need for statewide uniformity. *Denver v. State*, 788 P.2d at 768. In *National Advertising* the Court preempted a Colorado Springs sign ordinance, citing a statewide interest in avoiding a substantial loss of federal highway monies. *Nat'l. Adver. Co.,* 751 P.2d 632. In *Bennion*, the Court cited a statewide expectation by state residents in the uniformity of local criminal laws. *Bennion v. City and County of Denver*. 180 Colo. 213, 504 P.2d 350. Other decisions have considered the expectation of state residents an aspect of their uniformity analysis. *See: Ibarra*, 62 P.3d at 160 (state residents' expectation of

uniform application of Colorado Childrens' Code), citing: *Town of Telluride v. Lot Thirty-Four Venture L.L.C*, 3 P.3d 30 (Colo. 2000) (state residents' expectation of uniformity of landlord-tenant law).

The manner chosen by Fort Morgan voters to fill vacancies does not implicate any "discernable pervading" statewide interest in uniformity, nor are any statewide expectations of citizens likely to be affected Fort Morgan's continuation of its 97 year old process. The matter presented here is a local one, between Fort Morgan voters and their elected representatives. It is unlikely that citizens outside of Fort Morgan either know or care, or have any expectation about how voters in Fort Morgan have directed that votes occur on vacancy appointments.

The League respectfully urges that the means chosen by Fort Morgan voters to fill vacancies does not implicate a "discernable pervading state interest" in uniformity, *Denver v. State*, 788 P.2d at 764, sufficient to warrant preemption of the voters' choice.

B. Extraterritorial Impact.

The *Denver v. State* Court described the second factor affecting classification of a matter as of state, local or mixed concern, as "the impact of the municipal legislation on persons living outside of the municipal limits." *Denver v.*

State, 788 P.2d at 768. In *Ibarra*, the Court summarized its current understanding of the "exterritorial impact" factor;

> We have defined "extraterritorial impact" as a ripple effect that impacts state residents outside the municipality. (Citation omitted).To find a ripple effect, however, the exterritorial impact must have serious consequences to residents outside the municipality, and be more than incidental or *de minimus*.

*Ibarra,*62 P.3d at 161.

Under the facts of this case, it is difficult to imagine, and it would probably be impossible to identify *any* example of how the use of confidential ballots to fill vacancies in the City of Fort Morgan has had any "serious consequences" for anybody outside of Fort Morgan at any time during the 97 years that the City has been making appointments in this way. It's a safe bet that residents outside of Fort Morgan have no idea, nor do they care, how Fort Morgan voters have decided to fill vacancies.

In *Ibarra*, the Supreme Court held that the State foster care system for adjudicated delinquent children a matter of statewide concern and preempted a Northglenn ordinance that sought to limit the number of juvenile registered sex offenders that could be placed in foster homes within Northglenn. *Ibarra, 67 P.3d 161.* In its application of the "extraterritorial impact" factor, the *Ibarra* Court found that Northglenn's ordinance had a "significant adverse impact in and outside

Northglenn because it decreases the total number of foster care homes available in a statewide system," that "[b]y forcing juvenile sex offenders out of foster homes, [the city ordinance] has a ripple effect on the availability of homes for all foster care children" statewide. *Ibarra*, *Id.*

In *City of Commerce City*, the Court addressed conflicts between various municipal ordinances and a state law regarding use of what is commonly known as "photo radar." The Court found the conflicting ordinances preempted, and observed in applying the "extraterritorial impact" factor that:

> Without the unifying state legislation, a driver – simply by commuting to work on a typical day – could be subject to a patchwork of rules and procedures by individual cities. Thus, the regulation of automated vehicle identification systems [photo radar] affects the residents of Colorado as a whole, as opposed to simply affecting local residents.

City of Commerce City v. State, 40 P.3d at 1283 (Colo. 2002).

In *Denver v. State*, the Court considered the extraterritorial impact of a Denver charter provision that required all City employees to live within Denver. On its face, the Denver ordinance at issue in *Denver v. State*, which affected tens of thousands of municipal employees, would appear to have a *far* greater potential extraterritorial impact than the narrow vacancy appointment process at issue in the present appeal. Yet the Supreme Court found little extraterritorial impact,

concluding that "the economic impact of the Denver residency requirement on the reminder of the state is *de minimus*." *Denver v. State* 788 P.2d at 769.

The League urges that, should any extraterritorial impact of Fort Morgan's method of filling vacancies be discovered, such impact would surely be far less significant than that found to be *de minimus* by the Court in *Denver v. State*. Certainly, the sort of extraterritorial "ripple effect" found by the Court under the facts presented in *Ibarra* and *Commerce City* is simply not possible here, nor has such an effect been evident during the 97 years that this provision has been on the books in Fort Morgan.

Appellant's handling of the "exterritorial impact" factor (Opening Brief at 36-37) focuses on the fact that, *once appointed*, council appointees may vote on matters that affect out-of-town citizens, and "[w]ere those decisions to have been cloaked in the camouflage of a secret ballot…., non-residents would have been prevented from determining which council members voted for or against the actions that directly affected them." (Opening Brief at 36.)

As noted above, this appeal does not involve the City of Fort Morgan city council doing *anything* other than that which they were commanded to do by Fort Morgan voters, in the charter. Nobody voted by secret ballot on a photo radar ordinance, or group home ordinance, or a dog ordinance here. No formation of

public policy of any sort was voted upon here; this appeal concerns *solely* votes on vacancy appointments. The League respectfully urges that resolution of any controversy concerning the potential extraterritorial impact of voting on such hypothetical matters such as those suggested by Appellant await an actual case or controversy that presents those facts.

C. Historical Locus of Regulation.

The *Denver v. State* Court listed as its third factor "historical considerations, *i.e.*, whether a matter is one traditionally governed by state or local government." *Denver v. State,* 788 P.2d at 768.

In *Ibarra*, the Court rejected an effort by Northglenn to characterize its ordinance limiting the number of juvenile sex offenders in foster homes as a "zoning ordinance," which characterization would have safely placed the ordinance in a category previously declared by the Court to be a matter of "local concern." The Court explained its decision by returning again to its theme that these determinations are made on an ad hoc basis and fact based.

> When considering whether a subject matter is historically or traditionally regulated by the locality or the state, we have rejected a "categorical approach" and focused instead on "the importance of the facts and circumstances of a particular case."

Ibarra, 62 P.3d at 162.

As discussed above, Article 20, Section 6 of our Colorado Constitution gives home rule municipalities plenary authority over local and municipal matters and Section 6(a) reserves considerable authority over officers and employees. As the Supreme Court has noted:

> Article XX was adopted by a favorable vote of the Colorado electorate. *By adopting that amendment to our constitution, the people of Colorado specifically granted citizens of home rule municipalities the right to name their own officers and determine how those officers should be selected, their qualifications, and their tenure.*

Fraternal Order of Police v. City and Cnty. Of Denver, 926 P.2d 582, 587 (emphasis added).

Section 6(a) of Article 20, to which the *FOP* Court was referring, was adopted by voters in 1912. Consequently, since at that time, for Colorado's home rule municipalities, the manner of selecting municipal officers and filling vacancies in offices has traditionally been governed by the choice of local voters, expressed in their local home rule charters.

Much of Appellant's opening brief focuses on alleged incompatibility between Fort Morgan's 97 year old vacancy appointment procedure and the "purpose" of the state COML. As noted above, the League does not view the facts in this case as requiring this Court to resolve a major collision between the COML's goal of avoiding secret "formation of public policy" and the choice made by Fort Morgan's voters.

D. Constitutional Provisions

The Court in *Denver v. State* described its fourth factor as follows: "[f]inally, we have considered relevant the fact that the Colorado Constitution specifically commits a particular matter to state or local regulation." *Denver v. State*, 788 P.2d at 768.

As discussed above, Article 20 of the Colorado Constitution adopted in 1912, specifically gives home rule municipalities the "power to legislate upon provide, regulate, conduct and control ... [t]he creation and terms of municipal officers ... [and] the definition, regulation and alteration of the powers, duties, qualifications and terms or tenure of all municipal officers." Colo. Const. Art. 20, Sec. 6. By adopting this provision, Colorado voters "specifically granted citizens of home rule municipalities the right to name their own officers, *and determine how those officers should be selected*." *Fraternal Order of Police*, 926, P.2d. at 587.

To paraphrase the Supreme Court in its *FOP* decision, here Fort Morgan voters determined that candidates for officer vacancies should be "selected" by appointment using confidential ballots.

The *FOP* Court cited *Denver v. Rinker*, 148 Colo. 441, 366 P.2d 548 (Colo. 1961) for its conclusion that Art. 20 granted citizens in home rule municipalities

the power to determine how their officers are selected. *Rinker* dealt with the authority of Denver with respect to its deputy sheriffs. The Court concluded that, upon adoption of Article 20:

> The method of selection and tenure of the officer designated to carry out the duties of the position became the concern of the people of Denver by authority expressly granted to them by all of the people of the state under Article XX.

Denver v. Rinker, 148 Colo. At 448, 366 P.2d at 551.

Notably, the *Rinker* Court illustrated what it was talking about by pointing to the fact that voters in Denver, like those in Fort Morgan in the case at bar, "did change the method of selection and tenure of the person designated by the charter to carry out the duties of the [officer] *by providing that he should be appointed*" (in that case, by the Denver mayor, rather than by the city council, as here). *Id.* (emphasis added).

The League respectfully urges that the Colorado Constitution specifically commits to home rule municipalities the authority to determine how their officers should be selected.

E. Legislative Declaration

A fifth and final relevant factor for the Court to consider is that in C.R.S. § 24-6-401 of the COML, the General Assembly states: "[i]t is declared to be a

matter of statewide concern and the policy of this state that the formation of public policy is public business and may not be conducted in secret."

The Supreme Court has said that while it will give great weight to the General Assembly's declaration of statewide concern, it is not binding and "[i]f the constitutional provisions establishing the right of home rule municipalities to legislate as to their local affairs are to have any meaning, we must look beyond the mere declaration of a state interest and determine whether in fact the interest is present." *Denver v. State*, 788 P.2d at 768, fn.6. In fact, on several occasions the Colorado Supreme Court has found a matter to be of purely local concern despite a legislative declaration of statewide concern or of mixed state and local concern by the General Assembly. *See*, *Town of Telluride v. San Miguel Valley Corp.*, 185 P.3d 161 (Colo. 2008) (notwithstanding a legislative declaration of mixed statewide and local concern in statute. Court held that a home rule town's constitutional authority to condemn properties outside its boundaries for parks and similar purposes, was not preempted by state's statutory prohibition of such condemnations. *Winslow Constr. Co. v. Denver*, 960 P.2d 685, (Colo. 1998) (home rule city's sales tax provisions being a matter of purely local concern, control over conflicting state statute, despite legislative declaration of state's interests); and *Denver v. State*, 788 P.2d at 768, fn.6 Court found that Denver's residency

requirement in its charter was a matter of purely local concern and, therefore, preempted conflicting state statute, which included declaration of statewide concern).

The League urges that this is another situation, like those in the cases cited above where the facts of the particular case and the relative interests involved do not support the categorical, and preemptive "statewide concern" classification suggested by the General Assembly.

CONCLUSION

WHEREFORE, for all of the reasons set forth above, the League respectfully requests that the decision of the Morgan County District Court be affirmed.

Respectfully submitted this 12th day of January, 2011.

COLORADO MUNICIPAL LEAGUE

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Colorado Municipal League
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(303) 831-6411

CERTIFICATE OF SERVICE

The undersigned herein certifies that on this 12th day of January, 2011, a true and correct copy of the foregoing **BRIEF OF THE COLORADO MUNICIPAL LEAGUE** was filed with the Court and served on those named below via U.S. Mail:

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Barb Major

- Appendix A

DISTRICT COURT, MORGAN COUNTY, COLORADO 400 Warner Street, Fort Morgan, Colorado 80701 Plaintiff: **RONALD E. HENDERSON** vs. Defendants: **CITY OF FORT MORGAN, a home rule municipal corporation established under Art. XX of the Colorado Constitution, and, THE CITY COUNCIL OF THE CITY OF FORT MORGAN, in its official capacity**	ΔCOURT USE ONLYΔ Case Number: 10CV38 Div.: C

ORDER GRANTING CITY OF FORT MORGAN'S MOTION TO DISMISS UNDER C.R.C.P. RULE 12(b)

THIS MATTER comes before the Court upon the City's Motion to Dismiss under C.R.C.P. Rule 12(b). Having fully reviewed and considered the pleadings, Motion, Response, and Reply, the Court hereby FINDS and CONCLUDES:

The City's Motion to Dismiss raises the novel question whether its policy of appointing certain city officials by secret ballot of council members during open meetings violates the Colorado Open Meetings Law ("COML"). I conclude the City's policy does not violate the COML. I therefore GRANT the City's Motion to Dismiss the Plaintiff's complaint.

The "Statement of Facts" contained in the City's Motion to Dismiss sets forth certain undisputed facts pertinent to this lawsuit. For the sake of brevity the City's Statement of Facts in incorporated herein, by reference. It is also undisputed that the City of Fort Morgan is a home rule city and, as such, the City is authorized to legislate on matters of local concern, pursuant to Article XX, § 6, of the Colorado Constitution. Article III, § 7, of the Fort Morgan City Charter contains the following directive: "All votes of the council upon appointments shall be by ballot." In appointing a municipal court judge and filling city council vacancies, the City has construed and applied this Charter provision to require selection of city officials by secret ballot. The ballots are "secret" in the sense that the council members who cast the ballot cannot be identified. Article III, § 7, of the City Charter was originally adopted in 1914 and reaffirmed by the electorate in 2007.

For the following reasons, I conclude that Plaintiff's complaint fails to state a claim upon which relief can be granted.

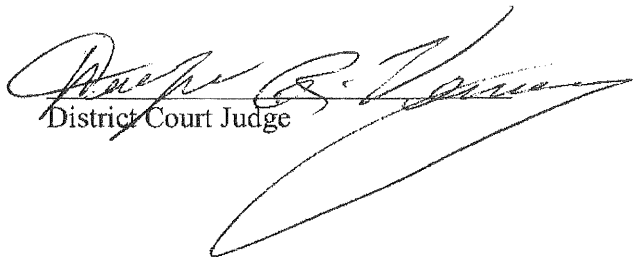
To begin with, the undisputed facts do not demonstrate the existence of a conflict between the City Charter provision, as applied by the City Council, and the COML. The Plaintiff concludes that a conflict exists between the City Charter, as applied by the City Council, and the COML by inferring that § 24-6-401, C.R.S., forbids by implication the use of secret ballots to appoint city officials. The plain language of the COML does not go so far. Plaintiff's expansive reading of the COML is not justified by the language of the statute or case law interpreting the statute. The COML contains no provision that directly bears upon the use of ballots to appoint local officials. The purpose of the COML is to insure public access to meetings at which public business is considered. Town of Marble v. Darien, 181 P.3d 1148, 1152 (Colo. 2008). The COML does not direct public bodies to conduct business in a specific manner. Van Alstyne v. Housing Authority City of Pueblo, 985 P.2d 97, 101 (Colo. App. 1999). Instead, the COML implements a broad policy declaration: "It is declared to be a matter of statewide concern and the policy of this state that the formation of public policy is public business and may not be conducted in secret." C.R.S. 24-6-401. The COML renders invalid any formal action of a local public body made at a meeting that is not open to the public, not convened upon public notice, and for which minutes are not kept. C.R.S. 24-6-402(2)(b), (c), (8). Here, it is undisputed that the actions in question were taken at an open meeting convened upon due notice to the public, that the ballots utilized by the City Council were preserved as public records, and that minutes of the proceedings were kept and preserved.

Even if a conflict between the City Charter, as applied, and the COML is assumed to exist, it does not follow that the matter is one of statewide concern. In matters of local concern, local legislation trumps state legislation. To determine whether an issue is a matter of state, local, or mixed concern a court must consider the totality of the circumstances in light of four factors. JAM Restaurant, Inc. v. City of Longmont, 140 P.3d 192, 195 (Colo. App. 2006). I conclude that the matter is one of local concern. There is no apparent need for statewide uniformity in the process of appointing municipal officials in a home rule city. The impact of the City Charter provision on individuals living outside of the City Fort Morgan is, at most, incidental. Historical considerations favor local control over the manner of appointing city officials. Finally, the Colorado Constitution commits the matter to local regulation. Article XX, § 6, of the Colorado Constitution, grants broad powers of governance to home rule cities. The authority expressly granted to home rules cities includes the "power to legislate upon, provide, regulate, conduct and control: The creation and terms of municipal officers . . . ; The creation of municipal courts . . . and the election or appointment of the officers thereof; [and] All matters pertaining to municipal elections in such city or town . . . ." Colo. Const., Art. XX, § 6.a., 6.c., and 6.d. Similarly, Article XX, § 2, provides, "the jurisdiction, term of office, duties and qualifications of all such officers shall be such as in the charter may be provided . . . ." In short, I conclude that the issue is a matter of local concern and, therefore, the City Charter provision, as applied by the City Council, prevails over the COML.

THE COURT ORDERS: Defendants' Motion to Dismiss is GRANTED. Plaintiff's complaint is hereby DISMISSED.

Entered in Chambers on June 29, 2010.

BY THE COURT



District Court Judge

- Appendix B

CHARTER

of the

CITY OF FORT MORGAN

COLORADO

August 26, 1914

Last Amended
at November 6, 2007 Election

Published by

COLORADO CODE PUBLISHING COMPANY
Fort Collins, Colorado

CHARTER

TABLE OF CONTENTS

THE CHARTER

PREAMBLE

We, the people of Fort Morgan, under the authority of the Constitution of the State of Colorado, do ordain and establish for our municipal government, this Charter. (As amended 11/6/07)

ARTICLE I

Name, Boundaries, Rights, Powers, Liabilities, Form of Government

Sec. 1. Name; boundaries.

The municipal corporation, heretofore existing as a city of the second class in Morgan County, State of Colorado, and known as Fort Morgan, shall remain and continue a body politic and corporate under this Charter, with the same name and boundaries, until changed in the manner authorized by law. (As amended 11/6/07)

Sec. 2. Rights; powers; liabilities.

(a) By the name of Fort Morgan, the City shall have perpetual succession; shall own, possess and hold all the property, real and personal, heretofore owned, possessed and held by said city; shall assume and manage all trusts in any way connected therewith; and shall succeed to all rights and assume all liabilities thereof.

(b) The City shall have power to sue and defend and plead and be impleaded in all courts and places and in all matters and proceedings; to use a common seal and alter the same at pleasure; to purchase, receive, hold, enjoy, sell and dispose of real and personal property; to receive gifts, bequests and donations of all kinds of property, in fee simple, or in trust for public, charitable or other purposes; and to sell, manage, lease and otherwise do all acts and things necessary to carry out the purposes and terms of such gifts, bequests and donations.

(c) All powers shall be exercised in the manner set forth in this charter or, if not provided for in this charter, in such manner as shall be provided by ordinance or resolution. (As amended 11/6/07)

Sec. 3. Form of government.

The municipal government provided by this charter shall be known as a council-manager government. (As amended 11/6/07)

ARTICLE II

Elected Officials

Sec. 1. Officers.

The elected officials of this City under this Charter shall be one mayor at large and two council members from each ward. (As amended 11/6/07)

Sec. 2. Qualifications.

No person shall be eligible to office unless at the time of their election he or she is a citizen of the United States, a registered elector of Fort Morgan, and shall have resided in the City for one year immediately prior thereto. A councilmember shall reside in the ward from which he or she is elected or appointed, but there shall be no separate time of residency requirement within the ward. (As amended 11/6/01, 11/6/07)

Sec. 3. Vacancies.

If a vacancy shall occur in any elective office, the city council shall appoint an eligible person to fill such vacancy and the person so appointed shall hold his or her office until the next regular municipal election and until his successor is sworn. The person so appointed shall only serve until the next regular municipal election at which time an eligible person shall be elected to serve the remainder of that unexpired term. The candidate from the ward electing more than one person, who receives the second highest number of votes, shall serve the remainder of the unexpired term of two (2) years. If two (2) or more vacancies exist simultaneously on the council, the remaining members shall, at the next regular meeting of the council, call a special election to fill such vacancies, unless there will be a regular municipal election within ninety (90) days and unless their successors have previously been elected. A vacancy shall exist when an elective officer fails to be sworn as provided in article III, section 1, within ninety days after the election, dies, resigns, removes from the City or from the ward, if applicable, absents himself or herself continuously without reasonable excuse for thirty days from the duties of their office, is convicted of violating any provision of this Charter, or of a felony, or is judicially declared to be an incapacitated person as defined by statute. (As amended 11/6/01, 11/6/07)

ARTICLE III

The Council

Sec. 1. Membership; rules.

(a) The council shall consist of the mayor elected at large and two councilmembers from each ward chosen by the electors of such ward. It shall be the judge of the election and qualification of its own members, shall determine its own rules of procedure, may punish its members a violation of such rules, and may compel the attendance of members.

(b) The mayor and each councilmember shall, before entering upon the duties of office, swear or affirm to support the Constitution of the United States, the Constitution of Colorado, and the Charter and ordinances of the City of Fort Morgan, and faithfully to perform the duties of the office. (As amended 11/6/07)

Sec. 2. Organization.

Each council at its first regular meeting, and thereafter when a vacancy in the office shall occur, shall elect one of the councilmembers mayor pro tem. (As amended 11/6/07)

Sec. 3. Meetings; quorum.

The council shall meet the first and third Tuesday of each month at the City Hall at an hour to be fixed from time to time by the rules of procedure of each council, and the council shall have power by ordinance, to prescribe the manner of calling special meetings thereof. If the first or third Tuesday falls on a legal holiday, the meeting shall be held on the next succeeding day which is not a legal holiday. A majority of the members of the council shall constitute a quorum to do business. The council shall sit with open doors at all sessions, and shall keep a journal of its proceedings which shall be a public record. (As amended 11/6/07)

Sec. 4. Ordinances, resolutions, motions.

(a) In all matters coming before it, the council shall act only by ordinance, resolution or motion. The ayes and nays shall be taken upon the passage of all ordinances and resolutions and entered upon the journal of the council proceedings. Every member, when present, must vote, and every resolution and motion shall require for passage a majority vote of the council, and every ordinance shall require on final passage the affirmative vote of four members of the council. The enacting clause of all ordinances shall be in the words: "Be it Ordained by the Council of Fort Morgan." All contracts involving in the aggregate an expenditure of ten thousand dollars or more, shall be authorized only by resolution. Every proposed ordinance before its final passage shall be read in at least two regular meetings of the council, may be amended on its first and second readings, and shall be published in full once in a newspaper of the City at least ten days before its final passage.

Whenever the reading of an ordinance is required by this Charter, such requirement shall be satisfied if the title of the proposed ordinance is read and the entire text of the proposed ordinance is submitted in writing to the council before adoption.

(b) The city clerk shall keep a journal of the council proceedings in which shall appear a record of all ordinances, resolutions and motions of the council, and shall keep such other records as required by this Charter or by ordinance. (As amended 11/6/01, 11/6/07)

Sec. 5. Publication and record, etc.

Every ordinance passed shall be published once in a newspaper of the City, within five days after its final passage, by publication in full or by title only as may be determined by the council at the time of second reading, and shall not take effect until five days after publication, except the tax levy ordinance, the annual appropriations ordinance and ordinances ordering improvements initiated by petition and to be paid for by special assessments, which ordinances shall take effect immediately upon publication. If publication of an ordinance after introduction was in a newspaper of the City, publication after adoption may be in the same newspaper by title only and shall contain the date of the initial publication and shall reprint in full any section, subsection, or paragraph of the ordinance which was amended following the initial publication. Publication of an ordinance following its adoption may be in full at the discretion of the council. No ordinances or section thereof shall be amended or repealed except by ordinance.

The mayor within three days after their final passage shall sign all ordinances, both upon the ordinance itself and in the "Ordinance Record," and also all resolutions of the council; and the city clerk in like time shall attest and affix the seal of the City to all ordinances, both upon the ordinance itself and in the "Ordinance Record," and to such resolutions and motions as the council shall direct. A true copy of each ordinance of the City shall be kept in a book marked, "Ordinance Record." (As amended 11/6/01, 11/6/07)

Sec. 6. Statements.

The council shall cause to be published monthly a detailed statement of all expenditures of the City during the preceding month. (As amended 11/6/07)

Sec. 7. Appointments.

All votes of the council upon appointments shall be by ballot. Where this charter provides for the council to appoint or remove any person, the vote of a majority of the council shall be necessary for such appointment or removal. (As amended 11/6/07)

ARTICLE IV

The Mayor and the Council

Sec. 1. Mayor.

The mayor shall be a member of the council, shall have the same powers and responsibilities as any councilmember, and when present shall preside at all meetings of the council. (As amended 11/6/07)

Sec. 2. Duties; authorities; powers.

(a) The mayor shall be recognized as the head of the City government for all ceremonial and dignitary purposes, by the courts for serving civil process, and by the state and federal governments for purposes of military law.

(b) The mayor shall have such emergency powers as conferred by the city council.

(c) The mayor shall have the power to administer oaths in any proceeding requiring the same.

(d) The mayor shall sign all warrants, contracts, bonds or other instruments requiring the signature of the mayor.

(e) The mayor shall have such other powers and responsibilities as may be provided by ordinance not in conflict with this Charter. (As amended 11/6/07)

Sec. 3. Mayor pro tem.

The mayor pro tem shall, during the absence of, or inability of the mayor to act, exercise all the powers and responsibilities of the mayor. (As amended 11/6/07)

Sec. 4. Powers.

(a) The City shall have all the power of home rule and local self-government, within and without its corporate boundaries, and all power possible for the City under the state constitution. All such powers shall be exercised in a manner consistent with the United States constitution, the state constitution, and this Charter.

(b) Except as otherwise provided in this Charter, the City shall also have all powers granted to cities, towns, and municipalities by the state statutes.

(c) The enumeration of specific powers in this Charter shall not be considered as limiting or excluding any other power under the state constitution. All powers shall be exercised in the manner set forth in this Charter or, if not provided for in this Charter, in such manner as shall be provided by ordinance.

(d) Without limiting the generality of the foregoing, the City, acting through the council, shall have power to:

(1) Provide for the construction, maintenance, operation, and disposition of public improvements, public works, public utilities, public services, and public buildings of every nature, and to make assessments for the same in such manner as may be prescribed by ordinance;

(2) Pass ordinances for the protection of the public health, safety, and welfare, and provide penalties for the violation thereof;

(3) Provide for the establishment, maintenance, and improvement of parks, cemeteries and public grounds of the City,

(4) Provide for the establishment and maintenance of public libraries;

(5) Form, in the manner provided by ordinance, improvement districts for any public purpose, and provide for the manner of assessment of owners of land therein;

(6) Appoint and remove a city manager, a city attorney, and a municipal judge and deputy municipal judges, in the manner provided in this Charter. In addition to these appointed officials the volunteer fire chief, who is selected and removed according to the fire department bylaws shall report to city council until such time that city council by ordinance requires the fire department be placed under the supervision of the city manager;

(7) Establish boards and commissions, provide for their powers and responsibilities, and appoint and remove their members;

(8) Require a bond or insurance, in such amount as determined by the council, for any position that is determined by the council to be a position of trust; and

(9) Raise revenues and issue bonds and other securities, subject to applicable provisions of the Colorado constitution and this Charter. (As amended 11/6/07)

Sec. 14. Condemnation.

In carrying out the powers and responsibilities imposed upon it by this Charter, the City, acting through the council, shall have power to acquire within or without its corporate limits, property, property rights, and interests in property of every nature, and may take the same upon paying just compensation to the owner as provided by law. (As amended 11/6/07)

ARTICLE V

City Administration

Sec. 1. City manager.

(a) The council shall appoint a city manager to serve at the pleasure of the council, shall establish the city manager's compensation, and shall evaluate the city manager's performance at least annually.

(b) The city manager shall become a resident of the City within six (6) months of appointment, and shall remain a resident of the City throughout the manager's appointment. (As amended 11/6/07)

Sec. 2. Acting city manager.

The council shall designate a qualified person to serve as acting city manager during the manager's absence or disability, or during times when the position is vacant. (As amended 11/6/07)

Sec. 3. Exclusive service to city.

During the period of the appointment, the city manager shall not be an employee of, or perform any services for compensation from, any person or entity other than the City, unless the manager has first obtained the approval of the council. (As amended 11/6/07)

Sec. 4. Powers and responsibilities of manager.

The city manager shall be the chief administrative officer of the City. The city manager shall have the following powers and responsibilities:

(a) Be responsible for the enforcement of the ordinances, resolutions, franchises, contracts, and other enactments of the City.

(b) Establish and implement personnel rules and regulations for City employees.

(c) Cause a proposed budget to be prepared and submitted to the council annually, and be responsible for the administration of the adopted budget.

(d) Cause to be prepared and submitted to the city council, as of the end of the fiscal year, a complete report on finances and administrative activities of the City for that year, and make other reports as requested by the council concerning the matters of the City in the manager's charge.

(e) Keep the city council advised of the financial condition and future needs of the City.

(f) Except as otherwise required by this Charter, establish a chain of command and, through that chain of command, exercise management and control over all City departments, including the selection and removal of department heads. However, notwithstanding the foregoing, city council has the authority to assign and remove the city's fire department to the direction of the city manager as it deems necessary.

(1) At the time the fire chief and firefighters are under the authority of the city council, they shall be selected by the members of said department pursuant to bylaws established by the department, and shall be subject to removal by said members pursuant to said bylaws or any process established by city council;

(2) Unless otherwise provided by ordinance, the fire chief shall report to the council and not to the manager; and

(3) Unless otherwise provided by ordinance, the supervision of any paid employees of said department shall be exercised by the fire chief and subject to city council oversight, but such employees, and their selection and removal, shall be subject to personnel enactments generally applicable to City employees.

(g) Make recommendations to the city council concerning the establishment, consolidation or abolition of such departments; but any such establishment, consolidation, or abolition shall be done by ordinance.

(h) Attend council meetings and participate in discussions with the council in an advisory capacity.

(i) Be responsible for informing the public on City functions and activities.

(j) Perform such other duties as prescribed by this Charter, or as required by the council and not inconsistent with this Charter. (As amended 11/6/07)

Sec. 5. Council's relationship to employees.

(a) Neither the council, nor any member of the council, shall dictate or interfere with the appointment of, or the duties of, any City employee subordinate to the city manager or to the city attorney, or prevent or interfere with the exercise of judgment in the performance of the employee's City responsibilities. The council, and each member of the council, shall deal with such employees solely through the manager or the city attorney, as applicable, and shall not give orders or reprimands to any such employee.

(b) The city manager alone shall be responsible to the council for the proper administration of all matters placed in the manager's charge by or pursuant to this Charter. (As amended 11/6/07)

Sec. 6. Status of employees.

All employees shall be subject to removal at any time and without cause, except as otherwise provided by this Charter. (As amended 11/6/07)

Sec. 7. Transition.

Nothing in this article shall affect any department existing or employee holding employment at the time of the adoption of this article. Each such department shall continue in existence until or unless otherwise

provided by the council in accordance with this Charter, and each such employee shall continue to hold such employment, subject to the provisions of this Charter, until or unless removed in accordance with this Charter and the personnel rules and regulations of the City. (As amended 11/6/07)

ARTICLE VI

Finance and Revenue

Sec. 1. Fiscal year same as calendar year.

The fiscal year of this City shall commence on the first day of January and end on the last day of December of each year. (As amended 11/6/07)

Sec. 2. Treasurer.

There is established the office of city treasurer. Subject to the provisions of this Charter, the treasurer shall have charge over the finances of the City, and shall perform such other functions as provided in this charter or as required by the city manager. (As amended 11/6/07)

Sec. 3. Public moneys deposited.

The cash balance of the city treasurer for deposits in the banks, shall be kept on deposit in each of the banks of said city without discrimination. Nothing herein shall prevent said treasurer from temporarily having such funds otherwise deposited; provided, that as soon as practicable, he shall make a redeposit thereof in the manner hereinbefore specified. (As amended 11/6/07)

Sec. 4. Demands against city.

No demand for money against said city shall be approved, allowed or paid, unless it shall be in writing, dated and sufficiently itemized to identify the expenditure, certified to by the head of the proper department and verified by the city treasurer. Demands thus verified shall be paid by City warrants, bearing the signatures of the city clerk and mayor of said City, and drawn upon the city treasury, payable out of the particular fund upon which drawn. (As amended 11/6/07)

Sec. 5. Collection of taxes.

Until the council shall otherwise by ordinance provide, the county treasurer shall collect City taxes in the same manner and at the same time as state taxes are collected; and the law of the state for the assessment of property and the levy and collection of general taxes, including the laws for the sale of property for taxes and the redemption of the same, shall apply and have as full effect in respect of taxes for the City as of such general taxes, except as otherwise modified by this Charter.

On or before the fifth day of every month, the county treasurer shall report and pay to the city treasurer the amount of tax collections of the City for the preceding month. (As amended 11/6/07)

Sec. 6. Adoption of existing law.

Until the city council shall otherwise by ordinance provide, the statutes of the State of Colorado now or hereafter in force shall govern the making of assessments by the assessor of the county in which said city is situated, the making of equalization by the board of county commissioners of said county and the collection of taxes by the treasurer of said county for and on behalf of said city, and also the certification and collection of all delinquent charges, assessments and taxes. (As amended 11/6/07)

Sec. 7. Certificate of assessment.

It shall be the duty of the city clerk to procure, as soon as possible each year, a certificate from the county assessor of the total amount of property assessed for taxation within the limits of said city, as shown by the assessment roll in the assessor's office. (As amended 11/6/07)

Sec. 8. Annual general city estimate.

On or before the third Tuesday in October each year, or on such date as shall be fixed by the council, the city manager shall submit to the council an estimate of the probable expenditure of the City government for the next ensuing fiscal year, stating the amount required to meet the interest and maturing bonds of the outstanding indebtedness of the City, and the warrants of the municipal government in detail, and showing specifically the amount necessary to be provided for each fund; also an estimate of the amount of income from fines, licenses, water rents and all other sources of revenue, exclusive of taxes upon property, and the probable amount required to be levied and raised by taxation to defray all expenses and liabilities of the City. (As amended 11/6/07)

Sec. 9. Annual budget.

The council shall meet annually, prior to fixing the tax levy, and adopt a budget of the estimated amounts required to pay the expenses of conducting the business of the City government for the next ensuing fiscal year. The budget shall be prepared in such detail as to the aggregate sum and the items thereof allowed to each object, purpose, department, office, board or commission, as the council may deem advisable. (As amended 11/6/07)

Sec. 10. Annual appropriation.

Upon said budget as adopted and filed, the council shall pass an ordinance not later than the thirty-first day of December of each year, which shall be entitled: "The Annual Appropriation Ordinance," in which it shall make such tax levy and appropriate such sums of money as it may deem necessary to defray all expenses and liabilities of the City, and in such ordinance shall specify the objects and purposes for which such appropriations are made, and the amount appropriated for each object and purpose therein named for the ensuing fiscal year. (As amended 11/6/07)

Sec. 11. Levy.

Such ordinance shall include the levy in mills upon each dollar of the assessed valuation of all taxable property within the City. Such levy representing the amount of taxes for City purposes necessary to provide for payment during the ensuing fiscal year of all properly authorized demands upon the treasurer, and the council shall thereupon cause the total levy to be certified by the city clerk to the county assessor, who shall

extend the same upon the tax list of the current year in a separate column entitled: "The City of Fort Morgan Taxes," and shall include all City taxes in his general warrant to the county treasurer for collection as provided by law.

If the council fails in any year to make such tax levy as above provided, then the rate last fixed shall be the rate fixed for the ensuing fiscal year, and the county assessor and county treasurer shall proceed in all respects in the same manner as if an ordinance had been duly passed and certified fixing such rate. (As amended 11/6/07)

Sec. 12. City indebtedness and other borrowing.

(a) No general obligation bonds of the City shall be issued in an amount which, together with all then outstanding general obligation bonds, shall exceed three percent of the actual value of the taxable property within the City as determined by the county assessor; provided, however, that in determining the limitation of the City's power to incur such indebtedness there shall not be included bonds issued for the acquisition, improvement or extension of a water system and supply or other public utilities, enterprises, works or ways from which the City will derive a revenue.

(b) No general obligation bonds shall be issued without a vote of the qualified electors of the City , except water bonds and except general obligation bonds issued for the purpose of refunding outstanding general obligation bonds of the City.

(c) The city council shall have the power to issue bonds to finance the acquisition, improvement or extension of municipally owned and operated utilities, systems, enterprises, works or ways from which the City will derive a revenue, including water systems and supply, proved that said bonds shall be payable solely out of the revenue to be derived from the operation of such utilities, systems, enterprises or facilities to be acquired, improved or extended.

(d) The council shall have the power to issue special improvement district bonds.

(e) The council shall have the power to issue refunding bonds to refund any bonds to the city then outstanding whenever the same is deemed to be in the best interest of the City.

(f) The council shall have the power to issue short term or interim financing bonds, maturing within three years of their date, in anticipation of and to be payable from the proceeds of the later issuance of general obligation bonds or revenue bonds maturing over a longer period. Such short term bonds shall only be issued upon a determination by the council that their issuance is in the best interests of the City, stating the reasons therefore.

(g) The terms, conditions and details, including the rate of interest, of all bonds shall be fixed by the ordinance authorizing their issuance and the bonds shall be sold in such manner as the council may deem to be in the best interests of the City, at par, above par or below par, at public or private sale or by private placement.

(h) All bonds may contain provisions for calling the same in advance of maturity at designated interest periods and may provide for prepayment premiums, if any, not to exceed three percent of principal. (11-2-71, §2, 11/6/07)

Sec. 13. Poll tax.

No poll tax shall ever be taxed or collected by said city for any purpose whatsoever. (As amended 11/6/07)

Sec. 14. Occupation tax.

The council shall have power by ordinance to license, regulate and tax any and all lawful occupations. (As amended 11/6/07)

ARTICLE VII

Franchises and Public Utilities

Sec. 1. Franchise granted upon vote.

No franchise relating to any street, alley or public place of the said city shall be granted except upon the vote of the registered electors, and the question of its being granted shall be submitted to such vote upon deposit with the treasurer of the expense (to be determined by the city council) of such submission by the applicant for such franchise, and no such franchise shall be granted unless a majority of such electors voting thereon vote in favor thereof. (As amended 11/6/07)

Sec. 2. Contracts by ordinance.

All contracts for service between the City and the owner or manager of any such franchise, shall be made by ordinance, the terms of which shall be agreed to in writing by said owner or manager prior to the passage of such ordinance. No contract for service shall be made by the City for a longer period than two years unless such contract be submitted to a vote of the registered electors of the city, and approved by a majority of those voting on said question. (As amended 11/6/07)

Sec. 3. Regulate rates and fares.

The council shall have power by ordinance to fix and regulate rates, fares and charges for service by public utility corporations and to change the same every five years; provided, that rates, fares or charges shall not be changed without examination by competent inspectors, and the council shall have power to inspect the books and affairs of any public utility corporation as a part of such examination. The right to regulate shall include the right to require uniform, convenient and adequate service to the public, reasonable extensions of such service and of such public utility works and the issuance of transfers without extra charge by all street railway companies good upon the lines of all other street railway companies crossing or connecting with the lines of said companies. (As amended 11/6/07)

Sec. 4. Issuance of stock.

Every ordinance granting any franchise shall prohibit the issuing of any stock on account thereof by any corporation holding or doing business thereunder. (As amended 11/6/07)

Sec. 5. License tax.

The City shall have the right to license or tax streetcars, telephones, gas meters, electric meters, water meters or any other similar device for measuring service; also telephone, telegraph, electric light, and power poles, subways and wires. The said license or tax shall be exclusive of and in addition to all other lawful taxes upon the property of the holder thereof. (As amended 11/6/07)

Sec. 6. Street sprinkling, cleaning and paving.

Every grant of any franchise or privilege in, over, under or along any of the streets, highways or public places in the City for railway proposes, shall be subject to the conditions that the person, firm or corporation exercising or enjoying the same shall, unless otherwise provided by ordinance, sprinkle, clean, keep in repair, and pave and repave so much of said street, highway or other public place as may be occupied by said railway as lies between the rails of each railway track, and between the lines of double track, and for a space of two feet outside of said track. (As amended 11/6/07)

Sec. 7. Franchise provide for safety, etc.

The grant of every franchise or privilege shall be subject to the right of the City, whether in terms reserved or not, to make any regulations for the safety, welfare and accommodation of the public, including among other things, the right to require proper and adequate extensions of the service of such grant, the right to require any or all wires, cables, conduits and other like appliances to be placed underground, and the right to protect the public from danger or inconvenience in the operation of any work or business authorized by the grant of the franchise. (As amended 11/6/07)

Sec. 8. Oversight of water reserved to city.

Every franchise, right or privilege, which has been or which may hereafter be granted, conveying any right, permission or privilege to the use of the water belonging to the City, or to its water system, shall always be subject to the most comprehensive oversight, management and control in every particular by the City; and such control is retained by the City in order that nothing shall ever be done by any grantee or assignee of any such franchise, right or privilege which shall in any way interfere with the successful operation of the waterworks of the City, or which shall divert, impair or render the same inadequate for the complete performance of the trust for the people under which such waterworks are held by the City, or which shall tend so to do. (As amended 11/6/07)

Sec. 9. No exclusive franchise renewal.

No exclusive franchise shall ever be granted, and no franchise shall be renewed before one year prior to its expiration. (As amended 11/6/07)

Sec. 10. No franchise leased; exception.

No franchise granted by the City shall ever be leased, assigned or otherwise alienated without the express consent of the City, and no dealing with the lessee or assignee on the part of the City to require the performance of any act or payment of any compensation by the lessee or assignee, shall be deemed to operate as such consent. Any assignment or sale of such franchise to any foreign corporation shall operate as a forfeiture to the City of such franchise. (As amended 11/6/07)

Sec. 11. Amendment, renewal and extension.

No amendment, renewal, extension or enlargement of any franchise or grant of right of powers previously or heretofore granted to any corporation, person or association of persons, shall be made except in the manner and subject to all the conditions provided in this article for the making of original grants and franchises. The City shall require as a condition of any amendment, alteration or enlargement of a franchise or grant, unless otherwise expressly determined by a majority vote of the registered electors of the City, that the person, association or corporation owning the original franchise or grant, shall, as a prior condition to, and in consideration for such amendment, alteration or enlargement, covenant and agree, as a part thereof, that such original franchise, shall be brought within the conditions provided in this article for the exercise and enjoyment of franchises hereafter granted, including the right of the City to purchase the plant and physical property, whether within or without the City limits, or both, at a fair valuation, which valuation shall not include any franchise value, or any earning power of such property. (As amended 11/6/07)

Sec. 12. City maintain supervision.

The City shall maintain general supervision and police control over all public utility companies insofar as they are subject to municipal control. It shall cause to be instituted such actions or proceedings as may be necessary to prosecute public utility companies for violations of law. (As amended 11/6/07)

Sec. 13. Term twenty years; compensation.

No franchise, lease or right to use the streets or public places, or property of the City, shall be granted by the City, except as in this Charter provided, for a longer period than twenty years. Every grant of franchise shall fix the amount and manner of the payment of the compensation to be paid by the grantee for the use of the same and no other compensation of any kind shall be exacted for such use during the life of the franchise; but this provision shall not exempt the grantee from any lawful taxation upon his or its property, nor from any licenses, charges or impositions not levied on account of such use. (As amended 11/6/07)

Sec. 14. City may purchase, operate or sell; procedure.

(a) Every grant, extension or renewal of the franchise or right shall provide that the City may upon the payment therefore of its fair valuation, purchase and take over the property and plant of the grantee in whole or in part; such valuation shall be made as provided in the grant, but shall not include any value of the franchise or right of way through the streets or earning power of such property. The valuation may include, as part of the cost of the plant, interest on actual investment during the period of construction and prior to operation. Such grant may provide that if the purchase is made within five years of the time when the franchise is granted, the City shall pay an additional sum or bonus of not to exceed ten per centum on the actual value of the tangible property exclusive of the franchise value, which additional sum or bonus shall be reduced proportionately from such five year period to the end of the franchise period when no bonus shall be given.

The procedure to effect such purchase shall be as follows:

When the council shall, by resolution, direct that the city manager shall ascertain whether any such property or part thereof, should be acquired by the City, or in the absence of such action of the council, when a petition subscribed by a number of registered electors of the City equal in number to at least ten per centum of the last preceding vote cast in the City for mayor of said city, requesting that the manager shall ascertain

whether any such property or part thereof should be acquired by the City, shall be filed with the clerk; the manager shall forthwith carefully investigate said property and report to the council:

(1) At what probable cost said property may be acquired;

(2) What, if any, probable additional outlays would be necessary to operate the same;

(3) Whether, if acquired, it could be operated by the City at a profit or advantage in quality or cost of service, stating wherein such profit or advantage consists;

(4) Whether, if acquired, it could be paid for out of its net earnings and, if so, within what time; and

(5) Such other information touching the same as he shall have obtained.

Such report shall be made in writing, shall include a statement of facts in relation thereto with such particularity as will enable the council to judge of the correctness of his findings, and immediately after submission to the council, shall be filed, with the city clerk, and published once in a newspaper of general circulation published in the City.

If a petition subscribed by a number of registered electors of the City equal in number to at least ten per centum of the last preceding vote cast in the City for mayor of said city, requesting that the question whether or not the City shall acquire said property shall be submitted to a vote of the people, shall within sixty days after the filing of said report be filed with the clerk, the council shall provide by ordinance for the submission of the question to a vote of the registered electors at a general or special election called for the purpose.

(b) Every grant reserving to the City the right to acquire the plant as well as the property, if any, of the grantee situated in, on, above or under the public places of the City or elsewhere, used in connection therewith, shall in terms specify the method of arriving at the valuation therein provided for, and shall further provide that upon the payment by the City of such valuation, the plant and property so valued, purchased and paid for, shall become the property of this City by virtue of the grant and payment thereunder, and without the execution of any instrument of conveyance; and every such grant shall make adequate provision by way of forfeiture of the grant, or otherwise, for the effectual securing of efficient service, and for the continued maintenance of the property in good order and repair and its continuous use throughout the entire term of the grant. The grant may also provide that in case such reserved right to operate or to take over such plant or property is not exercised by the City, and it shall, prior to payment for the same, secure a bid for the property and grant a new franchise for the same service or utility, as provided in paragraph "c" of this section, or grant the right to another person or corporation to operate said utility, so occupied and used by its grantor, under the former grant, that the title to and possession of the plant and property so taken away be transferred directly to the new grantee upon the terms upon which the City may have purchased it.

(c) Whenever any plant or property shall become the property of the City of Fort Morgan, the City shall have the option at any time, then or thereafter, either to operate the same on its own account, or by ordinance to lease the same or any part thereof, together with the franchise or right to use the streets or other public property in connection therewith, for periods not exceeding twenty years, under such rules and regulations as it may prescribe, or by ordinance to sell the same provided, however, that no such ordinance to lease or sell shall be adopted except by a majority vote of the registered electors of the City. (As amended 11/6/07)

Sec. 15. Charter provisions not to impair right to insert other matters in franchise.

The enumeration and specification of particular matters in this Charter which must be included in every franchise or grant, shall never be construed as impairing the right of the City to insert in such franchise or grant, such other and further conditions, covenants, terms, restrictions, limitations, burdens, taxes, assessments, rates, fares, rentals, charges, control, forfeitures, or any other provisions whatever, as the city shall deem proper to protect the interests of the people. (As amended 11/6/07)

Sec. 16. Revocable permits.

The council may grant a permit at any time, in or upon any street, alley or public place, provided such permit may be revocable by the council at its pleasure at any time, whether such right to revoke be expressly reserved in such permit or not. (As amended 11/6/07)

Sec. 17. Petition to construct public utility.

If a petition subscribed by a number of registered electors of the City equal in number to at least ten per centum of the last preceding vote cast in the City for mayor of said city, shall be presented to the city council, requesting that the City shall provide for, construct, maintain and operate any public utility for the service of the citizens of said City of Fort Morgan, the council shall proceed in like manner as provided for the procedure to effect the purchase of any franchise as outlined herein. (As amended 11/6/07)

ARTICLE VIII

Elections

Sec. 1. City clerk to have charge of elections.

There is established the office of city clerk. Subject to the provisions of this Charter, the city clerk shall have charge over all regular and special elections, and shall perform such other functions as provided in this Charter or as required by the city manager. (As amended 11/6/07)

Sec. 2. Wards.

(a) The City shall be divided into three (3) wards, the boundaries of which shall be revised only by a resolution adopted by the affirmative vote of a majority of the council.

(b) At the time of revision pursuant to subsection (c), each ward shall be made as compact and contiguous as practicable, and the population in any ward shall not vary by more than five (5) percent from the population in any other ward.

(c) Following each federal decennial census, the boundaries of the wards shall be revised as necessary to meet the requirements of subsection (b). Ward boundaries shall not be changed more frequently unless necessary to conform to any applicable constitutional apportionment requirements. The revision shall be completed within one (1) year after the census figures are released by the federal government.

(d) Territory added to the City shall become a part of such ward or wards as may be determined by resolution; but this shall not prevent the subsequent revision of any ward boundary to conform to constitutional requirements.

(e) No revision in ward boundaries shall create a vacancy during the term of any councilmember in office at the time of the change. (As amended 11/6/07)

Sec. 3. Regular and special municipal elections.

A municipal election shall be held in and for the City of Fort Morgan, on the first Tuesday after the first Monday in November, 1915, and on the first Tuesday in November on every second year thereafter beginning in November, 2005, which shall be known as the regular municipal election. All other municipal elections that may be held shall be known as special municipal elections. (As amended 11/2/04, 11/6/07)

Sec. 4. Registration.

No person shall be permitted to vote at any municipal election without having been registered. The registration shall be the same as is now or may hereafter be provided by the general laws of the state, except as the council may otherwise by ordinance provide. (As amended 11/6/07)

Sec. 5. Nomination and election of officers.

The mode of nomination and election of all elective officers of the City to be voted for at any municipal election shall be as follows and not otherwise. (As amended 11/6/07)

Sec. 6. Condition of candidacy.

The name of a candidate shall be printed upon the ballot when the petition of nomination shall have been filed in his behalf, in the manner and form and under the conditions hereinafter set forth. (As amended 11/6/07)

Sec. 7. Form of petition of nomination.

Candidates for municipal offices shall be nominated, without regard to affiliation, by petition on forms supplied by the clerk. A petition of nomination may consist of one or more sheets, but it shall contain the name and address of only one candidate and shall indicate the office to which the candidate is seeking election.

The petition of nomination for councilmember shall consist of not less than twenty (20) individual signatures of registered electors from his or her ward, and the petition of nomination for mayor shall consist of not less than fifty (50) individual signatures of registered electors, which petition of nomination shall read substantially as follows:

STATE OF COLORADO)
County of Morgan) ss. **Petition of**
City of Fort Morgan) **Nomination**

We, the undersigned, do hereby join in a petition for the nomination of _____ whose residence is at _____, Fort Morgan, Colorado, for the office of _____ to be

voted for at the municipal election to be held in the City of Fort Morgan, on the ___ day of _____, 20__; and I certify that I am a qualified elector, and residing in Ward ____ and am not at this time a signer of any other petition nominating any other candidate for the above named office; my residence is at _____, Fort Morgan, Colorado.

I also certify that I believe the above-named person is qualified to fill the said office. I further certify that I join in this petition for the nomination of the above-named person believing that he has not become a candidate as the nominee or representative of, or because of any promised support from any political party, or any committee or convention representing or acting for any political party.

(An appropriate number of signature lines shall be inserted on each petition)

STATE OF COLORADO)
County of Morgan) ss. **Affidavit of**
City of Fort Morgan) **Circulator**

_____ being first duly sworn, deposes and says that he or she is the person who circulated the foregoing **Petition of Nomination**; that each signature thereon is the signature of the person whose name it purports to be; that each signer has stated to the circulator that the signer is a registered elector of the City of Fort Morgan or the City and Ward, as the case may be, for which the nomination is made; and that the statements therein are true.

_____
(Signed)

Subscribed and sworn to before me this ____ day of _____, 20___.

_____
Notary Public

The Petition of Nomination shall, if found insufficient, be returned to _____ at _____, Fort Morgan, Colorado.

(As amended 11/6/01, 11/6/07)

Sec. 8. Forms supplied by city clerk.

It shall be the duty of the city clerk to furnish, upon application, a reasonable number of forms of such petition of nomination and of acceptances or rejections of nominations. (As amended 11/6/01, 11/6/07)

Sec. 9. Requirements of petition of nomination.

Each petition of nomination must be a separate form. All petitions of nomination must be of uniform size as determined by the city clerk. Each petition must contain the names and signatures of the persons signing the petition. Each petition must contain the name of one candidate and no more.

Each registered elector signing a petition shall sign such registered elector's own signature and shall print or, if such elector is unable to do so, shall cause to be printed such elector's legal name, the address at which such registered elector resides, including the street name and number, the city, the county, and the date of the signing. The registered elector, or the person printing on behalf of the registered elector, may use any abbreviations that reasonably identify the residence of the registered elector, and the date the registered elector signed the petition. The circulator of each nomination petition shall make an affidavit that each signature thereon is the signature of the person whose name it purports to be and that each signer has stated to the circulator that the signer is a registered elector of the City or City and ward, as the case may be, for

which the nomination is made. The signature of each signer of a petition shall constitute prima facie evidence of his qualifications without the requirement that each signer make an affidavit as to his qualifications. (As amended 11/6/01, 11/6/07)

Sec. 10. Date of presenting petition.

Nomination petitions may be circulated and signed beginning on the fiftieth day and ending on the thirtieth day prior to the day of election. Nomination petitions for candidates whose name will be on the ballot at a coordinated election or mail ballot election pursuant to Articles 1 to 13 of Title 1, C.R.S., shall be circulated, signed, and filed with the clerk within the period set forth in C.R.S. §1-4-805, as now provided or as subsequently amended. (As amended 11/3/87, 11/7/95, 11/6/01, 11/6/07)

Sec. 11. Examination of petition by city clerk.

When a petition of nomination is presented to the city clerk for filing, he or she shall forthwith examine the same, and ascertain whether it conforms to the provisions of this article.

No registered elector shall sign more than one nomination petition for each separate office to be filled in the City or City and ward, as the case may be. Each office of the council that is to be filled by the electorate shall be considered a separate office for the purpose of nomination. An elector may sign a nomination petition for each office to be filled from his ward and also for each office to be filled by election at large. If a registered elector's signature appears on more than one nomination petition for a particular office, the clerk may utilize the date of signing indicated on the nomination petitions to determine which signature was valid when affixed to the nomination petitions. If the date of signing does not clarify which signature was valid, all signatures of such registered elector shall be rejected.

If found not to conform thereto, the city clerk shall then and there, in writing on said petition, state the reason why such petition cannot be filed and shall forthwith return the petition to the person presenting the same, named as the person to whom it shall be returned in accordance with this article. The petition may then be amended and again, but not later than three days after said petition shall have been returned, be presented to the city clerk, as in the first instance. The city clerk shall forthwith proceed to examine the amended petition as hereinbefore provided. (As amended 11/6/01, 11/6/07)

Sec. 12. Filing of petitions.

If either the original or the amended petition of nomination be found sufficiently signed, as hereinbefore provided, the city clerk shall file the same forthwith. (As amended 11/6/07)

Sec. 13. Acceptance of nomination.

Every petition of nomination shall have endorsed thereon or appended thereto the written affidavit of the candidate accepting the nomination in the form hereinafter provided and swearing that the candidate satisfies the requirements set forth herein to be a candidate and hold office in the City. The acceptance of nomination shall contain the place of residence of the candidate and the name of the candidate in the form that the candidate wishes it to appear on the ballot. The candidate's name may be a nickname or include a nickname but shall not contain any title or degree designating the business or profession of the candidate. (As amended 11/6/01, 11/6/07)

Sec. 14. Form of acceptance of nomination.

The acceptance mentioned in the preceding paragraph shall be substantially in the following form:

STATE OF COLORADO)
County of Morgan) ss. **Acceptance of**
City of Fort Morgan) **Nomination**

I, _____, having heretofore been nominated for the office of _____ in said city, do hereby accept the said nomination, and state that I have not become, and am not a candidate as a nominee or representative of, or because of any promised support from any political party, or any committee or convention representing or acting for any political party, or organization.

_____
(Signed)

Subscribed and sworn to before me this ____ day of _____, 20___.

My commission expires _____.

_____
Notary Public

(As amended 11/06/01,11/6/07)

Sec. 15. Preservation of petition.

The city clerk shall cause all nomination petitions to be preserved for a period of two years. All such petitions shall be open to public inspection under proper regulation by the clerk with whom they are filed. (As amended 11/6/01, 11/6/07)

Sec. 16. List of nominations.

The city clerk shall at least ten days before every regular municipal election and every special municipal election held for the purpose of electing officers, certify a list of the candidates nominated for office at such election, whose names are entitled to appear on the ballot, being the list of candidates nominated as required by this Charter, together with the offices to be filled at such election and the clerk shall file in his or her office such certified list of names and the offices to be filled, and the clerk shall cause the same to be published once in one newspaper of general circulation, published in the City of Fort Morgan, which publication shall be not less than four nor more than seven days prior to said election. (As amended 11/6/01, 11/6/07)

Sec. 17. Use of carriages.

This section is deleted in its entirety. (As amended 11/6/01, 11/6/07)

Sec. 18. Election regulations.

The provisions of any state law, now or hereafter in force, except as the council may otherwise by ordinance provide, relating to the calling and holding of general and special elections, the qualifications and registration of electors, the manner of voting, the duties and appointment of election officers, the canvassing

of returns, and all other particulars in respect to the management of elections except as otherwise provided in this article, so far as they may be applicable, shall govern all municipal elections. (As amended 11/6/07)

Sec. 19. Commencement of terms of office.

The regular term of office of all elective officers of the City of Fort Morgan shall commence on the second Tuesday of January next after their election. (As amended 11/6/07)

Sec. 20. Terms of office.

At the regular municipal election to be held in the City of Fort Morgan, Colorado, in the year 1937 and every second year thereafter, there shall be elected one mayor at large who shall serve a term of two (2) years or until his successor is elected and sworn. At the regular municipal election to be held in 1937 there shall be elected one councilmember for each ward in said city to serve for a term of two (2) years, or until their successors are elected and sworn in. At the regular municipal election to be held in 1937 and every second year thereafter, there shall be elected one councilmember from each ward for a term of four (4) years, or until their successors are elected and sworn in. (As amended 11/5/35, 11/6/07)

Sec. 21. Initiative and referendum, general.

An ordinance maybe initiated by petition, or a referendum on an enacted ordinance may be had by petition, or the city council on its own motion shall have the power to refer and submit any proposed ordinance or question to the electors at a regular or special election, all as hereafter provided. The referendum provisions of this Charter shall not apply to any ordinance which contains therein a declaration that said ordinance is necessary for the immediate preservation of the public peace, health or safety, nor shall the initiative or referendum provisions apply to effect an amendment to or repeal of the tax levy ordinance, or an ordinance making appropriation for the support of the City, its business and institutions, or ordinances authorizing the issuance of bonds, or ordinances ordering improvements initiated by petition and to be paid for by special assessments. (As amended 11/6/07)

Sec. 22. Initiative and referendum; petition; requirements.

(a) *Number of signatures.* An initiative petition shall be addressed to the city council and shall be signed by qualified electors in number not less than fifteen percent of the total number of electors registered to vote at the last regular municipal election. A referendum petition shall be addressed to the city council and shall be signed by registered electors in number not less than ten percent of the total number of electors registered to vote at the last regular municipal election.

(b) *Form and content; representative of signers.* Petitions shall be printed on pages eight and one-half wide by fourteen inches long with a margin of two inches at the top for binding; the sheets for signature shall have their ruled lines numbered consecutively and shall be attached to a complete copy of the ordinance proposed to be initiated or referred printed in plain block letters no smaller than the impression of eight-point type. Petitions may consist of any number of sections composed of sheets arranged as provided in this section. Each petition shall designate by name and address not less than three nor more than five persons who shall represent the signers thereof in all matters affecting the same. Prior to the time of filing the persons designated in the petition to represent the signers shall attach the sheets containing the signatures and affidavits together, which shall be bound in convenient volumes each of which contains not more than one hundred of the affidavits of circulators required by this section, together with the sheets containing the

signatures accompanying the same. These bound volumes shall be filed with the city clerk and kept by him as public records.

(c) *Signatures; affidavits; circulators.* Any initiative or referendum petition shall be signed only by registered electors by their own signatures to which shall be attached the residence addresses of such persons, including street and number, if any, and the date of signing the same. To each such petition shall be attached an affidavit of some registered elector, that he circulated the said petition, that each signature thereon was affixed in his presence, that each signature thereon is the signature of the person whose name it purports to be, that to the best of the knowledge and belief of the affiant each of the person signing said petition was at the time of signing a registered elector, that he has not paid or will not in the future pay and that he believes that no other person has so paid or will pay, directly or indirectly, any money or other thing of value to any signer for the purpose of inducing or causing such signer to affix his signature to such petition. The city clerk shall not accept for filing any petition which does not have attached thereto the affidavit required by this section. No petition for any initiated measure or for referendum shall be circulated by any person who is not a registered elector.

(d) *Time for filing.* Signatures on an initiative or referendum petition shall be obtained within twenty-one days before the date of filing the petition. Referendum petitions must be filed prior to the date the ordinance to be referred takes effect under the provisions of this Charter. The filing of such petitions shall operate to suspend the taking effect of the ordinance sought to be reconsidered until either the petitions are withdrawn or determined to be insufficient, or until certification of the election results. (As amended 11/6/07)

Sec. 23. Procedure after filing.

(a) *Certificate of clerk; amendment.* Within ten days after the petition is filed, the city clerk shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective and shall promptly send a copy of the certificate to the petitioners' committee by certified mail. A petition certified insufficient for lack of the required number of valid signatures may be amended once if the petitioners' committee files a notice of intention to amend it with the clerk within two days after receiving the copy of his certificate and files a supplementary petition upon additional forms within ten days after receiving the copy of such certificate. Such supplementary petition shall comply with the requirements of section 20 of this article and within five days after it is filed the clerk shall complete a certificate as to the sufficiency of the petition as amended and promptly send a copy of such certificate to the petitioners' committee by certified mail as in the case of an original petition. If a petition or amended petition is certified insufficient and the petitioners' committee does not elect to amend or request council review under subsection (b) of this section within the time required, the clerk shall promptly present his certificate to the council and such certificate shall constitute a final determination as to the sufficiency of the petition.

(b) *Council review.* If a petition has been certified insufficient and the petitioners' committee does not file notice of intention to amend it or if an amended petition has been certified insufficient, the committee may, within two days after receiving the copy of such certificate, file a request that it be reviewed by the council. The council shall review the certificate at its next meeting following the filing of such request and approve or disapprove it, and the council's determination shall then be a final determination as to the sufficiency of the petition. (As amended 11/6/07)

Sec. 24. Action on petitions.

(a) *Consideration by council.* When an initiative or referendum petition has been finally determined sufficient, the council shall promptly consider the adoption of the proposed initiated ordinance in the manner provided for the adoption of ordinances by the council or reconsider the referred ordinance by voting its repeal. If the council fails to adopt a proposed initiated ordinance without any change in substance within thirty days or fails to repeal the referred ordinance within thirty days after the date the petition was finally determined sufficient, it shall submit the proposed or referred ordinance to the voters of the City.

(b) *Submission to voters.* The vote of the City on a proposed or referred ordinance shall be held not less than thirty days and not later than ninety days from the date of the final council vote thereon. If no regular City election is to be held within one hundred fifty days, the council shall provide for a special election; otherwise, the vote shall be held at the same time as such regular election, except that the council may in its discretion provide for a special election at an earlier date within the prescribed period. The full text of an initiated ordinance shall be published and posted in the same manner and time as the list of candidates or nominees for municipal office are published and posted at a regular municipal election and copies of the proposed or referred ordinance shall be made available to the polls. The ballot upon which the proposed ordinance is submitted shall state briefly the nature of the ordinance and shall contain the words "FOR THE ORDINANCE" and "AGAINST THE ORDINANCE."

(c) *Withdrawal of petitions.* An initiative or referendum petition may be withdrawn at any time prior to the fifteenth day preceding the day scheduled for the election by filing with the city clerk a request for withdrawal signed by a majority of the petitioners' committee. With the consent of the majority of the council and upon the filing of such request, the petition shall have no further force or effect and all proceedings thereon shall be terminated. (As amended 11/6/07)

Sec. 25. Results of election.

(a) *Initiative.* If a majority of the registered electors voting on a proposed initiative ordinance vote in its favor, it shall be considered adopted upon certification of the election results. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict. A true copy of every ordinance, as adopted by the vote of the electors of the City shall be published once after adoption. It shall be separately numbered and recorded commencing with "Peoples' Ordinance No. 1."

(b) *Referendum.* If a majority of the registered electors voting on a referred ordinance vote "against the ordinance," it shall be considered repealed upon certification of the election results.

(c) *Amendment or repeal.* An ordinance adopted by the electorate may not be amended or repealed for a period of six months after the date of the election at which it was adopted, and an ordinance repealed by the electorate may not be reenacted for a period of six months after the date of the election at which it was repealed; provided, however, that any ordinance may be adopted or amended, or repealed at any time by appropriate referendum or initiative procedure in accordance with the foregoing provisions of this Charter, or, if submitted by the electorate by the council on its own motion. (As amended 11/6/07)

Sec. 26. Implementation.

The council may, by ordinance, pass such additional rules, regulations and provisions and proscribe penalties for the violation of the provisions thereof as may be deemed necessary to implement the initiative and referendum provisions of the Charter. (As amended 11/6/07)

ARTICLE IX

Intoxicating Liquors

Sec. 1. Definition.

The words "intoxicating liquors" as used in this article shall mean all malt, vinous or spirituous liquors having an alcoholic content of more than three and two-tenths per cent of alcohol by weight. (Adopted at special election held February 2, 1965, 11/6/07)

Sec. 2. Lawful to manufacture and sell.

It shall be lawful in the City of Fort Morgan to manufacture and sell for beverages or medicinal purposes malt, vinous or spirituous liquors, subject to the terms, conditions, limitations and restrictions contained in and imposed by the laws of the State of Colorado. (Adopted at special election held February 2, 1965, 11/6/07)

Secs. 3 to 13. Repealed.

Repealed at special election held February 2, 1965. (As amended 11/6/07)

ARTICLE X

Ethics and Conflicts of Interest

Sec. 1. No extra compensation.

(a) No elected official, or employee shall receive any service or derive any profit or advantage, directly or indirectly, from the City, by reason of his or her connection therewith, on terms more favorable than those granted to the public generally. No elected official or employee shall derive any benefit, profit or advantage, directly or indirectly, from or by reason of any purchase made or work ordered by authority of the City, unless such purchase or work be ordered by the council without requiring, in order to secure a majority of the council, the vote of the officer so benefited.

(b) No elected official or employee of the City shall accept, directly or indirectly, any thing of value from any railroad, telegraph or telephone company or from any owner of any public utility franchise in the City, upon terms more favorable than those granted to the public generally. The council may, by ordinance, establish additional or more stringent requirements concerning ethics and conflicts of interest. (As amended 11/6/07)

Sec. 2. Opinions not affect appointments.

No appointment to any position of employment under the City government shall be made or withheld by reason of any political opinions or affiliations or political service, and no appointment or election to or removal from any employment and no transfer, promotion, reduction, reward or punishment shall be in any manner affected or made by reason of such opinions, affiliations or service. (As amended 11/6/07)

ARTICLE XI

Legal and Judiciary

Sec. 1. City attorney.

(a) The council shall appoint a city attorney to serve at the pleasure of the council.

(b) The council shall establish the city attorney's compensation.

(c) The city attorney shall be, at all times while serving as city attorney, an attorney at law admitted to practice in Colorado.

(d) The city attorney shall serve as the chief legal advisor for the City, shall advise the council, the city manager, and other city personnel in matters relating to their official powers and duties, and shall perform such other duties as may be designated by the council.

(e) Recognizing that the city attorney's ethical responsibilities extend to employees subordinate to the city attorney, such employees and their selection and removal shall be subject to personnel enactments generally applicable to City employees, but supervision and control over such employees, including the selection and removal of such employees, shall be exercised by the city attorney.

(f) The council shall evaluate the city attorney's performance at least annually.

(g) The council may employ such special counsel as may be recommended by the city attorney, or the council. (As amended 11/6/07)

Sec. 2. Municipal court.

(a) There shall be a municipal court vested with original jurisdiction over matters arising under the Charter and ordinances of the City.

(b) At its first regular meeting after the first regular municipal election provided for in this Charter, and every two years thereafter, the council shall appoint a presiding municipal judge and such deputy municipal judges as the council deems necessary.

(c) The council shall establish the compensation for the presiding municipal judge and each deputy municipal judge. The compensation shall not be dependent upon the outcome of the matters to be decided by the judge.

(d) The presiding municipal judge and each deputy municipal judge shall be, at all times while serving as judge, an attorney at law admitted to practice in Colorado.

(e) The removal of any judge during the term of office shall only be for cause as specified in the statutes applicable to the removal of municipal judges, and for any other conduct which would constitute a violation of the Colorado code of judicial conduct, as from time to time amended, if committed by a judge subject to such code. (As amended 11/6/07)

ARTICLE XII

General Provisions

Sec. 1. Amendment.

This Charter may be amended in manner as provided in Article XX of the Constitution of the State of Colorado. (As amended 11/6/07)

Sec. 2. Present ordinances in force.

All ordinances of Fort Morgan in force at the time this Charter goes into effect shall continue in force except insofar as they conflict with the provisions of this Charter or shall be amended or repealed by ordinances enacted under the authority of this Charter. (As amended 11/6/07)

Sec. 4. Construction of words.

Whenever such construction is applicable, words used in this Charter importing the singular or plural number may be construed so that one number includes both; words importing masculine gender may be construed to apply to include the feminine gender as well; and the word person may extend to and include firm and corporation; provided that these rules of construction shall not apply to any part of this Charter containing express provisions excluding such construction or where the subject matter or context is repugnant thereto. (As amended 11/6/07)

Sec. 5. Penalty for violation.

Any person who shall violate any of the provisions of this Charter for the violation of which no punishment has been provided herein, shall be punished, upon conviction, by a fine not exceeding one hundred dollars ($100.00), or by imprisonment in the City jail not exceeding three months, or by both such fine and imprisonment. (As amended 11/6/07)

Sec. 6. Continuing bonds, etc.

All official bonds, recognizances, obligations, contracts and all other instruments entered into or executed by or to the City before this Charter takes effect, and all taxes, fines, penalties, forfeitures incurred or imposed, due or owing the City, shall be enforced or collected and all writs, proscriptions, actions and causes of action, except as herein otherwise provided, shall continue without abatement and remain unaffected by this Charter; and all legal acts done by or in favor of the City shall be and remain as valid as though this Charter had not been adopted. (As amended 11/6/07)

Sec. 7. Reservation of power.

The power to supersede any law of this state, now or hereafter in force, insofar as it applies to local or municipal affairs, shall be reserved to the city, acting by ordinance. (As amended 11/6/07)