

TOWN OF MINTURN, COLORADO

Ordinance No. 2

**AN ORDINANCE OF THE TOWN OF MINTURN,
COLORADO, AMENDING TITLE 18 OF THE
MINTURN MUNICIPAL CODE, BY ADOPTING FIRE
PROTECTION AND EMERGENCY MEDICAL
SERVICES IMPACT FEES FOR LAND
DEVELOPMENT ACTIVITIES GENERATING THE
NEED FOR ADDITIONAL FIRE PROTECTION OR
EMERGENCY MEDICAL SERVICES.**

WHEREAS, the Town of Minturn, Colorado, ("Town") is a home rule municipality duly organized and existing under Article XX of the Colorado Constitution and the Town of Minturn Home Rule Charter of April 6, 1982 ("Charter"); and

WHEREAS, the Town, by virtue of its Home Rule status, may adopt such ordinances relative to local municipal matters as are necessary to effectuate the purposes and intent of the powers granted to municipalities; and

WHEREAS, pursuant to C.R.S. § 31-15-601(1)(l), the Town Council has the power to erect engine houses and provide fire engines and the necessary fire apparatus for the extinguishing of fires and to provide for the use and management of the same by volunteer fire companies or otherwise; and

WHEREAS, the Eagle River Fire Protection District ("Eagle River Fire" or "District") is a Colorado special district existing and operating under Title 32, Article 1, C.R.S., which includes the Town within its jurisdictional boundaries for the provision of fire protection and emergency medical services; and

WHEREAS, the Town Council has determined that the District's capital infrastructure is designed to be mutually reinforcing for safety in that fire stations and firefighting equipment provide back-up coverage throughout the District's service area regardless of the physical location of a call for service within that area; and

WHEREAS, the Town is experiencing significant annexation activity with the potential for increased population density and increased demand for fire protection and emergency medical services as a result of land development within the Town; and

WHEREAS, to the extent that new development places demands upon the capital facilities and infrastructure for fire protection and emergency medical services, those

demands should be satisfied by the shifting the responsibility for financing such capital facilities and infrastructure from the public to the development creating the demands; and

WHEREAS, the demand for fire protection and emergency medical services and facilities is immediate upon development of residential and commercial units even though the District's funding from tax revenues often accrues after the demand for such services exists; and

WHEREAS, the Town Council finds and determines that one of the primary roles of building, subdivision and development review is to ensure availability of essential fire protection and emergency medical services and facilities, and that in order to promote and protect the convenience, order, prosperity and welfare of present and future inhabitants of the Town, a rational system is necessary to identify growth-related costs incurred by Eagle River Fire in providing new and expanded fire protection and emergency medical services made necessary by expanded population and economic activity levels generated by new development, and a fee structure therefor directly related to such costs and method for collection of such fees, should be adopted; and

WHEREAS, the Town Council believes that fire protection and emergency medical services impact fees should reflect actual growth related capital costs; and

WHEREAS, new development should not be charged for upgrading existing fire protection services and existing emergency medical services to serve primarily existing development, and funds collected from new development for fire protection services and emergency medical services should be primarily used to benefit such new development; and

WHEREAS, the adoption of a requirement that developers of new residential, commercial and industrial subdivisions as well as new commercial, industrial and multi-family developments pay fire protection impact fees and emergency medical service impact fees as established herein will ensure that development bears a roughly proportional share of the cost of providing new and enhanced fire protection services and emergency medical services necessary to accommodate such new development; and

WHEREAS, pursuant to Section 31-23-207, C.R.S., the purpose of a master plan, and any regulations adopted thereunder, is to guide and accomplish a coordinated, adjusted, and harmonious development of the municipality and its environs which will, in accordance with present and future needs, promote health, safety, morals, order, convenience, prosperity and general welfare, as well as efficiency and economy in the process of development, including among other things the promotion of helpful and convenient distribution of population, wise and efficient expenditure of public funds, and the adequate provision of public facilities; and

TOWN OF MINTURN, COLORADO

Ordinance No. 2 –Series 2009

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WHEREAS, the Town, by virtue of its Home Rule status, may adopt such ordinances relative to local municipal matters as are necessary to effectuate the purposes and intent of the powers granted to municipalities; and

WHEREAS, pursuant to C.R.S. § 31-15-601(1)(l), the Town Council has the power to erect engine houses and provide fire engines and the necessary fire apparatus for the extinguishing of fires and to provide for the use and management of the same by volunteer fire companies or otherwise; and

WHEREAS, the Eagle River Fire Protection District (“Eagle River Fire” or “District”) is a Colorado special district existing and operating under Title 32, Article 1, C.R.S., which includes the Town within its jurisdictional boundaries for the provision of fire protection and emergency medical services; and

WHEREAS, the Town Council has determined that the District’s capital infrastructure is designed to be mutually reinforcing for safety in that fire stations and firefighting equipment provide back-up coverage throughout the District’s service area regardless of the physical location of a call for service within that area; and

WHEREAS, the Town is experiencing significant annexation activity with the potential for increased population density and increased demand for fire protection and emergency medical services as a result of land development within the Town; and

WHEREAS, to the extent that new development places demands upon the capital facilities and infrastructure for fire protection and emergency medical services, those

WHEREAS, pursuant to Section 31-23-303, C.R.S., a municipality may enact regulations made in accordance with a comprehensive plan designed to promote the health and general welfare, to avoid undue concentration of population, and facilitate the adequate provision of transportation, schools, and other public facilities; and

WHEREAS, the Local Government Land Use Control Enabling Act (the "Act"), Sections 29-20-101, *et seq.*, C.R.S., Article 23 of Title 31, and other applicable law grant broad authority to the Town to plan for and regulate the development of land on the basis of the impacts thereof on the community and surrounding areas; and

WHEREAS, Section 29-20-104.5 authorizes counties and municipalities to impose an impact fee as a condition of issuance of a development permit to offset the costs of providing any capital facility directly related to any service the county or municipality is authorized to provide, that has a useful life of at least five years, and is required by charter or general policy of the county or municipality; and

WHEREAS, Section 29-1-801, *et seq.*, C.R.S., concerning land development charges, recognize that local governments may collect charges imposed on land development as a condition of the approval of development, if such charges relate to an expenditure for an improvement, facility, or piece of equipment necessitated by land development that is directly related to a local governmental service; and

WHEREAS, the Local Government Land Use Control Enabling Act of 1974 authorizes and encourages local governments to cooperate or contract with other units of government for the purpose of regulating the development of land and the impacts thereof; and

WHEREAS, the Town Council finds and determines that as a part of the process for preliminary or final approval of an application for rezoning, planned unit development, conditional or special use permit, subdivision, development on site plan, or similar application for new construction, it is necessary and proper to examine whether adequate fire protection facilities and equipment and adequate emergency medical services facilities and equipment will be available to residents of the Town, if such development is approved; and

WHEREAS, Eagle River Fire has ordered BBC Research & Consulting and Stan Bernstein and Associates, Inc. to conduct and BBC has completed a Impact Fee Study ("BBC/Bernstein Impact Fee Study") analyzing the extent of the impact of development on fire protection services and emergency medical services throughout the Eagle River Fire Protection District, including the Town of Minturn, and the fees necessary to mitigate the impact thereof; and

WHEREAS, prior to final adoption, a public hearing was held before the Town Council of the Town of Minturn to consider the adoption of the provisions set forth herein, following public notice as required by law; and

WHEREAS, based upon the testimony at the public hearing, in the reasonable judgment of the Town Council, it finds that (1) new development upon which the impact fees for fire protection and emergency medical services are imposed creates a need for the capital facilities being funded by such fees; (2) new development will benefit from the construction of the facilities and improvements to be funded by these impact fees; and (3) the costs of the facilities and improvements funded by these impact fees are directly related to that required by new development; and

WHEREAS, the Town Council has determined that the imposition and application of an impact fee for fire protection and emergency medical services will not directly or indirectly have the effect of materially and adversely altering, impairing, preventing or diminishing, imposing a moratorium on development, or delay or otherwise adversely affect any of the rights of any property owner within the Town; and

WHEREAS, The Town Council finds that taking legislative action regarding fire protection and emergency medical services impact fees as set forth in this Ordinance is necessary to protect the health, safety and welfare of the present and future inhabitants of the Town and is consistent with the Town's goals, policies and plans, including the Town's Comprehensive Plan.

NOW, THEREFORE, THE TOWN OF MINTURN, COLORADO, ORDAINS:

Section 1. Adoption and addition of Article 12 to Title 18, Building Regulations, of the Town of Minturn, Colorado. Title 18 of the *Minturn Municipal Code* is amended by the addition thereto of a new Article 12, which is to read in full as follows:

ARTICLE 12. Impact Fees

Sec. 18-12-10	Purpose
Sec. 18-12-20	Use of Fees
Sec. 18-12-30	Payment of Fees
Sec. 18-12-40	Timing of Payment
Sec. 18-12-50	Alternative Fee Calculation
Sec. 18-12-60	Credit for Improvements
Sec. 18-12-70	Refund of Paid Fees
Sec. 18-12-80	Lien for Unpaid Fees
Sec. 18-12-90	Waiver
Sec. 18-12-100	Impact Fee Schedule
Sec. 18-12-110	Annual Adjustment

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Sec. 18-12-10 Purpose

A. The Town requires that areas chosen for development shall be capable of being provided within a reasonable period of time with an adequate level of fire protection and emergency medical services, including fire protection facilities and emergency medical services facilities.

B. This Section is intended to:

(1) Provide a rational system for identifying and mitigating costs associated with growth and development and the expansion of fire protection and emergency medical services and facilities made necessary by land development activities, a growing population and economic activity levels.

(2) Regulate the use and development of land to ensure that new development pays no more nor less than its fair share of the cost of capital expenditures necessary to provide adequate fire protection and emergency medical services to developments within the Town.

(3) Assure that the system of impact fees implemented in this Article is linked to a capital facilities program designed to provide the facilities and equipment for which the impact fees are imposed.

(4) Ensure that the impact fees established by this Article are not used to offset existing deficiencies in capital facilities necessary to serve pre-existing development.

(5) Ensure that new development that adequately mitigates or reduces the impact it creates on fire protection and emergency medical services through site-specific dedications or improvements receives offsetting credit against its impact fee obligation.

(6) Assure that the impact fees established and implemented by this Article are imposed on a uniform and non-discriminatory basis throughout the Town to any lot, tract or parcel or expansion for which no building permit has yet been issued.

Sec. 18-12-20 Use of Fees.

A. All impact fees collected pursuant to this Article shall, after retention of a reasonable administrative fee not to exceed six percent (6%) by the Town, within sixty (60) days following payment to the Town, be transferred to the Eagle River Fire Protection District (the "District").

B. After payment to the District, all fees collected pursuant to this Article shall be accounted for in the manner required by 29-1-801, *et seq.*, C.R.S., and other applicable law. Fees shall be deposited in an interest-bearing account which clearly identifies the lot, development activity and development approval for which the impact fee was collected and the associated category, account or fund of capital facility, by either aggregate or individual land development. Each such category, account, or fund shall be accounted for separately. Any interest or any income earned on moneys deposited in said interest-bearing account shall be credited to the account.

C. Revenues from impact fees shall be used exclusively for capital facilities, as defined by Section 29-20-104.5, C.R.S., for fire protection and emergency medical services. The costs of such capital facilities shall include any financing costs associated with such improvements.

D. No fees shall be used for periodic or routine maintenance, personnel costs or operational expenses.

E. In the event that bonds or similar financing instruments are used for the advance provision of any capital facilities for which impact fees are required, impact fee revenues may be used to pay debt service on such bonds or similar financing instruments.

F. The Town may enter into an intergovernmental agreement with the District to jointly fund expenditures and provide capital facilities needed to serve the development for which the impact fees were imposed. To the extent such intergovernmental agreement utilizes revenues from the impact fees imposed by this Article, it shall include such terms requiring compliance with this Chapter and Colorado law regarding impact fees, including Part 8, Article 1, Title 29 and Sections 29-20-103 and 29-20-104.5, C.R.S., and auditing of accounts and compliance as deemed appropriate by the Town Council.

G. In the event this Ordinance is repealed or any such intergovernmental agreement is terminated, such capital facilities during their useful life shall continue to be utilized to provide services to the development for which the impact fees were imposed.

Sec. 18-12-30 Payment of Fees.

A. As used in this Article, the term "development approval" shall constitute a "development permit" as that term is used in Sections 29-20-103 and 29-20-104.5, C.R.S.

B. A developer requesting a development approval shall be subject to payment of the impact fees established by this Article as a condition of development approval. The obligation to pay such impact fees shall run with the land. The impact fee imposed shall be paid at the time of issuance of each Building Permit.

C. Where previous development activity has occurred prior to the imposition of the impact fees established by this Article, or for which impact fees were previously paid, impact fees for subsequent development activity on the same lot shall be based on the net increase, if any, in the impact fee based on the demand for capital facilities for fire protection and emergency medical services created by the new development activity as compared to the previous development activity.

D. For applications for an amendment or change to a development approval previously obtained, but for which the development activity was not completed, the amount of the impact fee for the subsequent development approval shall be based on the net increase, if any, in the demand for capital facilities for fire protection and emergency medical services created by the new development approval as compared to the impact fee paid for the previous development approval.

Sec. 18-12-40 Timing of Payment.

A. Where development activities may result in multiple levels of development approvals, such as annexation, zoning, subdivision and building permit approval, impact fees shall be imposed upon the earliest development activity to occur for which the amount of impact fees can be reasonably calculated. The impact fee imposed shall be paid at the time of issuance of each Building Permit.

B. If for any reason, the amount of the impact fee cannot be calculated at the time of the initial level of development approval, the Town may defer computation and payment of all or a part of the impact fee until a subsequent level of development approval, or the Town may require that an estimated fee be paid. If an estimated fee is paid, any underpayment shall be recovered at the time of the next development approval at which the impact fee can be reasonably calculated. In the event an over-payment is made, such over-payment shall be refunded, without interest, within thirty (30) days following the date the impact fee can be completely computed.

Sec. 18-12-50 Alternative Fee Calculation.

In lieu of payment of impact fee amounts set forth in this Article, the developer may prepare and submit to the Town Administrator a site-specific fiscal impact and fee calculation study for the development approval that is requested. The site-specific fiscal impact and fee calculation study shall follow the prescribed methodologies and formats

established by the impact fee study submitted by the District. The fiscal impact study submitted shall show the basis upon which the site-specific fee calculation was made. The site-specific fiscal impact and fee calculation study shall be prepared and presented by professionals qualified in their respective fields. The Town Administrator shall consider the documentation submitted by the developer, but is not required to accept such documentation reasonably deemed to be inaccurate or not reliable, and may, in the alternative, require the developer to submit additional or different documentation for consideration. If an acceptable site-specific fiscal impact and fee calculation study is not presented, the developer shall pay the impact fee set forth in this Chapter. Determinations made by the Town Administrator pursuant to this paragraph may be appealed to the Town Council by filing a written request with the Town Administrator within ten (10) days of the Town Administrator's determination. Following the submittal of such request, the Town Council shall hold a public hearing to determine the amount of the impact fee. The decision of the Town Council shall be a final quasi-judicial decision for purposes of Rule 106(a)(4) and (b), C.R.C.P.

Sec. 18-12-60 Impact Fee Credit for Improvements.

Any developer who has previously made a site specific dedication or improvement to meet the same need for capital facilities for which an impact fee is imposed, may apply to the Town Council for a partial or total impact fee credit. The developer shall submit written evidence of the previously made site specific dedication or improvement, the fair market value of the site specific dedication or improvement at the time the dedication or improvement was made and that such was made for capital facilities for which an impact fee is imposed. Upon approval by the Town Council, the developer shall receive a credit against the amounts due or to become due pursuant to this Article. Such credit may also be made as a refund or refunds to the developer from impact fees imposed and paid to the Town equal to the fair market value of the site-specific dedication or improvement provided by the developer.

Sec. 18-12-70 Refund of Paid Fees.

A. If a Building Permit expires without commencement of construction or development, the applicant shall be entitled to a refund, without interest, of the impact fee paid as a condition for issuance, except when the fee has been expended or encumbered by the District in advance of and in anticipation of development. The applicant must submit an application for such refund to the Town Administrator within thirty (30) days of the expiration of the Building Permit. Neither the Town or the District shall have any obligation to refund any fee that has been expended or encumbered by the District in advance of and in anticipation of the development.

B. Any impact fee not expended or encumbered by the District by the end of the calendar quarter immediately following ten (10) years from the date the fee

was paid shall, upon application of the then current landowner to the Town Administrator, be returned to the landowner with interest earned on the fee, within one hundred eighty (180) days of the expiration of such ten (10) year period. Provided, however, that the Town Council, in its discretion, for good cause shown, may extend such period of time for an additional period as the Town Council deems reasonable and necessary.

Sec. 18-12-80 Lien for Unpaid Fees.

All impact fees shall constitute a prior, perpetual lien upon each lot or parcel subject to the development approval for which impact fees are imposed from the due date thereof, until paid. If such fee is not paid when due, in addition to any other means provided by law, the Town Clerk shall certify such delinquent fee to the Treasurer of Eagle County, and the fee shall be collected in the same manner as though it were part of the taxes. The Town may withhold or revoke any development approval, including certificates of occupancy, for which payment of impact fees is delinquent.

Sec. 18-12-90 Waiver.

The Town Council may, by resolution, grant a waiver of the applicable impact fees for fire protection and emergency medical services on a development or portion of a development for the purpose of constructing or providing low or moderately priced housing units for sale or lease to low or moderate income persons; provided that the parties to the development shall agree to appropriately restrict the future use of the applicable units by recorded agreement, deed restriction, covenants, declarations, or similar instruments as may be required by the Town Administrator.

Sec. 18-12-100 Impact Fee Schedule.

The following impact fees for fire protection and emergency medical services are established and imposed. The impact fee amounts and rates are deemed to fairly, equitably and proportionately mitigate the impacts on capital facilities for fire protection and emergency medical services created by development within the Town. Any impact fee for fire protection and emergency medical services hereby imposed shall be imposed and applied on a uniform and non-discriminatory basis throughout the Town to any lot, tract or parcel or expansion for which no building permit has yet been issued.

For Residential, Commercial (including lodging) or Industrial Development, impact fees imposed for fire protection and emergency medical services shall be based on size of the water meter required for development:

¾ inch	Impact Fee:	\$ 1,671
1 inch	Impact Fee:	\$ 2,841
1.5 inch	Impact Fee:	\$ 5,515

2 inch	Impact Fee:	\$ 8,857
3 inch	Impact Fee:	\$18,382
4 inch	Impact Fee:	\$28,409
6 inch	Impact Fee:	\$55,147

Sec. 18-12-110 Annual Adjustment.

The impact fees imposed hereby shall be reviewed and may be administratively adjusted without further Town Council action annually for inflation, beginning January 15, 2009 and annually on each anniversary date thereafter. Any such adjustment shall be based upon the percentage change in the United States Bureau of Labor Statistics Consumer Price Index for Denver-Boulder, all items, all urban consumers, or its successor index, or an equivalent index applicable to Eagle County.

Section 2. BBC/Bernstein Impact Fee Study Approval. The Town Council hereby approves and adopts the BBC/Bernstein Impact Fee Study, a copy of which is attached hereto as Exhibit A, as the basis for the impact fees for fire protection and emergency medical services established by this Ordinance.

Section 3. Public Inspection. The full text of this Ordinance and the *Minturn Municipal Code* being amended hereby, are available for public inspection at the office of the Town Clerk.

Section 4. Severability. If any portion of this Ordinance is found to be void or ineffective, it shall be deemed severed from this Ordinance and the remaining provisions shall remain valid and in full force and effect.

Section 5. Public Hearing. A public hearing on this Ordinance shall be held on the 4 day of March, 2008, at 7:00 p.m. at the Minturn Town Hall, 302 Pine Street, Minturn, Colorado

Section 6. Effective date. This Ordinance shall become effective and be in force seven (7) days after publication following final passage at second reading.

INTRODUCED, READ, AND ORDERED PUBLISHED BY THE TOWN COUNCIL OF THE TOWN OF MINTURN, COLORADO, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS REGULAR MEETING HELD AT THE TOWN OF MINTURN, ON THE 18 DAY OF February, 2008.

TOWN OF MINTURN, COLORADO

By: Hawkeye Fleckerty
Mayor

Attest:

[Signature]
Town Clerk



FINALLY ADOPTED, PASSED, APPROVED, AND ORDERED PUBLISHED BY THE TOWN COUNCIL OF THE TOWN OF MINTURN, COLORADO, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS REGULAR MEETING HELD AT THE TOWN OF MINTURN, ON THE 4th DAY OF March, 2008.

TOWN OF MINTURN, COLORADO

By: Hawkeye Fleckerty
Mayor

Attest:

[Signature]
Town Clerk



APPROVED AS TO FORM:

[Signature]
Allen C. Christensen, Town Attorney

Exhibit A
Eagle River Fire Protection District
Impact Fee Study – Phase II, Final Report
July 24, 2007
BBC Research & Consulting
Stan Bernstein and Associates, Inc.
(“BBC/Bernstein Impact Fee Study”)