



2011

Minturn Council Meeting

Wednesday May 4, 2011

Work Session: **5:00pm**
(Town Center)

Regular Session: **7:00pm**
(Town Center)

TOP FIVE COUNCIL PRIORITIES:

- Entry Signs
- Sidewalk Installations
- Street repairs with drainage (by priority)
- 100% completion of Telemetry
- Implement Streetscape Plan



Agenda

MEETING OF THE MINTURN TOWN COUNCIL
Minturn Town Center, 302 Pine Street
Minturn, CO 81645 • (970) 827-5645

Wednesday May 4, 2011

Work Session – 6:00pm
Regular Session – 7:00pm

MAYOR – Gordon “Hawkeye” Flaherty
MAYOR PRO TEM – George Brodin

TOWN MANAGER – Jim White
TOWN CLERK/TREAS – Jay Brunvand

COUNCIL MEMBERS:

Shelley Bellm
Earle Bidez
Jerry Bumgarner
Aggie Martinez
John Rosenfeld

When addressing the Council, please state your name and your address for the record prior to providing your comments. Please address the Council as a whole through the Mayor. All supporting documents are available for public review in the Town Offices – located at 302 Pine Street, Minturn CO 81645 – during regular business hours between 8:00 a.m. and 3:00 p.m., Monday through Friday, excluding holidays.

Work Session – 5:00pm

- Discussion re: Ordinance ___ - 2011 (First Reading) an ordinance regarding the sale of Medicinal Marijuana – White/Metteer (45min) pg 1
- Discussion – Council Meeting Start time – White (15min)
- Discussion – USFS Bone Yard update – White (15min) pg 22
- Discussion/Action – Holy Cross Franchise agreement – White (30min) pg 23

Regular Session – 7:00pm

1. Call to Order

- a. Roll Call
- b. Pledge of Allegiance

2. **Approval of Agenda**
 - a. Items to be Pulled or Added
3. **Approval of Minutes and Action Report**
 - April 6, 2011 pg 40
 - April 20, 2011 pg 49
 - Action Item Report pg 58
4. **Public comments on items, which are NOT on the agenda (5 minute time limit per person)**
 - Vail Ski and Snowboard Club – Aldo Radamus
5. **Special Presentations/Citizen Recognition**
 - Marin Lantzy recognition – White
6. **Planning Commission Update**
7. **Town Manager’s Report pg 59**
8. **Town Council Comments**

PUBLIC HEARINGS AND DISCUSSION/ACTION ITEMS

9. **Discussion/Action – Ordinance 1 – 2011 (Second Reading) an Ordinance annexing to the Town of Minturn, County of Eagle, State of Colorado, Eagle County School District Maloit Park Parcel No. 1 – Cerimele (15min) pg 61**
10. **Discussion/Action – Ordinance 2 – 2011 (Second Reading) an Ordinance annexing to the Town of Minturn, County of Eagle, State of Colorado, Eagle County School District Maloit Park Parcel No. 2 – Cerimele (15min) pg 65**
11. **Discussion/Action – Ordinance 3 - 2011 (Second Reading) an Ordinance authorizing the Mayor of the Town of Minturn, Colorado to sign an annexation agreement with the Eagle County School District – Cerimele (15min) pg 69**
12. **Discussion/Action – Ordinance 4 – 2011 (Second Reading) An Ordinance establishing zoning on parcels of land known as the Eagle County School District Maloit Park Property annexed to the Town of Minturn, Colorado and amending the official zone district map of the Town of Minturn, CO.– Cerimele (15min) pg 86**
13. **Discussion/Action – Ordinance 6 – 2011 (Second Reading) an Ordinance of the Town of Minturn amending Chapter 7 of the Municipal Code by repealing and re-enacting Sections 7-4-90 and 7-8-80 as they pertain to open burning within the Town – Cerimele (15min) pg 102**

14. **Discussion/Action** – Ordinance 8 – 2011 (First Reading) an Ordinance of the Town of Minturn amending Chapter 7 of the Municipal Code by repealing and re-enacting sections 18-5-10 and 18-5-20 to adopt by reference the 2009 International Fire Code with Amendments - Cerimele (15min) pg 105
15. **Discussion/Action** – Ordinance 7 – 2011 (First Reading) an Ordinance adopting standards for the issuance of Optional Premises Liquor Licenses and for Optional Premises for a Hotel and Restaurant pursuant to the provision of Section 12-47-310 C.R.S. as amended – Martinez (30min) pg 111

EXECUTIVE SESSION

16. **Executive Session** - Pursuant to CRS 24-6-402(4)(e) for the purpose of determining positions relative to matters that may be subject to negotiations and instruct the negotiators for the purpose of discussing a fire district request and for the purpose of discussing the Town Prosecuting attorneys first quarterly review and Pursuant to CRS 24-6-402(4)(b) for the purposes to consult with the Town's Attorney(s) and receive direction regarding the negotiations of the Battle Mountain Resort property annexation and water right issues – White/Christensen
17. **Executive Session** – Public direction to Staff as a result of the Executive Session (5min)

FUTURE AGENDA ITEMS

18. Next Meeting – May 4, 2011

- Discussion/Action – Ordinance ____ - 2011 (First Reading) an Ordinance allowing the sale of Medical Marijuana – May 18

19. Future Meeting

- Discussion/Action – Ordinance 5 – 2011 (First Reading) an Ordinance adopting the 2009 IBC as amended – Cerimele/Lanci – June 1
- Discussion/Action – Ordinance ____ - 2011 (Second Reading) an Ordinance allowing the sale of Medical Marijuana – June 1
- Executive Session - Pursuant to CRS 24-6-402(4)(b) to consult with the Town's Attorney(s) and receive legal advice regarding Environmental Protection Agency (EPA) and Colorado Department of Public Health comments on the Battle Mountain Resort project Remediation Feasibility Study Amendment– White/Christensen (60min)

20. Set Future Meeting Dates

- a) Council Meetings:
- May 18, 2011
 - June 1, 2011
 - June 15, 2011

b) Planning & Zoning Commission Meetings:

- May 11, 2011
- May 26, 2011
- June 8, 2011

c) Other Dates:

- May 14, 2011 Town Clean Up Day
- June 18, 2011 1st Day of Minturn Market
- June 22-24 CML Annual Conference/Vail

21. Adjournment



TOWN OF MINTURN
P.O. Box 309 (302 Pine Street)
Minturn, Colorado 81645-0309
970-827-5645 Fax: 970-827-5545
treasurer@minturn.org

**FROM THE DESK OF
JAY BRUNVAND, CLERK/TREASURER/FINANCE**

MEMORANDUM

TO: Jim White, Town Manager
FROM: Jay Brunvand, Treasurer/Clerk
CC:
DATE: Tuesday June 1, 2010
RE: Material for Medicinal Marijuana Discussion

Timeline:

| <u>Date:</u> | <u>Action Taken:</u> |
|---------------------|--|
| 3/17/10 | Medicinal Marijuana business license application submitted to the Town of Minturn. Application denied at Staff level. Medicinal Marijuana business license Administrative Denial is appealed to Council. Council upheld the Administrative Denial citing M.M.C 6-1-50(d) |
| 6/16/10 | Worksession update and discussion on the imposed State moratorium. Discussion to vote at Council level or hold a citizen election. No definitive direction was taken by Council. |
| 7/7/10 | Unanimous vote passing Ord 9-2010 (First Reading) to Notify Eagle County Clerk of Minturn's intent to join the coordinated County election on November 2, 2010. Discussion by Council weighing the options of drafting an ordinance banning medicinal or to include a ballot question for citizen direction. No definitive direction was taken by Council. |
| 7/21/10 | Council discussion for potential medicinal marijuana ballot language in work session. 2 nd and final reading of Ord 9-2010 and resolution to set Use Tax ballot language passes. Discussion by Council weighing the options of drafting an ordinance banning medicinal or to include a ballot question for citizen direction. No definitive direction was taken by Council. |
| 8/4/10 | Worksession to discuss ballot language. Direction from Council to proceed with the ballot language to prohibit. |
| 8/18/10 | Resolution 14-2010 setting ballot language to prohibit medicinal marijuana. |

11/2/10 Election Day – Medicinal ban fails 132 for the ban and 208 against the ban.

Ballot Question:

The following ballot question was approved by a 6-1 vote of the Council. The full text of the approved ballot question was:

A RESOLUTION SETTING BALLOT LANGUAGE FOR A VOTER QUESTION OF WHETHER THE OPERATION AND LICENSING OF MEDICAL MARIJUANA CENTERS, OPTIONAL PREMISES CULTIVATION OPERATIONS, AND MEDICAL MARIJUANA-INFUSED PRODUCTS MANUFACTURERS SHALL BE PROHIBITED IN THE TOWN OF MINTURN ON THE NOVEMBER 2, 2010 EAGLE COUNTY COORDINATED ELECTION AND PROVIDING OTHER DETAILS RELATING THERETO.

The Election:

The election was held November 2, 2010. Although this was not a Presidential election it was anticipated to be a large turnout due to the national issues centering on the state and national economy. Two ballot questions were conducted by the Town:

1. Requesting approval of a use tax
2. Medicinal marijuana prohibition.

The Town has approximately 785 registered voters. For the April 2010 Council election Minturn had 250 ballots cast; this is about average for Minturn's municipal elections. During the November 2010 election the Town had a combined 340 ballots cast; almost a 40% increase in voters from the April election. Further, a full 40 voters would have had to have misunderstood the ballot question to swing the vote results the other direction on the medicinal marijuana question.

ORDINANCE NO. _____

Series 2011

AN ORDINANCE AMENDING CHAPTER 6 OF THE MINTURN TOWN CODE
BY ADOPTING PROVISIONS FOR THE REGULATION OF MEDICAL MARIJUANA CENTERS

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MINTURN, COLORADO:

Section 1. Regulations Adopted. Title 6 of the Minturn Town Code is amended by the addition of a new article 3, to be entitled "Medical Marijuana Dispensaries", which shall read in its entirety as follows:

ARTICLE 3

MEDICAL MARIJUANA CENTERS

SECTION:

- 6-3-1: SHORT TITLE
- 6-3-2: FINDINGS
- 6-3-3: PURPOSE
- 6-3-4: AUTHORITY
- 6-3-5: DEFINITIONS
- 6-3-6: PERMIT REQUIRED
- 6-3-7: APPLICATION FOR PERMIT
- 6-3-8: APPLICATION FEE
- 6-3-9: INVESTIGATION OF APPLICATION
- 6-3-10: STANDARDS FOR ISSUANCE OF PERMIT
- 6-3-11: DENIAL OF PERMIT
- 6-3-12: AUTHORITY TO IMPOSE CONDITIONS ON PERMIT
- 6-3-13: DECISION BY TOWN CLERK
- 6-3-14: NOTICE OF DECISION
- 6-3-15: APPEAL OF DENIAL OR CONDITIONAL APPROVAL OF PERMIT
- 6-3-16: CONTENTS OF PERMIT
- 6-3-17: INSPECTION OF PREMISES
- 6-3-18: PERMIT NOT TRANSFERABLE
- 6-3-19: NOTICE OF ISSUANCE OF PERMIT
- 6-3-20: DURATION OF PERMIT; RENEWAL
- 6-3-21: DUTIES OF PERMITTEE
- 6-3-22: POSTING OF PERMIT
- 6-3-23: SUSPENSION OR REVOCATION OF PERMIT
- 6-3-24: LIMITATION ON SALE OF MARIJUANA
- 6-3-25: CENTER LOCATION
- 6-3-26: HOURS OF OPERATION
- 6-3-27: SIGNAGE
- 6-3-28: REQUIRED WARNINGS TO BE POSTED
- 6-3-29: ON-SITE CONSUMPTION
- 6-3-30: PARAPHERNALIA
- 6-3-31: ON-SITE CULTIVATION, GROWING AND PROCESSING
- 6-3-32: ALCOHOL

- 6-3-33: DISPLAY OF MEDICAL MARIJUANA
- 6-3-34: SECURITY REQUIREMENTS
- 6-3-35: BUSINESS LICENSE REQUIRED
- 6-3-36: TAXES
- 6-3-37: REQUIRED RECORD
- 6-3-38: PENALTIES; INJUNCTIVE RELIEF
- 6-3-39: NO WAIVER OF GOVERNMENTAL IMMUNITY
- 6-3-40: NO TOWN LIABILITY
- 6-3-41: INDEMNIFICATION OF TOWN
- 6-3-42: OTHER LAWS REMAIN APPLICABLE
- 6-3-43: RULES AND REGULATIONS

6-3-1: SHORT TITLE: This chapter shall be known and may be cited as the “Town of Minturn Medical Marijuana Center Ordinance.”

6-3-2: FINDINGS: The Town Council adopts this article based upon the following findings of fact:

- A. Because federal and state law prohibit the possession and sale of marijuana generally, marijuana sales have never been specifically addressed by Town ordinance.
- B. On November 7, 2000 the voters of the State of Colorado approved Amendment 20. Amendment 20 added §14 of article 18 to the Colorado Constitution, and created a limited exception from criminal liability under Colorado law (as opposed to federal law) for seriously ill persons who are in need of marijuana for specified medical purposes and who obtain and use medical marijuana under the limited, specified circumstances described in Amendment 20.
- C. The intent of Amendment 20 was to enable certain specified persons who comply with the registration provisions of the law to legally obtain, possess, cultivate, grow, use, and distribute marijuana without fear of criminal prosecution under Colorado (as opposed to federal) law.
- D. Despite the adoption of Amendment 20, marijuana is still a controlled substance under Colorado and federal law. As a result, making it legal for a person to obtain, possess, cultivate, grow, use, transport and distribute marijuana, even for medical use as contemplated by Amendment 20, has the potential for abuse that should be closely monitored and regulated by local authorities to the extent possible.
- E. If not closely monitored and regulated the presence of marijuana, even for the purposes legally permitted by Amendment 20, may cause an increase in illegal activities within the Town affecting the health, safety, order, comfort, convenience and general welfare of the residents of the Town, as well as the health, safety and welfare of the operators of medical marijuana dispensaries and their customers.
- F. If medical marijuana dispensaries operating pursuant Amendment 20 were allowed to be established and to operate without appropriate local regulation of their location, medical marijuana dispensaries might be established in areas that

would conflict with the Town's comprehensive land use plan; be inconsistent with surrounding uses; or otherwise be detrimental to the public health, safety and welfare.

- G. Nothing in this article allows a person to:
 - 1. engage in conduct that endangers others or causes a public nuisance;
 - 2. possess, cultivate, grow, use, or distribute marijuana for any purpose other than for use as medical marijuana as authorized and limited by Amendment 20, and the implementing state statutes and administrative regulations;
 - 3. possess, cultivate, grow, use, or distribute marijuana that is otherwise illegal under applicable law; or
 - 4. engage in any activity related to the possession, cultivation, growing, use, or distribution of marijuana that is otherwise not permitted under the laws of the Town or the State of Colorado.
- H. This article is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort, and convenience of the Town and the inhabitants thereof.
- I. No person, business, activity or use that distributed or involved the distribution of marijuana within the Town prior to the enactment of this chapter shall be deemed to have been legally established under this code, and no such person, business, activity, or use shall be entitled to claim legal nonconforming status under any provision of this code or applicable law.

6-3-3: PURPOSE: Recognizing that there is a potential conflict between federal and state law with respect to the operation of medical marijuana dispensaries, it is the purpose of this chapter to:

- A. Impose specific requirements and limitations for those individuals registering with the State of Colorado as a "patient" or "primary care-giver" as those terms are defined in Amendment 20, and the statutes and administrative regulations implementing Amendment 20.
- B. Require that a medical marijuana Center (as defined in this chapter) be operated in a safe manner that does not endanger the public welfare.
- C. Mitigate potential negative impacts that a medical marijuana center might cause on surrounding properties and persons.
- D. Regulate the conduct of persons owning, operating, and using a medical marijuana center in order to protect the public health, safety and welfare.
- E. Establish a non-discriminatory mechanism by which the Town can control, through appropriate regulation, the location and operation of medical marijuana dispensaries within the Town.

6-3-4: AUTHORITY: The Town Council hereby finds, determines, and declares that it has the power to adopt this chapter pursuant to:

- A. The Local Government Land Use Control Enabling Act, article 20 of title 29, C.R.S.;
- B. Part 3 of article 23 of title 31, C.R.S. (concerning municipal zoning powers);
- C. Section 31-15-103, C.R.S. (concerning municipal police powers);
- D. Section 31-15-401, C.R.S. (concerning municipal police powers);
- E. Section 31-15-501, C.R.S. (concerning municipal authority to regulate businesses);
- F. The authority granted to home rule municipalities by article XX of the Colorado Constitution; and
- G. The powers contained in the Minturn Town Charter.

6-3-5: DEFINITIONS:

- A. As used in this chapter the following words shall have the following meanings, unless the context clearly requires otherwise:

ADJACENT: Adjacent to or contiguous with the proposed location of a medical marijuana center. Adjacency shall be determined without regard to the existence of a platted or dedicated public street or alley, and real property that would otherwise be determined to be adjacent to a proposed medical marijuana center does not lose its adjacency by virtue of the existence of a platted or dedicated public street or alley.

ALCOHOLIC BEVERAGE: Has the meaning provided in Section _____ of this code.

AMENDMENT 20: A voter-initiated amendment to the Colorado Constitution adopted November 7, 2000. Amendment 20 added §14 of Article 18 to the Colorado Constitution.

APPLICANT: A person twenty one years of age or older who has submitted an application for permit pursuant to this chapter.

APPLICATION: An application for permit submitted pursuant to this chapter.

| | |
|--|---|
| BUILDING OFFICIAL: | The Building Official of the Town. |
| BUSINESS LICENSE: | A Business License to operate a medical marijuana center issued by the Town pursuant to this chapter. |
| DAY: | A calendar day, unless otherwise indicated. |
| DOWNTOWN OVERLAY DISTRICT: | The geographic area of the Town identified as the Downtown Overlay District in the Town's Land Use Guidelines, as amended from time to time. |
| GOOD CAUSE (for the purpose of refusing or denying a permit renewal under this chapter): | <p>Means:</p> <ul style="list-style-type: none"> A. the permittee has violated, does not meet, or has failed to comply with any of the terms, conditions, or provisions of this chapter and any rule and regulation promulgated pursuant to this chapter; B. the permittee has failed to comply with any special terms or conditions that were placed on its permit at the time the permit was issued, or that were placed on its permit in prior disciplinary proceedings or that arose in the context of potential disciplinary proceedings; or C. the permittee's medical marijuana center have been operated in a manner that adversely affects the public health, welfare, or safety of the immediate neighborhood in which the medical marijuana center is located. Evidence to support such a finding can include: (i) a continuing pattern of disorderly conduct as defined in section _____ of this code; (ii) a continuing pattern of drug-related criminal conduct within the premises of the medical marijuana center, or in the immediate area surrounding the medical marijuana center; or (iii) a continuing pattern of criminal conduct directly related to or arising from the operation of the medical marijuana center. |

| | |
|-------------------------------------|--|
| GROUND FLOOR: | The floor of a structure at approximately the same elevation as the natural grade of the surrounding area. |
| HALFWAY HOUSE: | A group care facility for adults or juveniles who have been placed on probation or parole under applicable law. |
| LAND USE GUIDELINES: | Has the meaning provided in section _____ of this code. |
| MEDICAL MARIJUANA CENTER OR CENTER: | The use of any property or structure within the Town to distribute, transmit, give, dispense, or otherwise provide marijuana in any manner to patients or primary care-givers in accordance with Section 14, Article XVIII of the Colorado Constitution, and the implementing state statutes and administrative regulations. A medical marijuana center may not be used as a physician's office to examine or consult with patients. |
| PATIENT: | Has the meaning provided in Amendment 20. |
| PERMIT: | A permit to operate a medical marijuana center issued by the Town pursuant to this chapter. |
| PERMITTEE: | The person to whom a permit has been issued pursuant to this chapter. |
| PERSON: | Has the meaning provided in section _____ of this code. |
| PRIMARY CARE-GIVER: | Has the meaning provided in Amendment 20. |
| RESIDENTIAL USE: | Has the meaning provided in section _____ of this code. |
| SPLIT LEVEL STRUCTURE: | A structure, or portion of a structure, that includes multiple floors with the lowest floor visible from the street front having a finished grade below the finished grade level of the street front sidewalk. |
| TOWN: | Has the meaning provided in section _____ of this code. |
| TOWN MANAGER: | The Town Manager of the Town, or the Town Manager's designee authorized to act pursuant to section _____ of this code. |

- B. In addition to the definitions provided in subsection A of this section, the other defined terms in Amendment 20 are incorporated into this chapter by reference.

6-3-6: PERMIT REQUIRED: No person shall operate a medical marijuana center within the Town without a valid permit issued in accordance with this chapter.

6-3-7: APPLICATION FOR PERMIT:

- A. A person seeking to obtain a permit pursuant to this chapter shall file an application with the Town Clerk. The form of the application shall be provided by the Town Clerk.
- B. A permit issued pursuant to this chapter does not eliminate the need for the permittee to obtain other required Town licenses and permits related to the operation of the approved medical marijuana center, including, without limitation:
 - 1. a State sales tax license;
 - 2. a Town business license; and
 - 3. a Medical Marijuana center permit has been obtained from the Town of Minturn and all applicable fees shall be paid in full. Permit fees will be set at \$8,000.00 for a new center permit and \$5,000.00 for an annual renewal, or as adjusted annually.
 - 4. a building permit, mechanical permit, plumbing permit, or electrical permit as necessary
- C. An application for a permit under this chapter shall contain the following information:
 - 1. the applicant's name, address, telephone number, birthdate and social security number;
 - 2. the street address of the proposed medical marijuana center;
 - 3. if the applicant is not the owner of the proposed location of the medical marijuana center, a notarized statement from the owner of such property authorizing the submission of the application;
 - 4. a statement of the applicant's personal history;
 - 5. a completed set of the applicant's fingerprints on a form approved by the Town Clerk;
 - 6. a business plan for the center to ensure compliance with law. The business plan must contain the following items:
 - i. description of security provisions and systems
 - ii. Hours of operation

- iii. Number of employees
 - iv. Lighting plan
 - v. A description of any cultivation within the center, including
 - a. Where plants are grown
 - b. The number of plants that will be grown
 - c. The number of plants within a given stage of growth at any given time
 - d. A description of the ventilation system for the premises
 - e. A description of the lighting system
7. a statement to be initialed by the applicant that the applicant and the employees of the medical marijuana center may be subject to prosecution under federal marijuana laws;
 8. a statement to be initialed by the applicant that the Town accepts no legal liability in connection with the approval and subsequent operation of the medical marijuana center; and
 9. any additional information that the Town Clerk reasonably determines to be necessary in connection with the investigation and review of the application.

Applications shall be processed by the Town Clerk in order of receipt.

6-3-8: APPLICATION FEE: An applicant shall pay to the Town a non-refundable application fee when the application is filed. The purpose of the fee is to cover the administrative costs of processing the application. For applications filed in 2011 the application fee is \$800.00. Thereafter, the amount of the application fee shall be fixed by the Town Council as part of its annual budget process.

6-3-9: INVESTIGATION OF APPLICATION:

- A. Upon receipt of a properly completed application, together with all information required in connection therewith, and the payment of the application fee as required by section 6-3-8, the Town Clerk shall transmit copies of the application to:
 1. the Police Department;
 2. the Town Attorney
 3. the Planning Department; and
 4. any other person or agency which the Town Clerk determines should properly investigate and comment upon the application.
- B. Upon receipt of a completed application the Police Department shall obtain and review a criminal background records search on the applicant from the Colorado Bureau of Investigation.

- C. Within twenty days of receipt of a completed application those Town departments and other referral agencies described in subsection A of this section shall provide the Town Clerk with comments concerning the application.

6-3-10: STANDARDS FOR ISSUANCE OF PERMIT: The Town Clerk shall issue a permit under this chapter when, from a consideration of the application and from such other information as may otherwise be obtained, the Town Clerk determines that:

- A. The application (including any required attachments and submissions) is complete and signed by the applicant;
- B. The applicant has paid the application fee and any other fees required by section 6-3-8;
- C. The application does not contain a material falsehood or misrepresentation;
- D. The application complies with all of the requirements of this chapter;
- E. The applicant has good moral character. In making this determination or when considering a criminal conviction, the Town Clerk shall be governed by the provisions of section 24-5-101, C.R.S. If the Town Clerk takes into consideration information concerning the applicant's criminal history record, the Town Clerk shall also consider any information provided by the applicant regarding such criminal history record, including but not limited to evidence of rehabilitation, character references, and educational achievements, especially those items pertaining to the period of time between the applicant's last criminal conviction and the consideration of the application for a permit; and
- F. The proposed location of the medical marijuana center is permitted under section 6-3-25.

6-3-11: DENIAL OF PERMIT: The Town Clerk shall deny an application for a permit under this chapter if the Town Clerk determines that:

- A. Information contained in the application, or supplemental information requested from the applicant, is found to be false in any material respect; or
- B. The application fails to meet any of the standards sets forth in section 6-3-10.

If an application is denied the application fee shall not be refunded.

6-3-12: AUTHORITY TO IMPOSE CONDITIONS ON PERMIT: The Town Clerk shall have the authority to impose such reasonable terms and conditions on a permit as may be necessary to protect the public health, safety, and welfare, and to obtain compliance with the requirements of this chapter and applicable law.

6-3-13: DECISION BY TOWN CLERK:

- A. The Town Clerk shall approve, deny, or conditionally approve an application within thirty days of the receipt of the completed application unless, by written

notice to the applicant, the decision period is extended for an additional ten days if necessary for the Town Clerk to complete the review of the application.

- B. If an application is denied, the Town Clerk shall clearly set forth in writing the grounds for denial.
- C. In the event an application is conditionally approved, the Town Clerk shall clearly set forth in writing the conditions of approval.

6-3-14: NOTICE OF DECISION: The Town Clerk shall notify the applicant of the decision on the application within three business days of rendering the decision. Notice shall be given by mailing a copy of the Town Clerk's decision to the applicant by certified mail, postage prepaid, at the address shown in the application. Notice is deemed to have been properly given upon mailing.

6-3-15: APPEAL OF DENIAL OR CONDITIONAL APPROVAL OF PERMIT:

- A. An applicant has the right to appeal the Town Clerk's denial or conditional approval of an application to the Town Manager.
- B. The applicant's written notice of appeal shall be filed with the Town Manager within ten days after the date of mailing of the Town Clerk's decision on the application.
- C. Within ten days of mailing of applicant's appeal of the Town Clerk's decision, the Town Manager shall concur, overrule or modify the decision. The applicant has the right to appeal the decision of the Town Manager to the Town Council by written request within ten days of after the date of mailing of the Manger's decision.
- D. The applicant shall be provided with not less than ten days' prior written notice of the appeal hearing to be held by the Town Council.
- E. The burden of proof in an appeal filed under this section shall be on the applicant.
- F. Any decision made by the Town Council pursuant to this section shall be a final decision and may be appealed to the district court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. The applicant's failure to timely appeal the decision is a waiver the applicant's right to contest the denial or conditional approval of the application.
- G. If there is any conflict between the provisions and requirements of this section and the provisions and requirements of chapter ___ of title ___ of this code, the provisions and requirements of this section shall control.

6-3-16: CONTENTS OF PERMIT: A permit shall contain the following information:

- A. The name of the permittee;
- B. The date of the issuance of the permit;

- C. The address at which the permittee is authorized to operate the medical marijuana center;
- D. Any special conditions of approval imposed upon the permit by the Town Clerk pursuant to section 6-3-12; and
- E. The date of the expiration of the permit.

A permit must be signed by both the applicant and the Town Clerk to be valid.

6-3-17: INSPECTION OF PREMISES: Prior to the issuance of a permit, the premises at which the medical marijuana center will be operated shall be inspected by the Town's Building Official to determine compliance with the Town's building and technical codes. No permit shall be issued if the premises at which the medical marijuana center will be operated do not comply with the Town's building and technical codes. Throughout the term of the permit the Building Official may inspect the premises at which the medical marijuana center is operated to determine continuing compliance with the Town's building and technical codes. Access to such premises may be obtained by the Building Official in accordance with the applicable provisions of such codes or other applicable law.

6-3-18: PERMIT NOT TRANSFERABLE: A permit is non-transferable and non-assignable. Any attempt to transfer or assign a permit voids the permit.

6-3-19: NOTICE OF ISSUANCE OF PERMIT: Immediately upon the issuance of a permit, the Town Clerk shall send a copy of the permit to:

- A. The Town Manager;
- B. The Town Attorney;
- C. The Police Department;
- D. The Planning Department;
- E. The Town Treasurer; and
- F. Any other person as determined by the Town Clerk.

6-3-20: DURATION OF PERMIT; RENEWAL

- A. Each permit issued pursuant to this chapter shall be valid for one year from the date of issuance, and may be renewed as provided in this section.
- B. An application for the renewal of an existing permit shall be made to the Town Clerk not less than forty-five days prior to the date of expiration. No application for renewal shall be accepted by the Town Clerk after the date of expiration. The Town Clerk may waive the forty-five days time requirement set forth in this subsection if the applicant demonstrates an adequate reason.
- C. The provisions of sections 6-3-9 through 6-3-15, inclusive, shall apply to the processing of an application to renew a permit. The timely filing of a renewal

application shall extend the current permit until a final decision is made on the renewal application, including any appeal of the Town Manager's decision to the Town Council.

- D. At the time of the filing of an application for the renewal of an existing permit the applicant shall pay a renewal fee in an amount fixed by the Town Council as part of its annual budget process.
- E. The Town Clerk may refuse to renew a permit for good cause.

6-3-21: DUTIES OF PERMITTEE: It is the duty and obligation of each permittee to do the following:

- A. Comply with all of the terms and conditions of the permit, and any special conditions on the permit imposed by the Town Clerk pursuant to section 6-3-12;
- B. Comply with all of the requirements of this chapter;
- C. Comply with all other applicable Town ordinances;
- D. Comply with all state laws and administrative regulations pertaining to the medical use of marijuana, including, but not limited to, Amendment 20; section 18-18-406.3, C.R.S.; and the administrative regulations issued by the Colorado Department of Public Health and Environment found at 5 CCR 1006-2, all as amended from time to time.
- E. Comply with all applicable federal laws, rules or regulations, other than a federal law, rule or regulation concerning the possession, sale or distribution of marijuana that conflicts with Amendment 20; and
- F. If the Town Clerk has a reasonable suspicion that the permittee is or has violated the terms and conditions of the permit: allow inspection of its records, building or structure, and operation by the Town Clerk for the purpose of determining the permittee's compliance with the terms and conditions of the permit. However, nothing in this section shall abrogate or affect: (i) any applicable confidentiality provision of state or federal law, or (ii) any applicable statutory or constitutional prohibition against unreasonable searches and seizure of property. In the event of any conflict between this section and any applicable state or federal law, the applicable provision of state or federal law shall control.

6-3-22: POSTING OF PERMIT: A permit shall be continuously posted in a conspicuous location at the medical marijuana center.

6-3-23: SUSPENSION OR REVOCATION OF PERMIT:

- A. A permit issued pursuant to this chapter may be suspended or revoked by the Town Clerk after a hearing for the following reasons:
 - 1. fraud, misrepresentation, or a false statement of material fact contained in the permit application;

2. a violation of any Town, state, or federal law or regulation, other than a federal law or regulation concerning the possession, sale or distribution of marijuana that conflicts with Amendment 20;
 3. a violation of any of the terms and conditions of the permit, including any special conditions of approval imposed upon the permit by the Town Clerk pursuant to section _____;
 4. a violation of any of the provisions of this chapter;
 5. operations have ceased at the medical marijuana center for more than 90 days, including during a change of ownership of the center; or
 6. ownership of the medical marijuana center has been transferred without the new owner obtaining a permit pursuant to this chapter.
- B. In connection with the suspension of a permit, the Town Clerk may impose reasonable conditions.
- C. A hearing held pursuant to this section shall be processed in accordance with _____ of this code.
- D. In deciding whether a permit should be suspended or revoked, and in deciding what conditions to impose in the event of a suspension, if any, the Town Clerk shall consider:
1. the nature and seriousness of the violation;
 2. corrective action, if any, taken by the permittee;
 3. prior violation(s), if any, by the permittee;
 4. the likelihood of recurrence;
 5. all circumstances surrounding the violation;
 6. whether the violation was willful;
 7. the number of previous violations by the permittee; and
 8. previous sanctions, if any, imposed against the permittee.
- E. If the Town Clerk suspends a permit, the permittee may appeal the suspension or revocation to the Town Manager, and if necessary, the Town Council, in accordance with the process outlined in section 6-3-15 of this article. The burden of proof in such an appeal is on the permittee. If the Town Council finds by a preponderance of the evidence that the Town Clerk acted correctly in suspending or revoking the permit, the Town Council shall uphold the Town Clerk's order of suspension or revocation. If the Town Council finds by a preponderance of the evidence that the Town Clerk acted improperly in suspending or revoking the permit, the appeal shall be sustained, and the Town Clerk's order of suspension or revocation shall be set aside. Any decision made by the Town Council

pursuant to this section shall be a final decision by the Town of Minturn. The permittee may appeal to the district court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. The applicant's failure to timely appeal the decision is a waiver the applicant's right to contest the denial or conditional approval of the application.

- F. No fee previously paid by a permittee in connection with the application shall be refunded if such permit is suspended or revoked.

6-3-24: LIMITATION ON SALE OF MARIJUANA: No marijuana may be sold, given away, or transferred at a medical marijuana center except to patients and to primary care-givers.

6-3-25: CENTER LOCATION:

- A. Except as provided in subsection F of this section, no medical marijuana center shall be located at a location that does not conform to the requirements of this section.
- B. No medical marijuana center shall be located:
 - 1. within 500 feet of a licensed child care facility;
 - 2. within 500 feet of any educational institution or school, college or university, either public or private;
 - 3. within 500 feet of any halfway house;
 - 4. within 500 feet of any property being used for a residential use; provided, however, this restriction does not apply to a mixed use building containing both residential and commercial units;
 - 5. within any building or structure that contains a residential unit;
- C. The distances described in subsection B shall be computed by direct measurement from the nearest property line of the adjacent to the building proposed to house the medical marijuana center using a straight line.
- D. Each medical marijuana center shall be operated from a permanent and fixed location. No medical marijuana center shall be permitted to operate from a moveable, mobile, or transitory location.
- E. Subsection D shall not prevent the physical delivery of medical marijuana to a patient or the patient's primary caregiver at a location off of the premises of the permittee's medical marijuana center if:
 - 1. the marijuana was lawfully purchased by the patient or the patient's primary caregiver from the permittee's medical marijuana center;
 - 2. the marijuana is delivered only to the patient or the patient's primary caregiver;

3. the marijuana is delivered only by the permittee or an employee of the permittee;
 4. the marijuana is delivered to a location within the Town; and
 5. the marijuana is delivered only by the use of a motor vehicle, bicycle, or other lawful means of transportation.
- F. The suitability of a location for a medical marijuana center shall be determined at the time of the initial issuance of the permit for such center. The fact that changes in the neighborhood that occur after the initial issuance of the permit might render the site unsuitable for a medical marijuana center under this section shall not be grounds to suspend, revoke or refuse to renew the permit for such center so long as the permit for the center remains in effect.
- G. No medical marijuana center shall be operated as a “home occupation” as described _____ of this code.

6-3-26: HOURS OF OPERATION: A medical marijuana center may open no earlier than 9 A.M. and shall close no later than 7 P.M. the same day. A medical marijuana center may be open seven days a week.

6-3-27: SIGNAGE: All signage for a medical marijuana center shall comply with the requirements of chapter ____ of article ____ of this code. In addition, no permittee shall display a sign for the medical marijuana center that contains the word “marijuana” or a graphic/image of any portion of a marijuana plant.

6-3-28: REQUIRED WARNINGS TO BE POSTED: There shall be posted in a conspicuous location in each medical marijuana center a legible sign, approved by the Town Clerk, containing the following warnings:

- A. A warning that the diversion of marijuana for non-medical purposes is a violation of state law;
- B. A warning that the use of medical marijuana may impair a person’s ability to drive a motor vehicle or operate machinery, and that it is illegal under state law to drive a motor vehicle or to operate machinery when under the influence of or impaired by marijuana; and
- C. A warning that loitering in or around the medical marijuana center is prohibited by state law.
- D. A warning that possession and distribution of marijuana is a violation of federal law.

6-3-29: ON-SITE CONSUMPTION: The consumption or inhalation of marijuana on or within the premises of a medical marijuana center is prohibited.

6-3-30: PARAPHERNALIA: Devices, contrivances, instruments, and paraphernalia for inhaling or otherwise consuming marijuana including, but not limited to, rolling papers and related tools,

water pipes, and vaporizers may lawfully be sold at a medical marijuana center. Such items may be sold or provided only to patients or primary care-givers.

6-3-31: ON-SITE CULTIVATION, GROWING AND PROCESSING: The growing, cultivation, or processing of marijuana on or within the premises of a medical marijuana center is prohibited unless the center is equipped with a proper ventilation system that filters out the odor of marijuana so that the odor is not capable of being detected by a person with a normal sense of smell at the exterior of the center or any adjoining business, parcel or tract of real property.

6-3-32: ALCOHOL: The sale or consumption of an alcoholic beverage within a medical marijuana center is prohibited.

6-3-33: DISPLAY OF MEDICAL MARIJUANA: No marijuana shall be displayed so as to be visible through glass, windows, or doors by a person of normal visual acuity standing at the outside perimeter of the medical marijuana center.

6-3-34: SECURITY REQUIREMENTS: A permittee shall provide adequate security on the premises of a medical marijuana center including, but not limited to, the following:

- A. Security surveillance cameras installed to monitor the main entrance along with the interior and exterior of the premises to discourage and to facilitate the reporting of criminal acts and nuisance activities occurring at the premises. Security video shall be preserved for at least 72 hours by the permittee;
- B. Robbery and burglary alarm systems which are professionally monitored and maintained in good working conditions;
- C. A locking safe permanently affixed to the premises that is suitable for storage of all of the saleable inventory of marijuana if marijuana is to be stored overnight on the premises; and
- D. Exterior lighting that illuminates the exterior walls of the business and is compliant with section 16-17-180 of this code.

6-3-35: BUSINESS LICENSE REQUIRED: At all times while a permit is in effect the permittee shall possess a valid license issued under chapter 6 of article 2 of this code.

6-3-36: TAXES: Each permittee shall collect and remit sales tax on all medical marijuana, paraphernalia, and other tangible personal property sold by the permittee at the medical marijuana center.

6-3-37: REQUIRED RECORD:

- A. Each permittee shall maintain an accurate and complete record of all marijuana sold or dispensed at the medical marijuana center. The record shall contain the following information:
 - 1. The quantity of marijuana sold or dispensed; and
 - 2. The date and time the marijuana was sold or dispensed

- B. The permittee's records described in subsection A of this section shall be available for inspection by the Town's police department pursuant to Rule 41 of the Colorado Rules of Criminal Procedure or Rule 241 of the Colorado Municipal Court Rules of Procedure.
- C. Nothing in this section shall abrogate or affect : (i) any applicable confidentiality provision of state or federal law, or (ii) any applicable statutory or constitutional prohibition against unreasonable searches and seizure of property. In the event of any conflict between this section and any applicable state or federal law, the applicable provision of state or federal law shall control.

6-3-38: PENALTIES; INJUNCTIVE RELIEF:

- A. It is a misdemeanor offense for any person to violate any provision of this chapter. Any person convicted of having violated any provision of this chapter shall be punished as set forth in chapter 6 of article 1 of this code.
- B. The operation of a medical marijuana center without a valid permit issued pursuant to this chapter may be enjoined by the Town in an action brought in a court of competent jurisdiction. In any case in which the Town prevails in a civil action initiated pursuant to this section, the Town may recover its reasonable attorney fees plus costs of the proceeding.
- C. The remedies provided in this section are in addition to any other remedy provided by applicable law.

6-3-39: NO WAIVER OF GOVERNMENTAL IMMUNITY: In adopting this chapter the Town Council is relying on, and does not waive or intend to waive by any provision of this chapter, the monetary limitations (presently \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, section 24-10-101 et seq., C.R.S., as from time to time amended, or any other limitation, right, immunity, or protection otherwise available to the Town, its officers, or its employees.

6-3-40: NO TOWN LIABILITY: By accepting a permit issued pursuant to this chapter a permittee releases the Town, its officers, elected officials, employees, attorneys, and agents from any liability for injuries, damages, or liabilities of any kind that result from any arrest or prosecution of center owners, operators, employees, clients, or customers for a violation of state or federal laws, rules or regulations. The Town Clerk may require a permittee to execute a written instrument confirming the provisions of this section.

6-3-41: INDEMNIFICATION OF TOWN: By accepting a permit issued pursuant to this chapter a permittee, jointly and severally if more than one, agrees to indemnify and defend the Town, its officers, elected officials, employees, attorneys, agents, insurers, and self-insurance pool against all liability, claims, and demands, on account of injury, loss, or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with the operation of the medical marijuana center that is the subject of the permit. The permittee further agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims, or demands at its expense, and to bear all other costs and expenses related thereto, including court costs and attorney fees. The

Town Clerk may require a permittee to execute a written instrument confirming the provisions of this section.

6-3-42: OTHER LAWS REMAIN APPLICABLE: The provisions of this chapter do not protect permittees, operators, employees, customers and clients of a permitted medical marijuana center from prosecution pursuant to any laws that may prohibit the cultivation, sale, use, or possession of controlled substances. In addition, as of the date of the adoption of this chapter the cultivation, sale, possession, distribution, and use of marijuana remain violations of federal and state law (except for conduct covered by Amendment 20), and this chapter affords no protection against prosecution under such federal and state laws. Permittees, operators, employees, customers and clients of a permitted medical marijuana center assume any and all risk and any and all liability arising or resulting from the operation of the center under any state or federal law. Further, to the greatest extent permitted by law, any actions taken under the provisions of this chapter by any public officer or officers, elected or appointed officials, employees, attorneys and agents of the Town of Minturn shall not become a personal liability of such person or of the Town.

6-3-43: RULES AND REGULATIONS: The Town Manager shall have the authority from time to time to adopt, amend, alter, and repeal administrative rules and regulations as may be necessary for the proper administration of this chapter. Such regulations shall be adopted in accordance with the procedures established by chapter 18, title 1 of this code.

Section 2. Town Code. Except as specifically amended hereby, the Minturn Town Code, and the various secondary codes adopted by reference therein, shall continue in full force and effect.

Section 3. Severability. If any section, paragraph, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional or otherwise invalid or ineffective by the final, nonappealable order or judgment of any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance. The Town Council hereby declares that it would have adopted each section, paragraph, sentence, clause and phrase of this ordinance irrespective of the fact that any one or more sections, paragraphs, sentences, clauses or phrases may be declared unconstitutional, invalid or ineffective.

Section 4. Repeal of Ordinances.

- A. Section - - of the Minturn Town Code, entitled "Medical Marijuana Ordinance" is repealed.

Section 5. Effective Date. This ordinance shall be published and become effective as provided by section of the Minturn Town Charter.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this . A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Minturn, Colorado on the day of , 20 , at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

ATTEST:

TOWN OF MINTURN

Jay Brunvand, CMC, Town Clerk

Gordon "Hawkeye" Flaherty, Mayor

The public hearing on this ordinance was held on _____.

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED IN FULL this _____
day of _____, 20___. This ordinance is available for inspection in the office of the Town
Clerk.

ATTEST:

TOWN OF Minturn

Jay Brunvand, CMC, Town Clerk

Gordon "Hawkeye" Flaherty, Mayor

Purchase of Boneyard with Open Space Funds:

- A. The County will want to leverage the funds they bring to the purchase of the land with other funding partners.
 - a. GOCO
 - b. Eagle Valley Land Trust
 - c. Town of Minturn
 - d. LaFarge
 - e. Minturn Community Fund
 - f. Trout Unlimited
 - g. Fishing is Fun

- B. Another point the County and OSAC look at is public access and use of the property:
 - a. Public parking for access to land and river
 - b. River access: for boaters and fishermen
 - c. Signage acknowledging OSAC purchased lands
 - d. Conservation easements limited development potential
 - e. Initial cleanup of property
 - f. Ongoing property maintenance (gravel lots and boat fish access, noxious weed control, etc.)
 - g. Bike or Hiking paths
 - h. Positive PR and press release pertaining to purchase and use

- C. The County will be looking to enter into an IGA with the Town covering some or all of the points and any other responsibility and participation the Town is willing to shoulder.

- D. A short discussion, additional ideas, and fleshing out what we are able to do will be a positive step toward making this purchase happen.

George

FRANCHISE (02-04-2011)

TOWN OF MINTURN

ORDINANCE NO. _____

(Series of 2011)

Comment [dg1]: Changed from 2000

AN ORDINANCE OF THE TOWN OF MINTURN, EAGLE COUNTY, COLORADO, GRANTING A FRANCHISE TO HOLY CROSS ENERGY, ITS SUCCESSORS AND ASSIGNS, TO LOCATE, BUILD, INSTALL, CONSTRUCT, ACQUIRE, PURCHASE, EXTEND, MAINTAIN, REPAIR AND OPERATE INTO, WITHIN AND THROUGH A PORTION OF THE TOWN OF MINTURN, DEFINED AS THE SERVICE AREA, ALL NECESSARY AND CONVENIENT FACILITIES FOR THE PURCHASE, GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRICAL ENERGY, AND TO FURNISH, SELL AND DISTRIBUTE SAID ELECTRICAL ENERGY TO THE RESIDENTS OF THE SERVICE AREA FOR LIGHT, HEAT, POWER AND OTHER PURPOSES BY MEANS OF CONDUITS, CABLES, POLES AND WIRES STRUNG THEREON, OR OTHERWISE ON, OVER, UNDER, ALONG, ACROSS AND THROUGH ALL PUBLIC EASEMENTS AND ALL STREETS AND OTHER PUBLIC WAYS IN SAID SERVICE AREA, AND FIXING THE TERMS AND CONDITIONS THEREOF.

Comment [dg2]: Added

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MINTURN, COLORADO:

ARTICLE 1
SHORT TITLE

- 1.1 This Ordinance shall be known and may be cited as the "Holy Cross Energy Franchise Ordinance."

ARTICLE 2
DEFINITIONS

For the purpose of this Ordinance, the following terms shall have the meaning given herein:

- 2.1 "Town" is the Town of Minturn, Eagle County, Colorado, the municipal corporation as is now constituted or as the same may be enlarged or expanded from time to time through annexation.
- 2.2 "Company" refers to Holy Cross Energy, a Colorado corporation, its successors and assigns.
- 2.3 "Service Area" refers to all land inside the municipal boundaries of the Town, as of the enactment of this Ordinance, and all land annexed within such boundaries hereafter, within the area certified to the Company by the Public Utilities Commission of the State of Colorado.
- 2.4 "Council" refers to the legislative body of the Town, known as the Town Council of the Town of Minturn, Colorado.
- 2.5 "Facilities" refers to all overhead and underground electric facilities, buildings and structures owned by the Company which are necessary to provide electricity into, within and through the Town including, but not limited to, such essential apparatus, appliances, plants, systems, substations, works, transmission and distribution lines, structures, anchors, cabinets, cables, conduits, guy posts, guy

Comment [dg3]: Added

FRANCHISE (02-04-2011)

wires, meters, microwave, communication facilities, overhead and underground lines, pedestals, poles, regulators, sectionalizers, switchgears, transformers, various pad mounted and pole mounted equipment, vaults, wires and all other related electrical equipment required for the distribution, generation, maintenance, operation, purchase and transmission of electrical energy.

- 2.6 "Public Easements" refers to easements created by general dedication and available for use by any public utility for its facilities
- 2.7 "Private Easements" refers to easements created by deed, specific dedication to specific grantees or acquired by the Company by prescriptive right and available only for use by the Company for its Facilities, or by the Company and other users or utilities specifically named as grantees in the deed of dedication or which have also acquired the easement by prescriptive right.
- 2.8 "Residents" refers to and includes all persons, businesses, industry, governmental agencies and any other entity whatsoever, presently maintaining a residence, business, farm, ranch or other enterprise located within, in whole or in part, the boundaries of the Town.
- 2.9 "Revenues", unless otherwise specified, refers to and are the gross amounts of money that the Company receives from its customers within the Town from the sale or delivery of electrical energy for any particular period of time.
- 2.10 "Streets and Other Public Ways" refers to streets, alleys, viaducts, bridges, roads, lanes and other public ways in the Town, subject to limitations stated herein.

Comment [dg4]: Added

Comment [dg5]: Added

Comment [dg6]: Added

ARTICLE 3

GRANT OF FRANCHISE

- 3.1 Grant of Right to Serve. Subject to the conditions, terms and provisions contained in this Franchise, the Town hereby grants to the Company a non-exclusive right, privilege and authority to locate, build, install, construct, acquire, purchase, extend, maintain, repair and operate into, within and through all of the Service Area, all necessary and convenient Facilities for the purchase, generation, transmission and distribution of electrical energy. Such grant is made together with the exclusive right and privilege to furnish, sell and distribute said electrical energy to the Residents for light, heat, power and other purposes.
- 3.2 Scope of Grant. Such grant includes the right and obligation to furnish electrical energy using the Company Facilities on, over, under, along, across and through any and all Public Easements and all Streets and Other Public Ways, on, over, under, along, across and through any extension, connection with, or continuation of, the same and/or on, over, under, along, across and through any and all such new Public Easements and Streets and Other Public Ways as may be hereafter laid out, opened, located or constructed within the Service Area. The Company is further granted the right, privilege and authority to excavate in, occupy and use any and all Streets and Other Public Ways and Public Easements. Any such excavation, occupation and use must be in accordance with Town standards and regulations, and will be undertaken under the supervision of the properly constituted authority of the Town for the purpose of bringing electrical energy into, within and through the Service Area and supplying electrical energy to the Residents.
- 3.3 Service to Town Facilities. The Town hereby grants to the Company the non-exclusive right, privilege and authority to provide street and security lighting to

Comment [dg7]: Deleted "non-exclusive"

Comment [dg8]: Added

Comment [dg9]: Added

Comment [dg10]: Deleted "non-exclusive"

FRANCHISE (02-04-2011)

the Town, and to serve all Town owned or operated structures, plants, equipment or Town apparatus and facilities, including the right, privilege and authority to furnish, sell and distribute electrical energy necessary for such.

ARTICLE 4

SPECIFIC ELEMENTS OF GRANT

- 4.1 Recreational Areas. The Company shall not have the right to locate, build or construct Facilities under, across or through public parks or recreational areas, open space or other Town owned property located within the Town except as expressly set forth in this Franchise or with prior written approval granted by the Council. Said approval shall not be unreasonably withheld.
- 4.2 Trees and Shrubs. The Company shall have the right to trim or cut down such trees and shrubbery and to control the growth of the same by chemical means, machinery, or otherwise, only as may be reasonably necessary to protect its Facilities as provided for in the Company "Vegetation Management Guidelines" as such may from time to time be amended.
- 4.3 Location of Company's Facilities. Wherever reasonable and practicable, the Company will endeavor to install its Facilities within Public Easements. The Company shall locate its Facilities within the Town so as to cause minimum interference with any of the Town's facilities or property, including without limitation water lines, sewer lines, storm drains and the proper use of Streets and Other Public Ways, and so as to cause minimum interference with the rights or reasonable convenience of property owners whose property adjoins any of the said Streets and Other Public Ways.
- 4.4 Restoration of Public and Private Improvements. Should it become necessary for the Company, in exercising its rights and performing its duties hereunder, to interfere with any sidewalk, graveled or paved street, road, alley, water line, sewer line, storm drain or any other public or private improvement, the Company shall at its own expense and in a quality workmanlike manner, repair or cause to be repaired and restored to its original condition such sidewalk, graveled or paved street, road, alley, water line, sewer line, storm drain or other public or private improvement after the installation of its Facilities. However, upon failure of the Company to do such required repairs within a reasonable time and in a workmanlike manner, the Town may perform the required work and charge the Company for all reasonable costs thereof. Nothing hereinabove shall be construed to obligate the Company to pay for the removal and relocation of its Facilities where such is at the request or demand of a person, or a public or private entity under circumstances which require the party requesting or demanding such to pay for the relocation under other provisions hereof or under the provisions of the Company's Electric Service Tariffs, Rules and Regulations or other customary practices, as such may from time to time be amended.
- 4.5 Use of Facilities. The Company shall have the right to make such use of its Facilities and other property owned by Company, for uses other than the uses contemplated in this Franchise Ordinance, as it deems proper so long as such other uses do not interfere with its ability to supply electrical energy, consistent with the then current zoning.
- 4.6 Changed Conditions (Overhead). If at any time it shall be necessary to change the position of any overhead electrical facilities of the Company located within

Comment [dg11]: Moved paragraph 3.4 "Duration of Franchise" to 10.1

Comment [dg12]: Added.

Comment [dg13]: Deleted "This Ordinance shall never be construed to limit the Company's rights of eminent domain as provided by law."

Comment [dg14]: New Paragraph replaces : The Company shall have the right to control the growth of trees and shrubs as may be reasonably necessary to protect its Facilities. The Company may use machinery or other lawful methods to control such growth, but shall not use chemicals for such purpose. Annually, on a date mutually agreed to by both parties, representatives of each party shall meet and/or consult to discuss problems related to the means and methods of controlling such growth. Prior to cutting down or removing any tree, the Company shall consult with a representative of the Town for the purpose of determining whether such cutting or removal is the only reasonable and cost effective means of protecting the Company's Facilities ... [1]

Comment [dg15]: Replaces "provided, however that"

Comment [dg16]: Added

Comment [dg17]: Replaces "the"

Comment [dg18]: Added

FRANCHISE (02-04-2011)

- Public Easements or Streets and Other Public Ways to permit the Town to lay, make or change street grades, pavements, sewers, water mains, storm drains or other Town works, such changes shall be made by the Company at its own expense, after reasonable notice from the Town. Any necessary position change of overhead electrical facilities of the Company located within Private Easements will be paid for by the person, or private or public entity requesting such change. The Town shall consult with the Company during the design of any such Town works which may require relocation of existing overhead electrical facilities of the Company and work with the Company to ensure that any relocation necessary is minimized and that a location for the relocated Facilities is provided.
- 4.7 **Compliance with Town Ordinances.** The Company shall comply with all Town ordinances and regulations regarding curb and pavement cuts, excavating, digging and related construction, maintenance and operational activities. If requested by the Town, the Company shall submit copies of reports of annual and long-term planning for capital improvement projects with descriptions of required street cuts, excavation, digging and related construction activities within 30 days after issuance of request.
- 4.8 **Town Review of Construction and Design.** Prior to construction of any significant Facilities within the Town, as determined jointly by the Company and Town, the Company shall furnish to the Town the plans for such proposed construction. In addition, the Company shall assess and report on the impact of such proposed construction on the Town environment. Such plans and reports may be reviewed by the Town to ascertain, inter alia, (1) that all applicable laws including building and zoning codes, air and water pollution regulations are complied with, (2) that aesthetic and good planning principles have been given due consideration and (3) that adverse impact on the environment has been minimized.
- 4.9 **Capital Improvement and Major Development Projects.** The Company and the Town shall endeavor to inform one another of any capital improvement and major development projects anticipated within the Town that may impact the Facilities or operations of either party. The party proposing such capital improvements shall inform the other party of the nature of such improvements within a reasonable time after plans for such improvements have been substantially formulated. Each party shall cooperate in the timely exchange of all necessary information, design data, drawings and reports to properly assess and evaluate the potential impacts of said improvements and major developments.
- 4.10 **Maintenance of Facilities.** The Company shall install, maintain, repair, replace and upgrade its Facilities to ensure both the adequacy of and quality of, electric service to the Town and all Residents. All excavation and construction work done by or under the authority of the Company shall be done in a timely and expeditious manner which minimizes the inconvenience to the Town and all Residents. The Town shall have the right to inspect any portion of the Facilities located in the Streets or Other Public Ways. However, the Town will not require construction of the Facilities in such a manner that would not meet the National Electrical Safety Code and other governing entity requirements or standard utility engineering practices. The Company agrees to cooperate with the Town in conducting the inspection.
- 4.11 **Town Not Required to Advance Funds.** Upon receipt from the Town of an authorization to proceed and a promise to pay for construction, the Company
- Comment [dg19]:** Added
- Comment [dg20]:** Replaces "sewer mains"
- Comment [dg21]:** Replaces "This provision shall not apply to any changes that result from new development within the Town. The costs associated with changing overhead electric facilities to accommodate such new development shall be borne by the developer, the Town or some other party, but not the Company."
- Comment [dg22]:** Replaces "Requirements"
- Comment [dg23]:** Replaces "requirements"
- Comment [dg24]:** Replaces "except as otherwise provided for in this Franchise Ordinance"
- Comment [dg25]:** Replaces "if requested by the Town"
- Comment [dg26]:** Added
- Comment [dg27]:** Added
- Comment [dg28]:** Added
- Comment [dg29]:** Added

FRANCHISE (02-04-2011)

- shall extend its Facilities to the Town for municipal uses therein or for any municipal facility outside the Service Area and within the Company's certificated service area, without requiring the Town to advance funds prior to construction.
- 4.12 Scheduled Interruptions. The Company shall, whenever possible, give notice, either oral or written, to the Town and its affected Residents, of planned service interruptions of significant duration.
- 4.13 Cooperation with Other Utilities. When undertaking a project of undergrounding, the Town and the Company shall work with other utilities or companies to have all lines undergrounded as part of the same project. The Company shall not be required to pay the costs of any other utility or company in connection with work under this section.
- 4.14 Annual Review of Franchise. At the request of either the Town or the Company, the parties hereto shall meet to discuss any topic of concern.
- Comment [dg30]:** Replaces "territory"
- Comment [dg31]:** Replaces "to attempt to have"
- Comment [dg32]:** Added

ARTICLE 5

RATES, REGULATIONS, UNIFORMITY OF SERVICE AND UPGRADES

- 5.1 Furnishing Electrical Energy. The Company shall furnish electrical energy within the Service Area, and to the Residents thereof at the Company's applicable and effective rates and under the terms and conditions set forth in the Company's Electric Service Tariffs, Rules and Regulations and Consumer Service Facilities Metering and Use Guidebook adopted by and on file with the Company, as such may from time to time be amended, subject only to regulations thereof as is provided by law. The Company shall not, as to rates, charges, service, Facilities, rules, regulations or in any other respect, make or grant any preference or advantage to any Resident, provided that nothing in this grant shall be taken to prohibit the establishment from time to time of a graduated scale of charges and classified rate schedules to which any customer coming within an established classification would be entitled.
- 5.2 Facility Upgrades. The Company will, from time to time, during the term of this Franchise make such improvements, enlargements and extensions of its Facilities incorporating, when reasonable and practical, technological advances within the industry as the business of the Company and the growth of the Town justify, in accordance with its Electric Service Tariffs, Rules and Regulations, Consumer Service Facilities Metering and Use Guidebook or other customary practices in effect and on file with the Company, as such may from time to time be amended, subject only to regulations thereof as is provided by law.
- 5.3 Reliable Supply of Electricity. The Company shall take all reasonable and necessary steps to provide an adequate supply of electricity to its customers at the lowest reasonable cost consistent with long-term reliable supplies. If the supply of electricity to its customers is interrupted, the Company shall take all necessary and reasonable actions to restore such supply within the shortest practicable time.
- 5.4 Maps and Regulations. The Company shall, submit copies of its Consumer Services Facilities Metering and Use Guidebook, Electric Service Tariffs, Rules and Regulations and maps of its Facilities within the Service Area to the Town Clerk. All changes in such information shall be submitted to the Town as the same may from time to time occur.
- Comment [dg33]:** Updated document titles
- Comment [dg34]:** Added
- Comment [dg35]:** Updated document titles
- Comment [dg36]:** Added
- Comment [dg37]:** Added
- Comment [dg38]:** Replaces "shall be"
- Comment [dg39]:** Removed "In the event the Company's electric system, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use diligence to restore its system to satisfactory service within the shortest practicable time.
- Comment [dg40]:** Updated document titles
- Comment [dg41]:** Replaces "maps, Standards for Service, Rules and Regulations, and policies"

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- 5.5 Subdivision Review. The Company shall analyze any subdivision plats or planned unit development plans submitted to it by the Town and respond to any request by the Town for information regarding the adequacy of its Facilities necessary to serve such proposed plat or plan and answer any other questions posed to the Company by the Town regarding said plat or plan as are within the knowledge of the Company. The Company shall respond to said requests or questions within reasonable time limits set by the Town's Subdivision Regulations. The Town will require the developers of such projects to meet all applicable provisions of the Company's Electric Service Tariffs, Rules and Regulations and other customary practices, as such may from time to time be amended.
- 5.6 Interrelationship of Laws, Rates, Regulations and Ordinances. The Company shall comply with all County, State or Federal laws and rules and regulations related to the subject matter hereof. The Company also agrees to abide by all ordinances and resolutions of the Town, unless and except to the extent that this Franchise Ordinance shall relieve the Company of the obligation to comply with the terms and conditions of such other ordinances or any other provisions hereof. The Company, from time to time, may promulgate such rules, regulations, terms and conditions governing the conduct of its business, including the use of electrical energy and the payment therefor, and the interference with, or alteration of, any of the Company's property upon the premises of its customers as shall be necessary to provide a safe, continuous and uninterrupted service to each and all of such customers and the proper measurement thereof and payment therefor. Any such rules, regulations, terms and conditions must not be inconsistent with this Franchise Ordinance, but no ordinance of the Town may regulate the Company's rates or charges for the furnishing of electrical energy, or shall lessen the safety of providing such energy to its customers, nor shall any such ordinance alter the manner in which service is extended to such customers.

Comment [dg42]: Added

ARTICLE 6

USE OF COMPANY FACILITIES

- 6.1 Use of Poles by Town. The Town shall have the right, without cost, to jointly use all poles and suitable overhead structures within the Service Area for the purpose of stringing wires thereon for any reasonable Town authorized use; which use shall not include generation, distribution or transmission of electricity. However, the Company shall assume no liability, or any additional expense, in connection therewith, and said use shall not interfere in any unreasonable manner with the Company's use of same, or the use thereof by the Company's permittees, licensees or other existing users of such Facilities. The Town is not authorized to assign its right to jointly use the Company's Facilities to any third party. The Company, in its sole discretion, may allow third parties to use its Facilities upon such terms and conditions as the Company deems appropriate.
- 6.2 Joint Use of Trenches. The Company, upon receiving a written request from the Town, shall permit the Town to install additional conduit in any trench excavated for the Company's Facilities, for the express purpose and use of the Town, provided such additional installation shall be in accordance with sound engineering methods and safety regulations, and shall not interfere with or cause any conflict with the Company's Facilities, and shall not cause the Company additional installation expense or additional expense to maintain and repair its

Comment [dg43]: Added

Comment [dg44]: Replaces "the Company agrees to permit Town licensees, permittees and franchisees, except those holding an electric utility franchise or license from the Town, to use its Facilities upon reasonable terms and conditions to be contractually agreed upon with the Company, in writing."

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Facilities. The Town, at its expense, will pay all costs and expenses of such additional installation. The Town shall be responsible for ensuring that required vertical and horizontal separations between its facilities and that of the Company's are strictly maintained. The Town and Company shall jointly hold each other harmless from any liability or damage resulting from their respective facilities being installed in a joint trench.

ARTICLE 7

INDEMNIFICATION AND POLICE POWER

- 7.1 **Mutual Hold Harmless.** Each party, shall to the extent allowed by law, indemnify, defend and save the other party harmless from and against all liability or damage and all claims or demands whatsoever in nature arising out of the operations of the indemnifying party under the provisions of this Franchise, and the securing of, and the exercise of the Franchise rights granted in this ordinance and the indemnifying party shall pay all reasonable expenses arising therefrom. The indemnifying party will provide prompt written notice to the other party of the pendency of any claim or action against the indemnified party arising out of the exercise of the Franchise rights. The indemnifying party will be permitted, at its own expense, to appear and defend or to assist in defense of such claim. Notwithstanding any provision hereof to the contrary, the indemnifying party shall not be obligated to indemnify, defend or hold the other party harmless to the extent of any claim, demand, or lien arising out of, or in connection with, any negligent act or failure to act or the intentional misconduct by the indemnified party or any of its officers, employees or agents. The indemnified party's use of independent contractors shall not constitute an avoidance or defense to the indemnifying party's duties to defend and indemnify under this section. Each party shall maintain public liability insurance in an amount not less than \$1,000,000. Each party shall be a named insured on the other party's liability insurance.
- 7.2 **Police Power Reserved.** The right is hereby reserved to the Town to adopt from time to time, in addition to the provisions herein contained, such Ordinances as may be deemed necessary in the exercise of its police power, provided that such regulations shall be reasonable and not destructive of the rights herein granted, and not in conflict with the laws of the State of Colorado, or with orders of other authorities having jurisdiction in the premises.

ARTICLE 8

FRANCHISE FEE

- 8.1 **Franchise Fee.** As a further consideration for this Franchise, and accepted by the Town in lieu of all occupancy and license taxes and all other special taxes, assessments, fees, or excises upon the Facilities or other property of the Company, or other levies that might be imposed, either as a franchise tax, occupation tax, occupancy tax, license tax, permit charge, or for the inspection of the Facilities or other property of the Company, and charges which would otherwise be chargeable to the Company, or otherwise, the Company shall pay to the Town a sum equal to three percent (3%) of its quarterly Revenues collected from the sale of electricity within the Service Area for electrical energy furnished

Comment [dg45]: Replaces "If the Company installs new electric underground conduit or opens a trench or replaces such conduit, the Company shall provide adequate advance notice to permit additional installation of similar facilities in the same trench by the Town, or installation of other types of municipal facilities, subject to applicable rules and regulations. If the Town elects to use the trench it will so notify the Company. The Town shall provide the materials at no expense to the Company. The Town shall reimburse to the Company only those monies paid by the Company to an independent contractor for labor costs to install Town furnished materials by such independent contractor. The Company shall include copies of invoices from the independent contractor to substantiate the Company's request for reimbursement. If the installation of Town furnished materials is performed solely by the Company's employees, there will be no labor charge to the Town. Such action by the Town shall not unnecessarily interfere with the Company's Facilities or delay the accomplishment of the project

Comment [dg46]: Replaces "7.1 . Town Held Harmless. The Company shall indemnify, defend and save the Town, its officers and employees, harmless from and against all liability or damage and all claims or demands whatsoever in nature arising out of the operations of the Company within the Town pursuant to this Franchise, and the securing of, and the exercise by the Company of, the Franchise rights granted in this ordinance and shall pay all reasonable expenses arising therefrom. The Town shall provide prompt written notice to the Company of the pendency of any claim or action against the Town arising out of the exercise by the Company of its Franchise rights. The Company will be permitted, at its own expense, to appear and defend or to assist in defense of such claim. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend or hold the Town harmless to the extent of any claim, demand, or lien arising out of, or in connection with, any negligent act or failure to act by the Town or any of its officers, employees, or agents unless the Company shall become obligated to indemnify, defend or hold the Town harmless by virtue of the comparative negligence laws of Colorado. ... [2]"

Comment [dg47]: Replaces "In"

Comment [dg48]: Added

Comment [dg49]: Replaces "gross"

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- for light, heat, power and other purposes. This three percent (3%) fee shall be surcharged to the Residents within the Service Area and is in addition to any charges specified in the Company's Electric Service Tariffs, Rules and Regulations and any applicable taxes. Payment of the franchise fee does not exempt the Company from payment of property or sales taxes which are not directly related to the franchise or the occupation of the Streets and Other Public Ways. Revenues received from Town facilities will not be assessed a three percent (3%) fee under this section nor will the Town be paid the three percent (3%) fee from such revenues collected from Town facilities.
- 8.2 Payment. Payment of the Franchise Fee shall be made by the Company to the Town on or before 30 days after the end of each quarter of each calendar year for the preceding three (3) month period, but shall be adjusted for the portions of the calendar quarters at the beginning and at the end of this Franchise. All payments shall be made to the Town Clerk.
- 8.3 Revenue Audit. For the purpose of ascertaining or auditing the correct amount to be paid under the provisions of this Article, the Company shall file with the Town Clerk, or such other official as shall be designated by the Town from time to time, a statement, in such reasonable form as the Town may require, showing the total gross receipts received by the Company from the sale of electricity to Residents within the Service Area for the preceding three (3) month period. The Town Clerk or any official appointed by the Council shall have limited access to the books of said Company for the sole purpose of confirming the quarterly Revenues received from operations within the Service Area. Such access is conditioned on the agreement of the Town not to disclose the information to any third party.
- 8.4 Correction of Underpayment/Overpayment. Should either the Company or Town discover either an underpayment or overpayment of the quarterly Franchise Fee, the party making such discovery shall inform the other party within a reasonable time. If the error is substantiated as an underpayment, the Company shall make payment of the deficiency within 30 days of the date the error was substantiated. If the error is substantiated as an overpayment, a credit equal to the overpayment will be applied to the next quarterly Franchise payment due the Town. If any dispute arises regarding underpayment/overpayment, Company and Town agree to submit the dispute to binding arbitration, with each party to bear their own costs.
- 8.5 Occupancy Tax Alternative. In the event said Franchise Fee levied herein should be declared invalid and or shall be set aside by a Court of competent jurisdiction, then, and in such event, and in lieu thereof, the Town may thereafter levy an occupancy tax upon the Company, not to exceed in any calendar year three percent (3%) of the Revenues collected from the sale of electricity within the Service Area for electrical energy furnished for light, heat, power, and other purposes for that calendar year. Such occupancy tax shall be adjusted for any Franchise Fees previously paid to the Town in such calendar year. In the event the Town shall enact such an occupancy tax, in lieu of the Franchise Fee, all of the remaining terms, conditions and provisions of this Ordinance shall remain in full force and effect for the period stated herein. Such occupancy tax ordinance or enactment shall be designed to meet all legal requirements to ensure that it is not construed as an income tax.

Comment [dg50]: Added

Comment [dg51]: Replaces "Electric Revenues received from service to the"

Comment [dg52]: Removed old section 8.2 Change of Franchise Fee -Town Initiated. The Town expressly reserves the right to notify the Company of its desire to revise the Franchise Fee to a different percentage of revenue prior to October 1 of the even numbered years during the term of this franchise, which revised Franchise Fee shall become effective on the next succeeding January 1, following notification. Provided, however, that the maximum amount of the Franchise Fee shall be five percent (5%) of the gross Revenues collected within the Service Area. Notification to the consumer shall be given by the Town no less than thirty (30) days prior to January 1, the effective date of the scheduled increase. All expenses associated with notification shall be paid entirely by the Town.

Comment [dg53]: Added

Comment [dg54]: Replaces "gross"

Comment [dg55]: Added

Comment [dg56]: Added

Comment [dg57]: Added

Comment [dg58]: Added

Comment [dg59]: Replaces "occupation" – typical in this paragraph

Comment [dg60]: Removed "one"

Comment [dg61]: Replaces "five percent (5%) of the gross"

Comment [dg62]: Added

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- 8.6 **Franchise Fee Payment in Lieu of Other Fees.** As indicated in Section 8.1, above, the Franchise Fee paid by the Company is accepted by the Town in lieu of any occupancy tax, license tax, permit charge, inspection fee or similar tax on the privilege of doing business or in connection with the physical operation thereof, but does not exempt the Company from any lawful taxation upon its property or any other tax not related to the Franchise or the physical operation thereof and does not exempt the Company from payment of head taxes or other fees or taxes assessed generally upon business.
- 8.7 **Street Cut Permits.** The Company will provide the Town with a Corporate Bond without Sureties each year to ensure it performs all conditions imposed by such permits. Upon request from the Town, the Company will furnish the Town with the Company's estimated cost of street repair.
- 8.8 **Termination of Franchise.** If this Franchise is terminated by either the Company or the Town for whatever reason, or is declared null and void, all Franchise Fees or occupancy taxes levied herein shall be suspended as of the date the Franchise is legally terminated. Final payment of any Franchise Fee or occupancy tax owed and due the Town shall be made on or before 30 days after the date the Franchise is legally terminated.

Comment [dg63]: Added

Comment [dg64]: Replaces "occupation"

Comment [dg65]: Removed "contractors license fees,"

Comment [dg66]: Removed old section 8.8 "8.8 Payment of Expenses Incurred by Town in Relation to Ordinance. At the Town's option, the Company shall pay in advance or reimburse the Town for expenses incurred in publication of notices and ordinances and for photocopying of documents arising out of the negotiations or process of obtaining this franchise.

Comment [dg67]: Added

Comment [dg68]: Replaces "occupation". Typical in this paragraph

ARTICLE 9

REPORTING AND CHANGE IN FRANCHISE FEE

- 9.1 **Reports.** The Company shall submit reasonable and necessary reports containing, or based upon, information readily obtainable from the Company's books and records as the Town may request with respect to the operations of the Company under this Franchise, and shall, if requested, provide the Town with a list of real property within the Town which is owned by the Company.
- 9.2 **Change of Franchise Fee.** The Company shall, upon request from the Town, notify the Council of any changes in the Franchise Fee percentage made with other municipalities served by the Company under a franchise within the State of Colorado. If the Council decides the Franchise Fee percentage hereunder shall be changed, it shall provide for such change by Ordinance. However, any change in the Franchise Fee percentage shall then be surcharged by the Company to the Residents of the Town.

Comment [dg69]: Added

Comment [dg70]: Added

Comment [dg71]: Deleted 9.2 "9.2 Copies of Tariffs. Upon request, the Company shall furnish the Town with copies of any tariffs currently in use."

ARTICLE 10

ADMINISTRATION

- 10.1 **Duration of Franchise.** This Ordinance shall be in full force and effect from and after its passage as by law required and the conditions, terms, and provisions herein shall remain in full force and effect for a period of 20 years from and after such enactment.
- 10.2 **Temporary Extension of Franchise.** Prior to the expiration of this Franchise, should the parties desire to renew the terms and conditions of this Franchise or execute a new Franchise, but have not yet done so, the parties may temporarily extend the terms and conditions of this Franchise by written agreement for a period of not longer than 180 days from such date of expiration. During such extension, all provisions of the Franchise shall continue in effect as if the Franchise had not expired.

Comment [dg72]: Moved from 3.4

Comment [dg73]: Replaces "10"

Comment [dg74]: Added

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- 10.3 Amendments. At any time during the term of this Franchise, the Town through its Council, or the Company, may propose amendments to this Franchise by giving 30 days written notice to the other party of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, shall within a reasonable time, negotiate in good faith in an effort to agree upon a mutually satisfactory amendment(s). No amendment(s) to this Franchise shall be effective until mutually agreed upon ~~by the Town and the Company and until all public notice requirements pursuant to Colorado statutes, and ordinance requirements of the Town, have been met.~~ This section shall not apply to Franchise Fee changes under Article 9.
- 10.4 Revocation of Privileges by Condemnation. In the event, at any time during the term of this Franchise, the Town shall condemn any of the Facilities of the Company within the Service Area, and thereby revoke all or any part of the privilege and authority herein granted to the Company to serve the Residents ~~of the Service Area,~~ then and in such event the Town shall pay to the Company just compensation as provided by the laws of the State of Colorado for such rights and Facilities by reason of such condemnation.
- 10.5 Compliance Impaired. Both the Company and the Town recognize there may be circumstances whereby compliance with the provisions of this Franchise is impossible or is delayed because of circumstances beyond the Company's or Town's control. In those instances, the Company or Town shall use its best efforts to comply in a timely manner and to the extent possible.
- 10.6 Company's Failure to Perform. It is agreed that in case of the failure of the Company to perform and carry out any of the ~~conditions,~~ terms and provisions herein set forth in any substantial particular, wherein such failure is within the Company's control and with respect to which redress is not otherwise herein provided, the Town, acting through its Council, may, after hearing, determine such substantial failure; and, thereupon, after notice given the Company of such failure, the Company may have a reasonable time, not less than 90 days, unless otherwise agreed by parties, in which to remedy the conditions respecting which such notice shall have been given. After the expiration of such time and the failure to correct such conditions, the Council shall determine whether any or all rights and privileges granted the Company under this ordinance shall be forfeited and may declare this Franchise null and void.
- 10.7 Ownership of Facilities. All Facilities used or placed by the Company either within or outside the Service Area shall be and remain the property of the Company.
- 10.8 Transfer of Rights. The Company shall not transfer or assign any rights under this Franchise to a third party, excepting only corporate reorganizations of the Company not including a third party, unless the Town shall approve in writing such transfer or assignment. Approval of the transfer or assignment shall not be unreasonably withheld.
- 10.9 Removal of Facilities. Upon the expiration of this Franchise, if thereafter the Company Facilities shall not be used for electric, telephone, or cable TV purposes for a period of 12 successive months, the Town shall have the option of having the Company remove such Facilities or claim such Facilities as its own. ~~If the Town elects to have the Company remove the Facilities, it shall give written notice to the Company, directing it to remove such Facilities, and the Company shall remove the same no later than 90 days after the date of such notice, unless~~

Comment [dg75]: Removed "in writing"

Comment [dg76]: Added

Comment [dg77]: Replaces "stipulations"

Comment [dg78]: Removed "If the Town should require the Company to remove its Facilities such removal shall only apply to those Facilities that are above ground and have a visual impact on the surrounding area."

Comment [dg79]: Removed "within thirty (30) days after expiration of the twelve (12) month period above described"

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the Company and the Town agree to a longer period within which removal shall occur. Any Facilities, either underground or overhead, remaining after such time that are not expressly claimed by the Town shall be deemed to have been abandoned. Any cost incurred by the Town in removing abandoned Facilities, and any liability associated with Facilities abandoned by the Company shall be the liability of the Company. For any Facilities claimed by the Town, any liability associated with such Facilities shall become the liability of the Town.

Comment [dg80]: Replaces "the twelve (12) month, thirty (30) day, and ninety (90) day periods above described,"

Comment [dg81]: Replaces "have not been"

Comment [dg82]: Removed "or removed by the Company"

- 10.10 Non-renewal of Franchise (Alternative Electric Service). If this Franchise is not renewed, or if it is declared null and void, or the Company terminates any service provided for herein for any reason, and the Town has not provided for alternative electric service to the Residents of the Service Area, the Company shall not remove its Facilities and shall be obligated to continue electric service to the Residents until alternative electric service is provided. The Company will not withhold any temporary services necessary to protect the public.

Comment [dg83]: Added

ARTICLE 11

COMMUNITY ENHANCEMENT FUND

- 11.1 Purpose. The Company is committed to programs designed to make a difference in people's lives and the communities in which they reside. The Company will voluntarily make monetary resources available to the Town for such programs and/or activities. Programs for which such funds shall be spent shall be limited to (1) beautification projects, (2) energy conservation projects, (3) equipment and technology upgrades for schools, (4) scholarship funds, (5) acquisition of open space and/or park land and development thereof, (6) sponsorship of special community events and (7) undergrounding of overhead electric and other utility lines. Funds made available under this Article may be spent for other purposes only with the express written consent of the Company.
- 11.2 Payments to the Fund. The Company shall make annual payments to the fund equal to one percent (1%) of its prior year's Revenues, prorated for the portions of the months at the beginning and end of the term of this Franchise, collected from the sale of electricity within the Service Area, or \$2,000, whichever amount is greater. Said payments shall be made into the fund no later than February 15th of the year subsequent to the year in which the gross revenues are received by the Company.
- 11.3 The Fund. The fund established by the Company shall be maintained in a bank account in the name of the Town, but shall be maintained separately from all other funds and accounts held by the Town.
- 11.4 Payments from the Fund. All payments from the fund shall be for projects described in Section 11.1 hereof. Prior to any such expenditure, authorization to withdraw from the fund shall be given by resolution or ordinance duly enacted by the Council, and such resolution or ordinance shall clearly describe the nature and purpose of the project for which the expenditure is made. Prior to any expenditure, the Town shall notify the Company of its intended use of the funds. Unless the Company objects, in writing, prior to such expenditure, the Company shall have waived its right to object in the future if the funds are expended for the use identified in the notice.
- 11.5 Audits. The Town may audit the Company's books for the limited purpose of determining the Revenues being collected within the Town at any reasonable

Comment [dg84]: Additional sentences moved to paragraph 11.8

Comment [dg85]: Removed "After enactment of this Ordinance, the Company will establish an initial fund amount of \$2,000.00."

Comment [dg86]: Removed "then"

Comment [dg87]: Removed "gross"

Comment [dg88]: Replaces "related to gross"

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- time and with reasonable prior notice. The Company may audit the fund account, expenditures from the fund and resolutions and ordinances authorizing such expenditures at any reasonable time and with reasonable prior notice.
- 11.6 **Forfeiture of Enhancement Funds.** The Company shall have the express right to temporarily suspend or terminate in full its annual contributions to the Enhancement Fund if it is determined that funds allocated and paid to the Town are being, or have been, misappropriated, administered with bias or discrimination or for other inappropriate actions.
- 11.7 **Advancement of Fund.** The Company shall consider advances of funds, subject to the provisions of this section, for all projects that specifically involve undergrounding of overhead lines or projects acceptable to the Company which are related to the Company's existing Facilities. The Town shall make all reasonable attempts to plan and budget use of the Fund without advancement of future Funds. However, if the Town requests and the Company and the Town agree that it is in the mutual interest of both, the Company shall anticipate Fund amounts to be available for up to three (3) years in advance. Both parties shall enter into a special agreement concerning the advanced Funds. Any amounts advanced shall be credited against amounts to be expended in succeeding years until such advances are eliminated.
- 11.8 **TABOR Compliance Issue.** The Community Enhancement Fund described in this Article is a program that has been initiated solely by the Company. This Town has not made the program a requirement for granting of a franchise to the Company. Funding for this program is not a cost of doing business, but is a voluntary contribution by the Company and is intended to be and shall be considered to be a gift or grant within the meaning of Article X, Section 20, of the Constitution of the State of Colorado for purposes of determining compliance by the Town with such constitutional provisions.

Comment [dg89]: Paragraph added

Comment [dg90]: Moved from paragraph 11.1

Comment [dg91]: Added

ARTICLE 12 UNDERGROUNDING

- 12.1 **At Consumer's Request.** If a customer(s) within the Town should request that new Facilities be installed underground or for the conversion of existing overhead electrical facilities of the Company to underground facilities or if Town ordinances or resolutions require a customer(s) to install Company facilities underground, the Company shall proceed in accordance with its **Electric Service Tariffs, Rules and Regulations** or other customary practices, as each may from time to time be amended.
- 12.2 **Town Requested Undergrounding.** Except for the Company's contributions to the Community Enhancement Fund, which may be used by the Town to pay for the undergrounding of the Company's overhead electric facilities, any request, requirement imposed by resolution or ordinance, or other communication from the Town to the Company, asking, or requiring the Company to underground its new electrical facilities or its existing overhead electric facilities, or move, remove, or replace its existing underground electrical facilities, shall be responded to in accordance with the provisions of the Company's **Electric Service Tariffs, Rules and Regulations** or other customary practices, as such may from time to time be amended.

Comment [dg92]: Added

Comment [dg93]: Updated document titles

Comment [dg94]: Added

Comment [dg95]: Added

Comment [dg96]: Added

Comment [dg97]: Updated document titles

Comment [dg98]: Added.

Comment [dg99]: Removed "The Town acknowledges receipt of a copy of both policies"

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12.3 Relocation of Underground Facilities. No provision contained in this Article shall be construed to obligate the Company to pay for the removal and relocation of its underground electric facilities where such is at the request or demand of a person, or a public or private entity under circumstances which require the party requesting or demanding such to pay for the relocation under other provisions hereof or under the provisions of the Company's Electric Service Tariffs, Rules and Regulations or other customary practice in use by the Company, as such may be from time to time amended.

Comment [dg100]: Replaces "Nothing herinabove"

12.4 Governmental Mandates. This Franchise or the Town's Municipal Code, as either may be amended from time to time, shall not prohibit or limit the Company's right to enforce its collection of any cost increase caused by governmental mandate in accordance with the provisions of the Company's Electric Service Tariffs, Rules and Regulations, or other customary practices of the Company, as such may be from time to time amended.

Comment [dg101]: Updated document titles.

Comment [dg102]: Added

ARTICLE 13 MISCELLANEOUS

13.1 Changes in Utility Regulation. In the event new legislation materially affects the terms and conditions of this Franchise Ordinance, the parties agree to renegotiate the affected terms and conditions in good faith as an amendment hereto. The parties hereto acknowledge that regulatory and legislative changes in the electric utility, gas utility and other energy industries are currently being discussed nationwide and statewide; that some changes in utility industry sectors have already been implemented; and that other changes may be made in the future, during the term of this Franchise. The parties agree, that insofar as future changes in the utility laws will allow, the Company shall always retain the right to bill customers for utility transportation services and energy sales within the Service Area if it is the provider of either the energy product or the transportation of such product. The parties agree that this will provide the most efficient and convenient utility service to the Residents of the Service Area and provide assurance to the Town of franchise fee collection for each component charged for the sale and delivery of energy products within the Service Area.

Comment [dg103]: Replaces "the increased costs of new underground construction, or conversion, in accordance with the provisions of the Company's Line Extension Policy, Underground Conversion Policy, customary practices of the Company, or state law. Anything in this Franchise, or in the Municipal Code, that would be a contributing factor to the ultimate effect of causing the Company to convert overhead electric lines or Facilities to underground lines or Facilities, or which would result in new construction of lines or Facilities being placed underground, when such could have been constructed overhead, shall be deemed to be a mandatory requirement of the Town."

Comment [dg104]: Added

Comment [dg105]: Removed "One likely scenario is the implementation of open access to electric customers, and other energy customers, making such customers available to all utilities, thus eliminating or limiting territorial protections. Under this scenario one utility may contract to sell a type of energy to a customer, while another utility transports the energy to the customer for a fee charged to the other utility or the customer."

Comment [dg106]: Added

13.2 Successors and Assigns. The rights, privileges, franchises and obligations granted and contained in this Ordinance shall inure to the benefit of and be binding upon the Company, its successors and assigns.

13.3 Representatives. Both parties shall designate from time to time in writing representatives to act as franchise agents for the Company and the Town. Such will be the persons to whom notices shall be sent regarding any action to be taken under this Ordinance. Notice shall be in writing and forwarded by certified mail or hand delivery to the persons and addresses as hereinafter stated, unless the persons and addresses are changed at the written request of either party. Until any such change shall hereafter be made, notices shall be sent to the Town Manager and to the Company's Chief Executive Officer. Currently the addresses for each are as follows:

Comment [dg107]: Replaces "General Manager"

Town:

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Town Manager
Town of Minturn
P.O. Box 309
302 Pine Street
Minturn, CO 81645-0309

Company:

Chief Executive Officer
Holy Cross Energy
P.O. Box 2150
Glenwood Springs, CO 81602-2150

Comment [dg108]: Replaces "243 Boulder Street"

Comment [dg109]: Added

Comment [dg110]: Replaces "General Manager"

Comment [dg111]: Removed "3799 Highway 82"

Comment [dg112]: Added

- 13.4 Severability. Should any one or more provisions of this Franchise be determined to be illegal or unenforceable, all other provisions nevertheless shall remain effective; provided, however, the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft provisions that will achieve the original intent of stricken provisions.
- 13.5 Entire Agreement. This Franchise constitutes the entire agreement of the parties. There have been no representations made other than those contained in this Franchise.

ARTICLE 14 APPROVAL

- 14.1 Town Approval. This grant of Franchise shall not become effective until approved by the Town in accordance with its ordinances and the statutes of the State of Colorado.
- 14.2 Company Approval. The Company shall file with the Town Clerk its written acceptance of this Franchise and of all its terms and provisions within 15 business days after the final adoption of this Franchise by the Town. The acceptance shall be in the form and content approved by the Town Attorney. If the Company shall fail to timely file its written acceptance as herein provided, this Franchise shall become null and void.

FRANCHISE (02-04-2011)

INTRODUCED, READ, AND ORDERED PUBLISHED BY THE TOWN COUNCIL OF TRUSTEES 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 _____ DAY OF _____, 2011, BY A VOTE OF _____ IN FAVOR AND _____ AGAINST.

Comment [dg113]: Modified

Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Town Attorney

Publication Dates:

FINALLY, adopted, passed and approved on second reading after Public Hearing on _____, 2011.

ATTEST:

TOWN OF MINTURN

Town Clerk

Mayor

HOLY CROSS ENERGY

Del Worley, Chief Executive Officer

Date

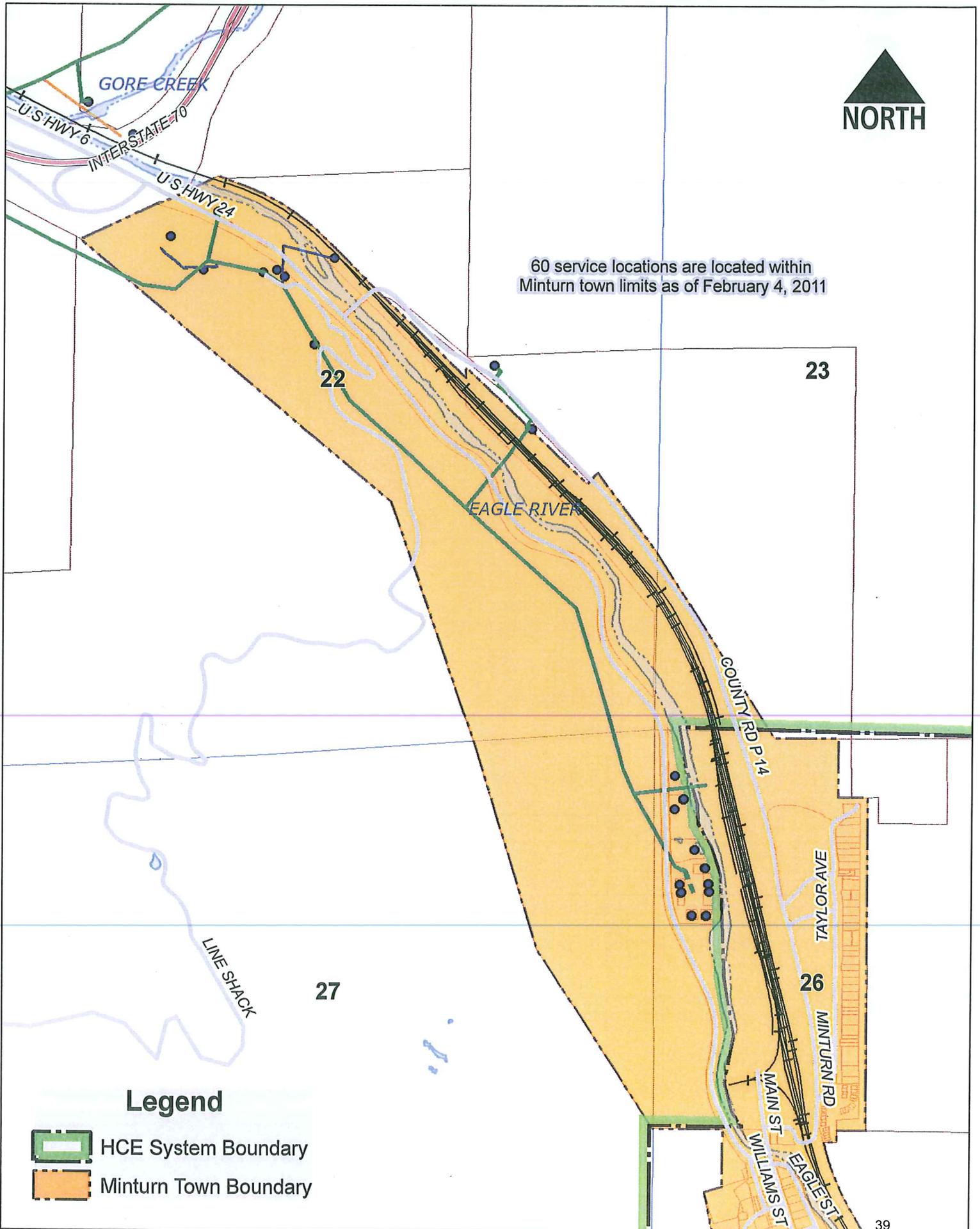
New Paragraph replaces :

The Company shall have the right to control the growth of trees and shrubs as may be reasonably necessary to protect its Facilities. The Company may use machinery or other lawful methods to control such growth, but shall not use chemicals for such purpose. Annually, on a date mutually agreed to by both parties, representatives of each party shall meet and/or consult to discuss problems related to the means and methods of controlling such growth. Prior to cutting down or removing any tree, the Company shall consult with a representative of the Town for the purpose of determining whether such cutting or removal is the only reasonable and cost effective means of protecting the Company's Facilities.

Replaces “

7.1 Town Held Harmless. The Company shall indemnify, defend and save the Town, its officers and employees, harmless from and against all liability or damage and all claims or demands whatsoever in nature arising out of the operations of the Company within the Town pursuant to this Franchise, and the securing of, and the exercise by the Company of, the Franchise rights granted in this ordinance and shall pay all reasonable expenses arising therefrom. The Town shall provide prompt written notice to the Company of the pendency of any claim or action against the Town arising out of the exercise by the Company of its Franchise rights. The Company will be permitted, at its own expense, to appear and defend or to assist in defense of such claim. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend or hold the Town harmless to the extent of any claim, demand, or lien arising out of, or in connection with, any negligent act or failure to act by the Town or any of its officers, employees, or agents unless the Company shall become obligated to indemnify, defend or hold the Town harmless by virtue of the comparative negligence laws of Colorado.

Minturn Town Limits and HCE Boundary





Official Minutes

MEETING OF THE MINTURN TOWN COUNCIL
Minturn Town Center, 302 Pine Street
Minturn, CO 81645 • (970) 827-5645

Wednesday April 6, 2011

Regular Session – 7:00pm

MAYOR – Gordon “Hawkeye” Flaherty
MAYOR PRO TEM – George Brodin

TOWN MANAGER – Jim White
TOWN CLERK/TREAS – Jay Brunvand

COUNCIL MEMBERS:

Shelley Bellm
Earle Bidez
Jerry Bumgarner
Aggie Martinez
John Rosenfeld

When addressing the Council, please state your name and your address for the record prior to providing your comments. Please address the Council as a whole through the Mayor. All supporting documents are available for public review in the Town Offices – located at 302 Pine Street, Minturn CO 81645 – during regular business hours between 8:00 a.m. and 3:00 p.m., Monday through Friday, excluding holidays.

Regular Session – 7:00pm

1. Call to Order

- a. Roll Call
- b. Pledge of Allegiance

The meeting was called to order by Mayor Pro Tem Brodin at 7:02 pm.

Those present included: Mayor Pro Tem George Brodin, Council Members Shelley Bellm, Jerry Bumgarner, John Rosenfeld, Aggie Martinez, and Earle Bidez. (Mayor Hawkeye Flaherty absent, excused)

Staff present: Town Manager Jim White, Town Treasurer/Clerk Jay Brunvand, Administrative Assistant/Deputy Clerk Michelle Metteer, Town Planner Chris Cerimele.

2. Approval of Agenda

- a. Items to be Pulled or Added

Add item 13a-Executive Session

Motion by Shelley B., second by John R., to approve the agenda of April 6, 2011 as amended, all voted in favor. (Mayor Hawkeye F., absent, excused)

3. Minturn Liquor Authority

- The Minturn Country Club, Inc Hotel/Restaurant Liquor License annual renewal; 131 Main Street; Tom Ricci/Joe Honnessy, Owner/Manager

Motion by Shelley B., second by Aggie M., to approve the Minturn Country Club, Hotel/Restaurant Liquor License annual renewal; 131 Main Street. All voted in favor.

4. Approval of Minutes and Action Report

- March 16, 2011
- Action Item Report

Motion by Earle B., second by Jerry B., to approve the minutes of March 16, 2011 as presented, all voted in favor. (Mayor Hawkeye F., absent, excused)

5. Public comments on items, which are NOT on the agenda (5 minute time limit per person)

- Eagle County Commissioners
 - Eco Transit-discuss how have things gone so far this year, numbers are good. Discuss sustainable ridership.
 - Eagle County Airport/Plan to determine facilities needed and timetable...will want a Minturn representative on committee. Eagle County will also consider an international airport feasibility study.
 - Comprehensive Economic Planning
 - Land Swap Status-Meeting April 18th with CDOT to discuss the different issues involved with the Eagle Valley Land Exchange
 - Medical Marijuana
 - Coordinated county-wide calendar
 - Attainable housing, housing assistance programs
 - Paving of County Road & 2nd Phase of Eco Trail
 - Thank the Commissioners for the \$500 donation to the (Independence Day) 4th of July Celebration
- Eagle River Water & Sanitation District – Diane Johnson

6. Special Presentations/Citizen Recognition

- Eagle River Youth Coalition – Rebecca Odom

7. Planning Commission Update

3.23.11. Planning Commission Meeting

The Planning Commission voted unanimously to approve a single family residence at 251 Main Street. This is a use by right in the mixed-use zone of the Old Town Character Area. The applicant withdrew the original scheme that required multiple variances and included ground floor commercial space. The approved design conforms to all of the lot coverage, building height, setback and parking requirements of the zoning code. The applicant plans to begin construction later this spring.



Main Street



Boulder Street



Building Code Update

As requested, a copy of the proposed amendments to the 2009 building codes has been included with your packet. Please review for the 4/20/11 meeting when the building inspector will be present at a work session to discuss the proposed amendments. An ordinance to adopt the 2009 codes will be prepared for a public hearing for the same meeting. This ordinance will include the proposed amendments to the fire code that will govern open burning in the Town of Minturn.

8. Town Manager's Report

Governor Hickenlooper Visits Minturn

On Thursday, March 31, 2011, we were honored to have Governor John Hickenlooper arrive at Minturn's Town Hall for a town meeting. He specifically requested to talk about our downtown revitalization efforts, including the improvements to our infrastructure, imminent Town signage, and the influx of eight to ten new businesses in the past eighteen months. He also made a special request to ride on the Eagle County Transit bus. Governor Hickenlooper has challenged all counties throughout Colorado to create consolidated economic development plans.

Eagle County/State Land Board/USFS

Consider Land Swaps

We have rekindled the prospect of purchasing the property in Minturn commonly referred to as the Bone Yard. We are working in conjunction with the Eagle County Open Lands Committee to secure funding for this project. The agreement with the USFS requires that the Town of Minturn will be responsible for the costs of the appraisal as well as USFS staff contract hours. Eagle County Commissioner Jon Stavney has been instrumental in assisting with this project.

Eagle County Economic Development Plan

Eagle County is supporting efforts among all jurisdictions and unincorporated areas to engage in creation of a county wide economic development plan in response to the request from Governor Hickenlooper. Councilman John Rosenfeld and I attended an economic development meeting on Thursday, March 31, 2011 from 5:00pm to 7pm in the Eagle County Commissioner's room in Eagle, CO.

Medical Marijuana

Following the Minturn citizens' vote not to ban medical marijuana centers, staff research and work on the medical marijuana issue over the past several months has resulted in a draft ordinance. The first draft of the Town of Minturn's Medical Marijuana Ordinance has been provided to the Town Council and will be discussed beginning with the May 4, 2011 Town Council meeting.

Signage

Town staff will continue working on the construction and final design elements of the entryway sign. Installation is planned in the early summer of 2011.

Battle Mountain Update

Elizabeth Mitchell, Holland & Hart attorney, has been representing Minturn's interest in discussions with Battle Mountain in preparation of a response to the report given to the Battle Mountain developers by the Environmental Protection Agency (EPA) related to the Battle Mountain project. Responses to the EPA are required by the fall of 2011. We will continue to strategize with Battle Mountain Development to represent our areas of interest, individual and collective.

Holy Cross Franchise Agreement Extension

The Town of Minturn and Holy Cross representatives met on February 9, 2011 to begin review of the existing Franchise Agreement. Subsequently, we have extended our franchise through September 21, 2011. Holy Cross representatives will attend the Minturn Town Council meeting on May 4, 2011 to begin formal franchise renewal discussions.

Annual Town Clean Up Day

The Town of Minturn will hold its Annual Town Clean Up Day this year on Saturday, May 14, 2011. The Municipal Lot will be the designated drop off site. Arrangements are being made for special pick-ups for seniors and those with disabilities who need assistance.

Colorado Department of Public Safety Audit

The Colorado Bureau of Investigation (CBI) through the Colorado of Public Safety reported that the Town of Minturn's record keeping, consistent with current Colorado Crime Information Center (CCIC) and National Crime Information Center (NCIC), has passed the preliminary audit. The CBI is pleased to report that the information provided by the Town of Minturn shows all policies and practices are in compliance with CCIC and NCIC policies regarding use and submission of records. Lisa Osborne is responsible for these efforts and her efforts are both recognized and commendable!

Colorado Municipal League Annual Conference

Please consider attending the CML Annual Conference this year in Vail, CO. The conference is from June 22-June 24, 2011. The information and registration is available on the CML website. I will be completing my term as President and assuming the role of Immediate Past President.

9. Town Council Comments

John R. represented the Town of Minturn at the Eagle County Economic Development "Bottom Up" initiative meeting on March 31. The meeting went well and the diversity of the audience led to what will look to be, great results.

Direction was given to staff to send out the Eagle Vail Power Point presentation to the business community of Minturn.

The Minturn Town clean-up day is the 14th of May. Highway clean-up is the 7th of May. Everyone is welcome to come and assist in cleaning up the community. The recommendation was made for the Minturn Town clean up to focus on internal Town streets as the county-wide highway clean up the week before traditionally covers the highway running through Town.

PUBLIC HEARINGS AND DISCUSSION/ACTION ITEMS

Tom Braun, Braun Associates, representing the Eagle County School Board, requested a continuance of Ordinances 1-4 series 2011 to the first week in May.

10. Discussion/Action – Ordinance 1 – 2011 (Second Reading) an Ordinance annexing to the Town of Minturn, County of Eagle, State of Colorado, Eagle County School District Maloit Park Parcel No. 1 – Cerimele (15min)

Motion by John R., second by Aggie M., to continue to the May 4, 2011 meeting Ordinance 1 – 2011 (Second Reading) an Ordinance annexing to the Town of Minturn, County of Eagle, State of Colorado, Eagle County School District Maloit Park Parcel No. 1. All voted in favor. (Mayor Hawkeye F., absent, excused)

11. Discussion/Action – Ordinance 2 – 2011 (Second Reading) an Ordinance annexing to the Town of Minturn, County of Eagle, State of Colorado, Eagle County School District Maloit Park Parcel No. 2 – Cerimele (15min)

Motion by John R., second by Shelley B., to continue to the May 4, 2011 meeting Ordinance 2 – 2011 (Second Reading) an Ordinance annexing to the Town of Minturn, County of Eagle, State of Colorado, Eagle County School District Maloit Park Parcel No. 2. All voted in favor. (Mayor Hawkeye F., absent, excused)

12. Discussion/Action – Ordinance 3 - 2011 (Second Reading) an Ordinance authorizing the Mayor of the Town of Minturn, Colorado to sign an annexation agreement with the Eagle County School District – Cerimele (15min)

Motion by John R., second by Shelley B., to continue to the May 4, 2011 meeting Ordinance 3 – 2011 (Second Reading) an Ordinance authorizing the Mayor of the Town of Minturn, Colorado to sign an annexation agreement with the Eagle County School District. All voted in favor. (Mayor Hawkeye F., absent, excused)

13. Discussion/Action – Ordinance 4 – 2011 (Second Reading) An Ordinance establishing zoning on parcels of land known as the Eagle County School District Maloit Park Property annexed to the Town of Minturn, Colorado and amending the official zone district map of the Town of Minturn, CO.– Cerimele (15min)

Motion by John R., second by Shelley B., to continue to the May 4, 2011 meeting Ordinance 4 – 2011 (Second Reading) An Ordinance establishing zoning on parcels of land known as the Eagle County School District Maloit Park Property annexed to the Town of Minturn, Colorado and amending the official zone district map of the Town of Minturn, CO. All voted in favor. (Mayor Hawkeye F., absent, excused)

EXECUTIVE SESSION

14. a. Executive Session - Pursuant to CRS 24-6-402(4)(b) to consult with the Town's Attorney(s) and receive legal advice regarding Environmental Protection Agency (EPA) and Colorado Department of Public Health comments on the Battle Mountain Resort project Remediation Feasibility Study Amendment– White/Christensen (30min)

Motion by Jerry B., second by Shelley B., to convene into Executive Session Pursuant to CRS 24-6-402(4)(b) to consult with the Town's Attorney(s) and receive legal advice regarding Environmental Protection Agency (EPA) and Colorado Department of Public Health comments on the Battle Mountain Resort project Remediation Feasibility Study Amendment. All voted in favor (Mayor Hawkeye F., absent, excused)

FUTURE AGENDA ITEMS

15. Next Meeting – April 20, 2011

- Work Session – Ordinance 5 – 2011 an Ordinance adopting the 2009 IBC – Cerimele/Lanci (15min)
- EPA Update and follow-up with Elizabeth Mitchell (Executive Session)
- Discussion/Action - Public Works update – A. Martinez (30min)
- Discussion/Action – Ordinance 5 – 2011 (First Reading) an Ordinance adopting the 2009 IBC as amended – Cerimele/Lanci (30min)
- Introduce new Minturn Community Foundation Director-Jodi Born

16. Future Meeting

- Worksession discussion re: Ordinance ____ - 2011 an ordinance regarding the sale of Medicinal Marijuana (45min) – May 4
- Discussion/Action – Ordinance 1 – 2011 (Second Reading) an Ordinance annexing to the Town of Minturn, County of Eagle, State of Colorado, Eagle County School District Maloit Park Parcel No. 1 – Cerimele (15Min)
- Discussion/Action – Ordinance 2 – 2011 (Second Reading) an Ordinance annexing to the Town of Minturn, County of Eagle, State of Colorado, Eagle County School District Maloit Park Parcel No. 2 – Cerimele (15min)
- Discussion/Action – Ordinance 3 - 2011 (Second Reading) an Ordinance authorizing the Mayor of the Town of Minturn, Colorado to sign an annexation agreement with the Eagle County School District – Cerimele (15min)
- Discussion/Action – Ordinance 4 – 2011 (Second Reading) an Ordinance amending the Official Zone District Map of the Town of Minturn and creating the Maloit Park Character Area – Cerimele (15min)
- Discussion/Action – Ordinance ____ - 2011 (First Reading) an Ordinance allowing the sale of Medical Marijuana – May 18
- Discussion/Action – Ordinance ____ - 2011 (Second Reading) an Ordinance allowing the sale of Medical Marijuana – June 1

17. Set Future Meeting Dates

a) Council Meetings:

- April 20, 2011
- May 4, 2011
- May 18, 2011

b) Planning & Zoning Commission Meetings:

- April 13, 2011
- April 27, 2011
- May 11, 2011

c) Other Dates:

- May 14, 2011 Town Clean Up Day
- June 18, 2011 1st Day of Minturn Market
- June 22-24 CML Annual Conference/Vail

18. Adjournment

Motion by John R., second by Aggie M., to adjourn at 9:08pm. All voted in favor. (Mayor Hawkeye F., absent, excused)

Mayor Hawkeye Flaherty

ATTEST:

Town Clerk, Jay Brunvand



OFFICIAL MINUTES

MEETING OF THE MINTURN TOWN COUNCIL Minturn Town Center, 302 Pine Street Minturn, CO 81645 • (970) 827-5645

Wednesday April 20, 2011

**Work Session – 5:30pm
Regular Session – 7:00pm**

**MAYOR – Gordon “Hawkeye” Flaherty
MAYOR PRO TEM – George Brodin**

**TOWN MANAGER – Jim White
TOWN CLERK/TREAS – Jay Brunvand**

COUNCIL MEMBERS:

Shelley Bellm
Earle Bidez
Jerry Bumgarner
Aggie Martinez
John Rosenfeld

These minutes are formally submitted to the Town of Minturn Town Council for approval as the official written record of the proceedings at the identified Council Meeting. Additionally, all Council meetings are tape-recorded and are available to the public for listening at the Town Center Offices from 8:30am – 2:00 pm, Monday through Friday, by contacting the Town Clerk at 970/824-5645 302 Pine St. Minturn, CO 81645

Work Session – 5:30pm

- Discussion/ Ordinance 5 – 2011 an Ordinance adopting the 2009 IBC – Cerimele/Lanci (45min)
- Discussion/ Ordinance 7 - 2011: An Ordinance adopting standards for the issuance of Optional Premises Liquor Licenses and for Optional Premises for a Hotel and Restaurant pursuant to the provision of Section 12-47-310 C.R.S. as amended – Brunvand (15min)
- Discussion: Council meeting start times – White (15min)

Regular Session – 7:00pm

- 1. Call to Order**
 - a. Roll Call
 - b. Pledge of Allegiance

The meeting was called to order by Mayor Flaherty at 7:02pm.

Those present included: Mayor Hawkeye Flaherty, Mayor Pro Tem George Brodin, Council Members Shelley Bellm, Jerry Bumgarner, John Rosenfeld, Aggie Martinez, and Earle Bidez.

Staff present: Town Manager Jim White, Town Treasurer/Clerk Jay Brunvand, Town Planner Chris Cerimele and Attorney Allen Christensen.

2. Approval of Agenda

- a. Items to be Pulled or Added

Addition of 12a – The appointment of a representative to the Eagle County Airport Study Committee

Motion by Shelley B., second by George B., to approve the agenda as amended; all voted in favor.

3. Approval of Minutes and Action Report

- Action Item Report

Action updates: Jim W. noted the Maloit Park annexation is not on the agenda due to attendance conflicts and the School District requested more time to review the issue brought up by Council. The item will be on the May 4, 2011 meeting for consideration.

4. Public comments on items, which are NOT on the agenda (5 minute time limit per person)

Ms. Lisa Osborne, Town of Minturn Police Dept. announced April is Sexual Assault Awareness month. On April 28 a series of vignettes will be presented in a play depicting myths and facts of sex assault at Eagle Valley HS at 7pm.

On April 30 the Town will be participating in a national prescription drug take back initiative. Any prescription drug no longer used or needed may be turned in 10-2pm at the town Hall. This is a safe way to dispose of potentially dangerous drugs.

Further information on either of these topics may be obtained by calling the Minturn Police Department at 827-4272

5. Special Presentations/Citizen Recognition

- Introduction of Jodi Born – Minturn Community Fund

Mr. Andy Kaufman, Minturn Community Fund, introduced Ms. Jodi Born as the new Director of the Minturn Community Fund. Ms. Born spoke of her excitement and a brief list of summer events to include Little Beach Park band concerts and movie nights throughout the summer.

6. Planning Commission Update

The Planning Commission did not meet on 4.13.11 as there were no new development applications to consider. Meetings will resume in May to discuss open space requirements for subdivisions and Planned Unit Developments.

Building Code Update

The first reading of the ordinance to adopt the 2009 building codes is scheduled for tonight's meeting. Chuck Lanci, Building Official, will be present to discuss the proposed amendments to the codes. The adoption of the fire code is also included in the ordinance. Adoption of the 2009 International Fire Code will establish guidelines for recreational fires in Minturn.

ECO Trail – Phase 2

As requested by the Council at the last meeting, staff has followed up with Peter Runyon regarding his contacts with Union Pacific. Peter has initiated contact with Union Pacific on behalf of Minturn and they have indicated that they will need more information before they would consider the request for a revocable trail easement. They are primarily concerned with liability issues and trespassing. Staff is preparing a map of the proposed alignment for Union Pacific.

7. Town Manager's Report

Jim W. noted the Vail Ski and Snowboard Club was approved by the Eagle County School District to use the Minturn Middle School for its club base once the School District closes the middle school.

Eagle County/State Land Board/USFS

Consider Land Swaps

I attended a collective meeting at the USFS involving the parties involved in the Eagle County land swap discussions. The two properties involved that are located in Minturn are the CDOT operations center on the north end of Town across the road from the Vail Bone Yard and the Cross Creek property at the south end of Town. The CDOT property is a high priority in the discussions while the Cross Creek parcel is one of the three lowest priorities identified during the discussion held at the Forest Service. Chris Cerimele, Town Planner, also attended the site tour for the potential CDOT facility in Minturn.

Medical Marijuana

Following the Minturn citizens' vote not to ban medical marijuana centers, staff research and work on the medical marijuana issue over the past several months has resulted in a draft ordinance. The first draft of the Town of Minturn's Medical Marijuana Ordinance will be discussed beginning at the May 4, 2011 Town Council meeting.

Signage

We have secured the services of House of Signs to construct and install the Town entryway signage. Verbal support for placement of the sign on USFS land has been given by Dave Neely, District Ranger. The USFS has a formal written process it needs to complete for final approval.

Dave indicated he would be processing the request with his approval. Installation is planned now during the first two weeks of June.

Battle Mountain Update

Elizabeth Mitchell, Holland & Hart attorney, will continue discussion with Battle Mountain representatives to prepare responses to the EPA which are required by the fall of 2011. We will continue to strategize with Battle Mountain Development to represent our areas of interest and concern.

Holy Cross Franchise Agreement Extension

The Town of Minturn and Holy Cross representatives met on February 9, 2011 to begin review of the existing Franchise Agreement. Subsequently, we have extended our franchise through September 21, 2011. Holy Cross representatives will attend the Minturn Town Council meeting on May 4, 2011 to begin formal franchise renewal discussions.

Hawkeye requested a map of the Holy Cross service area to be provided to Council.

Highway 24 Clean Up

Highway 24 Clean Up will be held on Saturday, May 7, 2011. The time of the Clean Up will be approximately 9am until noon. There will be a BBQ beginning at 2pm at the base of Arrowhead for all volunteers.

Annual Town Clean Up Day

The Town of Minturn will hold its Annual Town Clean Up Day this year on Saturday, May 14, 2011. The Municipal Lot will be the designated drop off site. Arrangements are being made for special pick-ups for seniors and those with disabilities who need assistance. **Old tires and refrigerators (with the Freon removed) will be accepted. Hazardous Waste will NOT be accepted.**

Town Hall Building and Public Works Building Energy Audits Considered

We are planning to receive a cost estimate and a proposal on an energy audit for both the Town Hall building and the Public Works building from SGM Engineering, located in Glenwood Springs. We have not made a commitment to perform the audit; however we are seeking the preliminary information so we can make a recommendation.

Colorado Municipal League Annual Conference

Please consider attending the CML Annual Conference this year in Vail, CO. The conference is from June 22-June 24, 2011. The information and registration is available on the CML website.

I will be completing my term as President and assuming the role of Immediate Past President. It has been an honor to serve in this role this past year and I am very grateful for the support the Town Council has afforded me to fulfill the duties and responsibilities of the position.

John R. asked if the Colorado Supreme Court had made a decision regarding the pending water cases we have in conjunction with the Battle Mountain Resort annexation; yes, they announced they will be hearing the case and are requiring briefs by Monday.

Shelley B. asked if the property dispute on Battle Mtn. had been resolved; no, but the Supreme Court did decide to hear the case. All the issues are interrelated.

8. Town Council Comments

John, congrats to Vail Ski and Snowboard Club on their efforts at the Minturn Middle School. The release of the ladybugs will be held May 7th from 10-2pm at the garden center. The actual release time will be at noon.

PUBLIC HEARINGS AND DISCUSSION/ACTION ITEMS

9. Discussion/Action – Public Works Update – Arnold Martinez (30min)

Arnold M. gave an update of the various facilities in Public Works and the cleanup efforts they have been undertaking to improve function and safety at the water plant specifically but throughout the department in general. The presentation included the conditions of the various infrastructure assets such as streets and sidewalks. Public Works is preparing for clean up day and the highway cleanup.

Discussion ensued as to the deteriorating condition of the various roads and what can be done to curb the continuing deterioration. This included crack seal, pothole repair, small replacement and large scale overlay of roads.

Public Works is preparing for high water runoff with sandbags and other safety measures and noted the recent training they have been attending in Defensive Driving and Heavy Equipment Operation..

Council expressed their support of Public Works. John R. commended Public Works on the snow removal over the past winter.

Mr. John Volk, Southwest Water, noted the upgrades and monitoring being done at the water plant to ensure the safe water supply and any issues that may occur. Mr. Volk noted the upgrades to the telemetry system which allows water monitoring of the tanks from the water plant. The three water pumps are being worked on. Any major work on the pumps will be done one at a time to reduce the issues of down time operations. Mr. Volk noted the online water monitoring for the Council.

Mr. Steve Humann, TST, handles the engineering functions of the plant. Mr. Humann outlined the continuing efforts of ensuring the plant is operating safe and efficiently and what infrastructure upgrades are on the horizon.

Mr. Joe Tom Wood, Martin and Wood Water Engineering, reviewed the water use and the water use limits we have on our water rights and noted that we are under our limits by combining the use of well water and river water. The management of the water collection and the various

ongoing repairs the Town has made result in a positive difference on our water consumption and more specifically on our water loss.

Mr. Don Taranto, TST, summarized the strides and improvements that have been made over the past year or so. This was highlighted as real progress on cost saving measures. The upgrades have made the system safer and much more efficient for our citizens. Aggie M. noted that the electronic upgrades are fine but we do need a manual backup where our Public Works crew is out making sure things are running well.

Hawkeye asked about the dredging of the intake pond; it is important but not a top priority yet. What disinfection are we using; Hypochlorite, we do not use chlorine. Hypochlorite is a safer chemical. Training is being provided to the operators to maintain and improve their certifications.

10. Discussion/Action – Ordinance 5 – 2011 (First Reading) An Ordinance of the Town of Minturn repealing and reenacting Articles 1-8 of Chapter 18 of the Town of Minturn Municipal Code and replacing those sections with Articles 1-10 to adopt by reference the 2009 Building Codes by reference – Cerimele/Lanci (30min)

Hawkeye introduced the ordinance and read the title. Shelly B. noted this states it is the 2008 electric code not the 2009, this will be corrected to reflect it as the 2009 electric code as necessary for second reading. Hawkeye noted this was reviewed with Chris C., Town Planner and Chuck Lanci, Town Building Inspector. Aggie M. asked for clarification on the geographic information; Chris will provide the information to council for the next meeting.

Discussion ensued as to what other communities are doing on the International Energy Conservation Code standards that are included in the code section. Chris C. will provide this information of what other communities within Colorado are doing with respect to this section.

Motion by John R., second by Shelley B., to table for 30 days to the June 1, 2011 Council meeting, Ordinance 5 – 2011 (First Reading) An Ordinance of the Town of Minturn repealing and reenacting Articles 1-8 of Chapter 18 of the Town of Minturn Municipal Code and replacing those sections with Articles 1-10 to adopt by reference the 2009 Building Codes by reference as presented; all voted in favor.

11. Discussion/Action – Ordinance 6 – 2011 (First Reading) an Ordinance of the Town of Minturn amending Chapter 7 of the Municipal Code by repealing and reenacting Sections 7-4-90 and 7-8-80 as they pertain to open burning within the Town – Cerimele (15min)

Discussion ensued as to if this ordinance could or should be passed if Ordinance 5-2011 is not; it was determined that it would be appropriate to consider this ordinance at this time. Shelley B. felt the 2009 Fire Code should be brought forward separate from the other codes. Hawkeye noted the extinguishment authority is both the Eagle Fire District and the Minturn Police Department and also noted the restrictions of where a fire can be lit as to setbacks and permanent structures.

Motion by Jerry B., second by John R., to approve Ordinance 6 – 2011 (First Reading) an Ordinance of the Town of Minturn amending Chapter 7 of the Municipal Code by repealing and re-enacting Sections 7-4-90 and 7-8-80 as they pertain to open burning within the Town as presented; all voted in favor.

12. Discussion/Action – Ordinance 7 – 2011 (First Reading) an Ordinance adopting standards for the issuance of Optional Premises Liquor Licenses and for Optional Premises for a Hotel and Restaurant License pursuant to the provision of Section 12-47-310 C.R.S. as amended – Brunvand (15min)

Hawkeye introduced and read Ordinance 7-2011. Jerry B. recommended to table this until the State legislature decides on SB 11-066. Council directed Staff to provide background information on SB 11-066. It was directed to have Chief Martinez available to comment at the May 4th meeting and until we are able to pass our own legislation we will either entertain an application for a Special Event Permit and administer it in the normal course of business or allow 3.2 liquor to be brought in by attendees on a BYOB status as we have in the past.

Discussion ensued as to if we are excluding Special Event Permits. Staff was directed to review the concerns expressed and how they might be addressed in the proposed Ordinance.

Motion by John R., second by Aggie M., to table to May 4th Ordinance 7 – 2011 (First Reading) an Ordinance adopting standards for the issuance of Optional Premises Liquor Licenses and for Optional Premises for a Hotel and Restaurant pursuant to the provision of Section 12-47-310 C.R.S. as presented; all voted in favor.

12a Discussion/Action – Addition of 12a – The appointment of a representative to the Eagle County Airport Task Force

Jim W. noted that he has had Jerry Bumgarner and Michael Gallagher express interest in this position.

Motion by George B., second by Shelley B., to appoint Jerry Bumgarner as the Town representative to the Eagle County Airport Task Force; all voted in favor.

EXECUTIVE SESSION

13. Executive Session - Pursuant to CRS 24-6-402(4)(e) for the purpose of determining positions relative to matters that may be subject to negotiations and instruct the negotiators for the purpose of discussing the Town receiving bids on annual contracts and for the purpose of discussing the Town Prosecuting attorneys first quarterly review – White/Christensen

Motion by Shelley B., second by George B., to convene in Executive Session Pursuant to CRS 24-6-402(4)(e) for the purpose of determining positions relative to matters that may be subject to

negotiations and instruct the negotiators for the purpose of discussing the Town receiving bids on annual contracts; all voted in favor.

The Executive Session ended at 9:35 at which time the Council reconvened the meeting.

Direction was given to proceed with a Request for Proposals for our summer park landscaping maintenance and irrigation.

FUTURE AGENDA ITEMS

14. Next Meeting – May 4, 2011

- Executive Session - Pursuant to CRS 24-6-402(4)(b) to consult with the Town's Attorney(s) and receive legal advice regarding Environmental Protection Agency (EPA) and Colorado Department of Public Health comments on the Battle Mountain Resort project Remediation Feasibility Study Amendment– White/Christensen (60min)
- Add fire code discussion
- Add Start time discussion
- Add park and open space money for the USFS Boneyard
- Worksession discussion re: Ordinance ___ - 2011 (First Reading) an ordinance regarding the sale of Medicinal Marijuana (45min) – May 4
- Discussion/Action – Ordinance 6 – 2011 (Second Reading) an Ordinance of the Town of Minturn amending Chapter 7 of the Municipal Code by repealing and re-enacting Sections 7-4-90 and 7-8-80 as they pertain to open burning within the Town – Cerimele (15min)
- Discussion/Action – Ordinance 7 – 2011(Second Reading) An Ordinance adopting standards for the issuance of Optional Premises Liquor Licenses and for Optional Premises for a Hotel and Restaurant pursuant to the provision of Section 12-47-310 C.R.S. as amended – Brunvand (15min)
- Discussion/Action – Ordinance 1 – 2011 (Second Reading) an Ordinance annexing to the Town of Minturn, County of Eagle, State of Colorado, Eagle County School District Maloit Park Parcel No. 1 – Cerimele (15min) – May 4
- Discussion/Action – Ordinance 2 – 2011 (Second Reading) an Ordinance annexing to the Town of Minturn, County of Eagle, State of Colorado, Eagle County School District Maloit Park Parcel No. 2 – Cerimele (15min) – May 4
- Discussion/Action – Ordinance 3 - 2011 (Second Reading) an Ordinance authorizing the Mayor of the Town of Minturn, Colorado to sign an annexation agreement with the Eagle County School District – Cerimele (15min) – May 4
- Discussion/Action – Ordinance 4 – 2011 (Second Reading) An Ordinance establishing zoning on parcels of land known as the Eagle County School District Maloit Park Property annexed to the Town of Minturn, Colorado and amending the official zone district map of the Town of Minturn, CO.– Cerimele (15min) – May 4

15. Future Meeting

- Discussion/Action – Ordinance ____ - 2011 (First Reading) an Ordinance allowing the sale of Medical Marijuana – May 18
- Discussion/Action – Ordinance ____ - 2011 (Second Reading) an Ordinance allowing the sale of Medical Marijuana – June 1
- Discussion/Action – Ordinance 5 – 2011 (Second Reading) an Ordinance adopting the 2009 IBC as amended – Cerimele/Lanci (30min)
-

16. Set Future Meeting Dates

a) Council Meetings:

- May 4, 2011
- May 18, 2011
- June 1, 2011

b) Planning & Zoning Commission Meetings:

- April 27, 2011
- May 11, 2011
- May 26, 2011

c) Other Dates:

- May 14, 2011 Town Clean Up Day
- June 18, 2011 1st Day of Minturn Market
- June 22-24 CML Annual Conference/Vail

17. Adjournment

Motion by Shelley B, second by Aggie M., to adjourn at 9:40pm; all voted in favor.

Mayor Hawkeye Flaherty

ATTEST:

Town Clerk, Jay Brunvand

**Town of Minturn
Council Action Item Memo**

TO: Staff Members/Council Members
FROM: Jim White/ Town Manager
DATE: May 4, 2011
SUBJECT: Status of Action Items from Town Council Meetings

| Action Item | Responsible Party | Progress Report |
|---|--------------------------|--|
| Maloit Park Annexation with Eagle County School District | White/Christensen | Public hearing, second reading, on the Ordinances related to annex scheduled for May 4 th . |
| Town entry sign: Requirements with USFS being sought | White | Continuing to modify & review design. Reviewing USFS Special Use Permit. Design complete, initial order placed at House of Signs with est install date of June 2011. |
| Draft open burning regulations as an amendment to the 2009 International Fire Code. | Cerimele | Changes from Feb 2 nd Council Meeting have been incorporated into the draft report. |
| Draft Medical Marijuana Ordinance-Staff level | White | Draft provided to Council on March 16, 2011 for review in Work Session on May 4 th , and first reading on May 18 th . |

Jim White
Town Manager
P.O. Box 309 ♦ 302 Pine Street
Minturn, CO 81645
Phone: 970-827-5645
Fax: 970-827-5545
Email: manager@minturn.org



TOWN COUNCIL
Mayor – Gordon “Hawkeye” Flaherty
Mayor Pro Tem – George Brodin
Councilmember – Shelley Bellm
Councilmember – Earle Bidez
Councilmember – Jerry Bumgarner
Councilmember – Aggie Martinez
Councilmember – John Rosenfeld

To: Mayor Flaherty and Minturn Town Council
From: Jim White, Town Manager
Date: April 28, 2011
Re: **Manager’s Report for the May 4, 2011 Town Council Meeting**

Eagle County/State Land Board/USFS
Consider Land Swaps

The two properties involved that are located in Minturn are the CDOT operations center on the north end of Town across the road from the Vail Bone Yard and the Cross Creek property at the south end of Town. The CDOT property is a high priority in the discussions while the Cross Creek parcel is one of the three lowest priorities identified during the discussion held at the Forest Service.

Bone Yard Parcel

We have secured both the agreement for the appraisal and the cooperation of the Forest Service to restart negotiations on this property. Initial dialog has started, and a site visit has been completed; however, The Town staff needs to initiate further conversation with the Eagle County staff to ask assistance in completing the application for funding from the county to make this purchase viable.

Medical Marijuana

Following the Minturn citizens’ vote not to ban medical marijuana centers, staff research and work on the medical marijuana issue over the past several months has resulted in a draft ordinance. The first draft of the Town of Minturn’s Medical Marijuana Ordinance will be discussed beginning at tonight’s meeting, May 4, 2011.

Signage

We have secured the services of House of Signs to construct and install the Town entryway signage. Installation is planned during the first two weeks of June. Formal approval documents from the USFS are reportedly in the mail.

Battle Mountain Update

Elizabeth Mitchell, Holland & Hart attorney, will continue discussion with Battle Mountain representatives to prepare responses to the EPA which are required by the fall of 2011. No new information is available at this time. Once it is available, we will reschedule a visit from Elizabeth to update the Town Council.

4/29/2011

Manager's Report for the April 20, 2011 Town Council Meeting

Holy Cross Franchise Agreement Extension

The Town of Minturn and Holy Cross have extended our franchise through September 21, 2011. Holy Cross representatives will attend the Minturn Town Council meeting on May 4, 2011 to begin formal franchise renewal discussions.

Highway 24 Clean Up

Highway 24 Clean Up will be held on Saturday, May 7, 2011. The time of the Clean Up will be approximately 9am until noon. There will be a BBQ beginning at 2pm at the base of Arrowhead for all volunteers.

Annual Town Clean Up Day

The Town of Minturn will hold its **Annual Town Clean Up Day** this year on Saturday, May 14, 2011. The Municipal Lot will be the designated drop off site. Arrangements are being made for special pick-ups for seniors and those with disabilities who need assistance. **Old tires and refrigerators (with the Freon removed) will be accepted. Hazardous Waste will NOT be accepted.**

Colorado Municipal League Annual Conference

Please consider attending the CML Annual Conference this year in Vail, CO. The conference is from June 22-June 24, 2011. The information and registration is available on the CML website.

Respectfully submitted,

Jim White
Town Manager

P.O. Box 309 ♦ 302 Pine Street
Minturn, CO 81645
Phone: 970-827-5645
Fax: 970-827-5545
Email: manager@minturn.org



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Councilman – Aggie Martinez
Councilman – John Rosenfeld

AGENDA ITEM COVER SHEET

| |
|---|
| <p>AGENDA TITLE:</p> <p>Ordinance 1 – 2011; An Ordinance Annexing to the Town of Minturn, County of Eagle, State of Colorado, the Eagle County School District Maloit Park Parcel No. 1</p> |
| <p>MEETING DATE: May 4, 2011</p> |
| <p>PRESENTER: Chris Cerimele</p> |
| <p>BACKGROUND: The Town Council voted unanimously to approve Resolution 2 - 2011 at their February 16, 2011 meeting. That Resolution established the parcel’s eligibility for annexation and concluded that the parcel was eligible to be annexed into the Town of Minturn by Ordinance. This ordinance will complete the annexation process and the land will be included within the Town’s municipal boundary.</p> |
| <p>CORE ISSUES: The annexation of Maloit Park Parcels 1 & 2 will result in the Eagle County School District deeding to the Town the 18 acre parcel of land that contains the Town’s municipal water treatment and distribution facility.</p> |
| <p>BUDGET/FINANCE IMPLICATIONS: Annexation of the Maloit Park property will result in additional revenue for the Town if and when the property is developed.</p> |
| <p>RECOMMENDED MOTION: I move to approve Ordinance 1 – Series 2011 on second reading.</p> |

**TOWN OF MINTURN, COLORADO
ORDINANCE NO. 1 - SERIES 2011**

**AN ORDINANCE ANNEXING TO THE TOWN OF MINTURN, COUNTY OF EAGLE,
STATE OF COLORADO, THE EAGLE COUNTY SCHOOL DISTRICT MALOIT
PARK PARCEL NO. 1**

WHEREAS, pursuant to Section 31-12-107 (1) (a), C.R.S., a petition for annexation to the Town of Minturn, Colorado of unincorporated territory located in the County of Eagle, State of Colorado as more particularly described in the legal description, a copy of which is attached hereto as Exhibit A and incorporated herein by reference, was submitted to the Town Clerk on November 17, 2010, and referred there from to the Town Council of the Town of Minturn, and;

WHEREAS, the owners of one hundred percent of the area that is the subject of the petition have petitioned for annexation to the Town of Minturn, and;

WHEREAS, the Town Council of the Town of Minturn passed Amended Resolution No. 18 - 2010 finding and determining that a public hearing should be held to determine if the proposed annexation complies with Section 30 of Article II of the State Constitution, Sections 31-12-104 and 31-12-105, C.R.S., or such parts thereof as may be required to establish eligibility for annexation to the Town of Minturn under the terms of Sections 31-12-101 to 31-12-123 C.R.S., and;

WHEREAS, the Town Council of the Town of Minturn, provided notice of the public hearing in accordance with 31-12-108 C.R.S. and held such a public hearing commencing on February 16, 2011, which date was not less than 30 days nor more than 60 days after the effective date of the resolution setting the hearing, and;

WHEREAS, the Town Council of the Town of Minturn passed Resolution No. 2 – 2011 in which it set forth its findings of fact and its conclusions on the petition for annexation, Eagle County School District Maloit Park Parcel No. 1, in accordance with the requirements of 31-12-110 C.R.S. and other applicable provisions of the Municipal Annexation Act of 1965 and resolving that such resolution be confirmed and adopted by Ordinance and that said parcel should be annexed to the Town of Minturn, Colorado by Ordinance in accordance with Section 30 of Article II of the State Constitution and Section 31-12-111, C.R.S. and;

WHEREAS, the Town Council of the Town of Minturn determines that it is in the best interest of the Town of Minturn to annex said territory to the Town.

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

Section 1. That the owners of one hundred percent of the area that is the subject of the petition have petitioned for annexation to the Town of Minturn, that findings of fact and conclusions were made by resolution by the Town Council confirming that the requirements of Section 30 of Article II of the State Constitution and Sections 31-12-104 and 31-12-105, C.R.S. have been met, that an election is not required under Section 30 (1)(a) of Article II of the State

Constitution and Section 31-12-107(2) C.R.S., and that no additional terms and conditions are to be imposed, and therefore the property described in Exhibit A, heretofore attached, be, and hereby is, annexed to the Town of Minturn and made a part of said Town, to be known as the Eagle County School District Maloit Park Parcel No. 1.

Section 2. The annexation shall take effect in accordance with the Municipal Annexation Act of 1965, as amended. This ordinance shall take effect in accordance with the Charter of the Town of Minturn.

Section 3. As required by Section 31-12-113(2) C.R.S., the Town Clerk of the Town of Minturn is directed as follows:

1. File one copy of the annexation map with the original of this annexation Ordinance in the office of the Town Clerk for the Town of Minturn.
2. File for recording three certified copies of this annexation Ordinance and map of the area annexed containing a legal description of such area with the county clerk and recorder of Eagle County, Colorado.

Section 4. Severability. If any part, section, sub-section, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance; and the Town Council for the Town of Minturn, Colorado hereby declares it would have passed this Ordinance and each part, section, sub-section, sentence, clause or phrase thereof, irrespective of the fact that any one or more parts, sections, sub-sections, sentences, clauses or phrases be declared invalid.

Section 5. The Town Council hereby finds, determines and declares that this Ordinance is necessary and proper for the health, safety and welfare of the Town of Minturn and the inhabitants thereof.

Section 6. The repeal or the repeal and re-enactment of any provision of the Minturn Municipal Code as provided in this ordinance shall not affect any right which has accrued, and duty imposed, any violation that occurred prior to the effective date hereof, any prosecution commenced, nor any other action or proceeding as commenced under or by virtue of the provision repealed and re-enacted. The repeal of any provision hereby shall not revive any provision or any ordinance previously repealed or superseded unless expressly stated herein.

INTRODUCED, READ BY TITLE, APPROVED ON THE FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL THE 16th DAY OF March, 2011. A public hearing on this Ordinance shall be held at the regular meeting of the Town Council of the Town of Minturn, Colorado, on the 6th day of April, 2011, at 7 P.M. in the Minturn Town Center in the Town of Minturn, Colorado.

Mayor

Attest:

Town Clerk

INTRODUCED, READ BY TITLE, PASSED ON SECOND READING, APPROVED AND ORDERED PUBLISHED IN FULL THIS ___DAY OF ____, 2011.

Mayor

Attest:

Town Clerk

P.O. Box 309 ♦ 302 Pine Street
Minturn, CO 81645
Phone: 970-827-5645
Fax: 970-827-5545
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TOWN COUNCIL
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Councilman – Earle Bidez
Councilman – Aggie Martinez
Councilman – John Rosenfeld

AGENDA ITEM COVER SHEET

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|---|
| <p>AGENDA TITLE:</p> <p>Ordinance 2 – 2011; An Ordinance Annexing to the Town of Minturn, County of Eagle, State of Colorado, the Eagle County School District Maloit Park Parcel No. 2</p> |
| <p>MEETING DATE: May 4, 2011</p> |
| <p>PRESENTER: Chris Cerimele</p> |
| <p>BACKGROUND: The Town Council voted unanimously to approve Resolution 3 - 2011 at their February 16, 2011 meeting. That Resolution established the parcel’s eligibility for annexation and concluded that the parcel was eligible to be annexed into the Town of Minturn by Ordinance. This ordinance will complete the annexation process and the land will be included within the Town’s municipal boundary.</p> |
| <p>CORE ISSUES: The annexation of Maloit Park Parcels 1 & 2 will result in the Eagle County School District deeding to the Town the 18 acre parcel of land that contains the Town’s municipal water treatment and distribution facility.</p> |
| <p>BUDGET/FINANCE IMPLICATIONS: Annexation of this parcel will result in additional revenues to the Town if and when the property is developed.</p> |
| <p>RECOMMENDED MOTION: I move to approve Ordinance 2 – 2011 on second reading.</p> |

**TOWN OF MINTURN, COLORADO
ORDINANCE NO. 2 - SERIES 2011**

**AN ORDINANCE ANNEXING TO THE TOWN OF MINTURN, COUNTY OF EAGLE,
STATE OF COLORADO, THE EAGLE COUNTY SCHOOL DISTRICT MALOIT
PARK PARCEL NO. 2**

WHEREAS, pursuant to Section 31-12-107 (1) (a), C.R.S., a petition for annexation to the Town of Minturn, Colorado of unincorporated territory located in the County of Eagle, State of Colorado as more particularly described in the legal description, a copy of which is attached hereto as Exhibit A and incorporated herein by reference, was submitted to the Town Clerk on November 17, 2010, and referred there from to the Town Council of the Town of Minturn, and;

WHEREAS, the owners of one hundred percent of the area that is the subject of the petition have petitioned for annexation to the Town of Minturn, and;

WHEREAS, the Town Council of the Town of Minturn passed Amended Resolution No. 19 - 2010 finding and determining that a public hearing should be held to determine if the proposed annexation complies with Section 30 of Article II of the State Constitution, Sections 31-12-104 and 31-12-105, C.R.S., or such parts thereof as may be required to establish eligibility for annexation to the Town of Minturn under the terms of Sections 31-12-101 to 31-12-123 C.R.S., and;

WHEREAS, the Town Council of the Town of Minturn, provided notice of the public hearing in accordance with 31-12-108 C.R.S. and held such a public hearing commencing on February 16, 2011, which date was not less than 30 days nor more than 60 days after the effective date of the resolution setting the hearing, and;

WHEREAS, the Town Council of the Town of Minturn passed Resolution No. 3 – 2011 in which it set forth its findings of fact and its conclusions on the petition for annexation, Eagle County School District Maloit Park Parcel No. 2, in accordance with the requirements of 31-12-110 C.R.S. and other applicable provisions of the Municipal Annexation Act of 1965 and resolving that such resolution be confirmed and adopted by Ordinance and that said parcel should be annexed to the Town of Minturn, Colorado by Ordinance in accordance with Section 30 of Article II of the State Constitution and Section 31-12-111, C.R.S. and;

WHEREAS, the Town Council of the Town of Minturn determines that it is in the best interest of the Town of Minturn to annex said territory to the Town.

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

Section 1. That the owners of one hundred percent of the area that is the subject of the petition have petitioned for annexation to the Town of Minturn, that findings of fact and conclusions were made by resolution by the Town Council confirming that the requirements of Section 30 of Article II of the State Constitution and Sections 31-12-104 and 31-12-105, C.R.S. have been met, that an election is not required under Section 30 (1)(a) of Article II of the State

Constitution and Section 31-12-107(2) C.R.S., and that no additional terms and conditions are to be imposed, and therefore the property described in Exhibit A, heretofore attached, be, and hereby is, annexed to the Town of Minturn and made a part of said Town, to be known as the Eagle County School District Maloit Park Parcel No. 2.

Section 2. The annexation shall take effect in accordance with the Municipal Annexation Act of 1965, as amended. This ordinance shall take effect in accordance with the Charter of the Town of Minturn.

Section 3. As required by Section 31-12-113(2) C.R.S., the Town Clerk of the Town of Minturn is directed as follows:

1. File one copy of the annexation map with the original of this annexation Ordinance in the office of the Town Clerk for the Town of Minturn.
2. File for recording three certified copies of this annexation Ordinance and map of the area annexed containing a legal description of such area with the county clerk and recorder of Eagle County, Colorado.

Section 4. Severability. If any part, section, sub-section, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance; and the Town Council for the Town of Minturn, Colorado hereby declares it would have passed this Ordinance and each part, section, sub-section, sentence, clause or phrase thereof, irrespective of the fact that any one or more parts, sections, sub-sections, sentences, clauses or phrases be declared invalid.

Section 5. The Town Council hereby finds, determines and declares that this Ordinance is necessary and proper for the health, safety and welfare of the Town of Minturn and the inhabitants thereof.

Section 6. The repeal or the repeal and re-enactment of any provision of the Minturn Municipal Code as provided in this ordinance shall not affect any right which has accrued, and duty imposed, any violation that occurred prior to the effective date hereof, any prosecution commenced, nor any other action or proceeding as commenced under or by virtue of the provision repealed and re-enacted. The repeal of any provision hereby shall not revive any provision or any ordinance previously repealed or superseded unless expressly stated herein.

INTRODUCED, READ BY TITLE, APPROVED ON THE FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL THE 16th DAY OF March, 2011. A public hearing on this Ordinance shall be held at the regular meeting of the Town Council of the Town of Minturn, Colorado, on the 6th day of April, 2011, at 7 P.M. in the Minturn Town Center in the Town of Minturn, Colorado.

Mayor

Attest:

Town Clerk

INTRODUCED, READ BY TITLE, PASSED ON SECOND READING, APPROVED AND ORDERED PUBLISHED IN FULL THIS ___DAY OF____, 2011.

Mayor

Attest:

Town Clerk

P.O. Box 309 ♦ 302 Pine Street
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Phone: 970-827-5645
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TOWN COUNCIL
Mayor – Gordon “Hawkeye” Flaherty
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Councilman – Earle Bidez
Councilman – Aggie Martinez
Councilman – John Rosenfeld

AGENDA ITEM COVER SHEET

| |
|---|
| AGENDA TITLE: Ordinance 3 – 2011; An Ordinance authorizing the Mayor of the Town of Minturn, Colorado, to sign an annexation agreement with the Eagle County School District. |
| MEETING DATE: May 4, 2011 |
| PRESENTER: Chris Cerimele |
| BACKGROUND: This Ordinance authorizes the Mayor to sign an annexation agreement between the Town of Minturn and the Eagle County School District. This agreement entitles the ECSD the right to build up to 120 residential units exclusive of staff housing and dormitory units associated with the Ski and Snowboard Club Vail. Additionally, the agreement includes a provision that the School District will deed to the Town the 18 acre water treatment plant parcel. The agreement also includes a provision that the ECSD will provide at least 3.0 acres for recreational purposes in order to maintain a generally similar level and quality of recreational use and facilities that exist at the time of the agreement. |
| CORE ISSUES: <ul style="list-style-type: none">• The School District has the right to develop up to 120 residential units for non-District development plus up to 48 beds in a dormitory style building and 4 dwelling units for Academy staff.• The District agrees to provide at least 3.0 acres for active recreational use• The Town receives the 18 acre parcel containing the water treatment plant• |
| BUDGET/FINANCE IMPLICATIONS: Upon development of the property, the Town will receive additional revenue through real estate transfer tax and water tap fees per the terms of the annexation agreement. |
| RECOMMENDED MOTION: I move to approve Ordinance 3 – 2011 on second reading. |

**TOWN OF MINTURN, COLORADO
ORDINANCE NO 3- SERIES 2011**

**AN ORDINANCE AUTHORIZING THE MAYOR OF THE TOWN OF MINTURN,
COLORADO, TO SIGN AN ANNEXATION AGREEMENT**

WHEREAS, by Ordinances No. 1 & 2, Series 2011, the Town of Minturn has annexed to the Town approximately 105 acres of land in Eagle County commonly known as the Eagle County School District Maloit Park property (the “Property”) in accordance with the applicable provisions of Section 30 of Article II of the Constitution of the State of Colorado, the Municipal Annexation Act of 1965 and the Minturn Municipal Charter and Code; and

WHEREAS, the Town of Minturn, Colorado, a home rule municipal corporation, (“Town”) has entered into negotiations with the Eagle County School District RE 50J for an Annexation Agreement pertaining to the two annexation petitions filed by Eagle County School District RE 50J in November 2010, which petitions in the aggregate cover approximately 104.552 acres of land; and

WHEREAS, in connection with the annexation of the Property, the Eagle County School District RE50J and the Town of Minturn have reached agreement on the terms and conditions of a proposed Annexation Agreement for the Property, a copy of which is attached hereto as Exhibit A (the “Eagle County School District RE 50J Annexation Agreement”); and

WHEREAS, the Home Rule Charter of the Town of Minturn, Colorado, the Minturn Municipal Code, and C.R.S. Sec. 31-15-101, as amended, authorize the Town to enter into such agreements.

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

Section 1. The Town Council approves the Eagle County School District RE50J Annexation Agreement.

Section 2. The Town Mayor is authorized to sign the Eagle County School District RE 50J Annexation Agreement.

Section 3. This Ordinance shall not take effect until the Eagle County School District RE 50J Annexation Agreement is signed by the representatives of all of the necessary parties thereto.

Section 4. Severability. If any part, section, sub-section, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance; and the Town Council for the Town of Minturn, Colorado hereby declares it would have passed this Ordinance and each part, section, sub-section, sentence, clause or phrase thereof, irrespective of the fact that any one or more parts, sections, sub-sections, sentences, clauses or phrases be declared invalid.

Section 5. The Town Council hereby finds, determines and declares that this Ordinance is necessary and proper for the health, safety and welfare of the Town of Minturn and the inhabitants thereof.

Section 6. The repeal or the repeal and re-enactment of any provision of the Minturn Municipal code as provided in this ordinance shall not affect any right which has accrued, and duty imposed, any violation that occurred prior to the effective date hereof, any prosecution commenced, nor any other action or proceeding as commenced under or by virtue of the provision repealed and re-enacted. The repeal of any provision hereby shall not revive any provision or any ordinance previously repealed or superseded unless expressly stated herein.

INTRODUCED, READ BY TITLE, APPROVED ON THE FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL THE 16th DAY OF March, 2011. A public hearing on this ordinance shall be held at the regular meeting of the Town Council of the Town of Minturn, Colorado, on the 4th day of May, 2011, at 7 P.M. in the Minturn Town Center in the Town of Minturn, Colorado.

Mayor

Attest:

Town Clerk

INTRODUCED, READ BY TITLE, PASSED ON SECOND READING, APPROVED AND ORDERED PUBLISHED IN FULL THIS ___ DAY OF ____, 2011.

Mayor

Attest:

Town Clerk

**EAGLE COUNTY SCHOOL DISTRICT RE 50J
ANNEXATION AGREEMENT**

The parties to this Annexation Agreement (this "Agreement") and the **TOWN OF MINTURN, COLORADO**, a home rule municipal corporation ("Town"), and **EAGLE COUNTY SCHOOL DISTRICT RE50J**, a Colorado school district ("District"), collectively referred to herein as "parties."

Recitals

A. **WHEREAS**, in 2010, the District filed with the Town two petitions for annexation ("Annexation Petitions") which cover approximately 104.552 acres of land south of the Town in Eagle County as legally described in the annexation resolutions and annexation ordinances as defined below (the "Property");

B. **WHEREAS**, the District owns 100% of the Property, exclusive of dedicated streets and alleys;

C. **WHEREAS**, on November 17, 2010, the Town Clerk referred the Annexation Petitions to the Town Council;

D. **WHEREAS**, on February 16, 2011 the Town Council conducted a public hearing at which it adopted Resolution Nos. 2-2011 and 3-2011 wherein it determined that the Annexation Petitions complied with C.R.S. Section 31-12-107, as amended;

E. **WHEREAS**, the Property is presently zoned Resource under the Eagle County zoning regulations and currently is used for school facilities, administration facilities, housing, open space, municipal utility facilities, and related purposes;

F. **WHEREAS**, the Town and District desire to enter into an agreement setting forth more fully the terms of the annexation, zoning and future redevelopment rights of the Property, with full acknowledgement of the existing uses of the Property;

G. **WHEREAS**, it is the intent of the parties to allow for the development of those portions of the Property retained by the District as a mixed use project ("Project") which will include both school and District related facilities ("District Development") and, public, residential and recreation uses ("non-District Development") as more specifically permitted under the zoning for the Maloit Park Character Area, consistent with the uses identified in Minturn's 2010 Three Mile Plan for Annexation;

H. **WHEREAS**, the District desires to complete the conveyance of approximately 18 acres of property to the Town, which property is used primarily for the Town's potable and raw water collection, treatment and distribution facilities;

I. **WHEREAS**, the District may in the future complete the conveyance of approximately 1 acre to Meet the Wilderness, a trade name of the Snowboard Outreach Society, a Colorado non-profit corporation, which property, if so conveyed, will be used for education related purposes, consistent with that certain Purchase Agreement dated June 8, 2005 between the District and Meet the Wilderness to the extent it has been extended or modified by the parties;

J. **WHEREAS**, the Project may contribute to the economic and attainable growth of the Town, and the Town desires to annex the Property in order to provide for orderly long term growth in and around the Town and to secure easements for Town infrastructure across the Property consistent with the possible redevelopment scenarios and current development of the Property;

K. **WHEREAS**, the development of the Property in accordance with this Agreement and the Maloit Park Character Area will provide for orderly growth in accordance with the policies and goals set forth in the Town's Community Plan, ensure reasonable certainty, stability, and fairness in the land use planning process, stimulate economic growth, foster cooperation between the public and private sectors in the area of land use planning and otherwise achieve the goals and purposes of the Town and the District; in exchange for these benefits and the other benefits to the Town contemplated by this Agreement, together with the public benefits served by the orderly development of the Property, the District desires to receive assurance that it may, in the future, proceed with redevelopment of the Property consistent with the terms and conditions contained in this Agreement;

L. **WHEREAS**, the Town and the District agree that the matters hereinafter set forth are reasonable conditions and requirements in connection with the acceptance and favorable action on the Annexation Petitions; the Town recognizing and reciting that such matters are necessary to protect, promote, and enhance the public welfare; and

M. **WHEREAS**, the parties agree that it is desirable for the District to annex the Property to the Town and after public hearing, it is anticipated that the Town Council will approve the Annexation Petitions and annex the Property to the Town under Resolution No. 2 Series 2011 and Ordinance 1 Series 2011 and Resolution No. 3 Series 2011 and Ordinance 2 Series 2011.

NOW THEREFORE, in consideration of Ten Dollars and other good and valuable consideration including the mutual promises and covenants stated herein including the transfer of certain lands to the Town by the District by separate conveyance and the creation of certain encumbrances on the District's property and water rights as more fully set forth herein and the approval of the described zoning of the Property, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE 1. ANNEXATION AND ZONING OF THE PROPERTY

Section 1.4 Zoning. The Property has been zoned Resource in Eagle County. With the consent of the District and consistent with the requirements of C.R.S. Section 31-12-115(2), the Town has contemporaneously herewith zoned the Property by amending the official Zone District Map of the Town, also known as the Character Area Zone Map, to create the Maloit Park Character Area which consists of approximately 45.6 acres designated as the Maloit Park Mixed Use Zone, approximately 41.2 acres as Maloit Park Open Space Zone, and approximately 18.2 acres as Maloit Park Public Facilities Zone. The intent of this rezoning is to provide for the following general purposes: (a) District Development purposes; (b) public utility, facilities and infrastructure and up to ten individual dwelling units for Town, public or community service employees; (c) District and non-District residential dwellings; (d) public recreational facilities; and (d) similar structures and uses directly related or accessory to such enumerated uses. The specific uses in the Character Area shall be as prescribed by the Maloit Park Character Area and include the following: schools and related school and District facilities; public utilities, including water diversion, potable and raw water transmission, potable water treatment and storage; single family residential, duplexes, multi-family residential, apartments, and structures and facilities that are accessory to such residential uses, recreational facilities, municipal or local government office facilities; passive and active recreational

areas and facilities; community uses; and open space. Industrial uses, wastewater treatment plant, a dump, boneyard, bus barn and maintenance facility, or other such uses shall not be permitted uses within the Maloit Park Character Area. This agreement is conditioned upon the approval of the zoning described herein. It is further anticipated that the District property remaining after the subdivision exemption approval provided for herein will be subject to specific subdivision as deemed appropriate by the District and approved by the Town consistent with the provisions and intent of zoning created in accordance with this Agreement and the Municipal Code; provided, however, that any such future subdivision and attendant development shall strictly conform to the Maloit Park Character Area designation. Any rezoning in the future shall not reduce the residential densities, change the specified uses or the land areas within the development area set forth herein and on the attached exhibits, except upon the request of the District. All current and existing uses, including without limitation the mobile and/or modular home dwelling units, shall continue to be permitted under this zoning for the Maloit Park Character Area.

Section 1.5 No Obligation to Develop. The District shall have no obligation under this Agreement to develop all or any portion of the Project or Property and shall have no liability under this Agreement to the Town or any other person or entity for its decision not to develop all or any part of the Project or Property.

ARTICLE 2. WATER

Section 2.1 Continuation of Existing Water Service. The Property is currently provided potable water service by the Town pursuant to the terms and conditions of that certain Agreement between the parties dated May 5, 1964 (“1964 Agreement”). Paragraph 1 of the 1964 Agreement is hereby amended to provide that the water service shall be provided to the District at the Town’s regular in-town metered and service fee rate, as established by Town Council pursuant to Section 13-4-70 of the Minturn Municipal Code (“Municipal Code”). The first full paragraph on page 2 of the 1964 Agreement is hereby amended to provide that the District shall pay the pumping power costs for the pumping of water from the Town’s water plant clear well to the Property and within the Property, because the 1964 Agreement specified that the justification for the Town’s payment of such costs was the fact that the District was previously paying out-of-town metered rates. The 1964 Agreement is hereby amended further to provide that it shall remain in full force and effect with respect to any water service being provided to the Property for District, and non-District Development including District residential dwellings and public recreational facilities. All other provisions of the 1964 Agreement shall remain in full force and effect. The District owns interests in the Arminda Ditch and uses the same for the irrigation of school recreation fields, open space, and landscaping. Additional water service to be provided to any non-District Development on the Property will be provided by the Town pursuant to applicable rules and regulations and provisions for in the Municipal Code and this Annexation Agreement. In the event that District Development of the Property is modified in such a manner as to create a material change in water service, which for purposes of this Annexation Agreement only, are defined as a proposed use requiring more than 5.80 acre feet per year, which represents a twenty-five percent (25%) increase in the historical water demands under the 1964 agreement established by averaging the water monthly demands for the three (3) years of record with the highest annual demand prior to the date of this agreement, the District will need to purchase additional taps from the Town, which taps shall count against the 150 single family equivalents (“SFEs”) in Section 2.3 below.

Section 2.2 Grants of Easements for Water System Infrastructure. The parties agree that the District will grant easements across the Property to the Town for water lines and associated facilities and infrastructure. Upon written request from the Town based on a specific projected need to construct water lines and associated facilities and infrastructure and wastewater infrastructure,

as appropriate, and finalize the grant of the easements for the same, the District agrees to deliver to the Town specific easements for potable and raw water lines and associated facilities and infrastructure and wastewater collection and transmission lines, as appropriate, along alignments that are compatible, at that time, with the then existing infrastructure and other structures and development on the District property. Such alignments are anticipated to begin in the areas generally depicted along Cross Creek and end in the areas on the easterly side of the Property shown on **Exhibit A** hereto. In the event that the Town needs such public utility easements prior to any further District or non-District Development, due to development off-site of the Property or other needs of the Town, the parties shall confer and in good faith specifically locate and legally describe such easements for conveyance in order to lessen any adverse impacts upon either District or non-District Development on the Property. It is expressly acknowledged and understood that the alignment of such easements may not be the most direct or shortest alignments, but rather alignments that shall be deemed to be the least impactful on the District's current and future use of the Property. The Town further agrees that any potable or raw water lines installed by the Town within such easements shall be appropriately sized to provide capacity for any District or non-District Development on the Property, as such development is contemplated by the Maloit Park Character Area. The District shall not be required to participate in any cost-recovery or line reimbursement agreement regarding such potable or raw water lines. Such easements shall be substantially in the form attached hereto as **Exhibit B** and shall be recorded in the Eagle County Clerk and Recorder's office upon execution.

Section 2.3 Water Rights Dedication. In consideration of the District's grant of the 18 acre parcel and of utility easements requested by the Town for development off-site of the Property, and contingent upon the Arminda Ditch Water Right being used for raw water irrigation, the Town shall waive dedication requirements under the Municipal Code, Article 13, Section 13-2-20 for up to and including 150 SFEs on the Property for District and non-District Development..

Section 2.4 Arminda Ditch. The District owns an interest in the Arminda Ditch, Priority No. 339, adjudicated March 5, 1918, appropriation date December 29, 1892, for the portion of the Arminda Ditch water right that has been historically used upon and in connection with and is appurtenant to the Property ("Arminda Ditch Water Right"). The Arminda Ditch Water Right is important to the water service of the Property for irrigation purposes and potentially for municipal water service purposes in the future. Accordingly, the parties agree to the following provisions with regard to the Arminda Ditch Water Right:

1. At such time as the District or its successor request new taps that include outdoor irrigation to serve the 45.6 acres designated as Maloit Park Mixed Use Zone in Section 1.4 above, not including any taps covered by the 1964 agreement pursuant to Section 2.1 above, the District shall convey such Arminda Ditch Water Rights to the Town. The District shall retain the first right to use the Arminda Ditch Water Right for the outdoor irrigation of any portion of the Property.
2. Subsequent to conveyance to the Town, the Town shall assume all operations, maintenance and administration duties with respect to such Arminda Ditch Water Right (including ditch operation and maintenance). The users of the yield of the Arminda Ditch Water Right on the Property shall be charged no more than a pro rata share of such costs for operation, maintenance and administration based on the amount of raw water use.
3. The Town shall have the right of first refusal to purchase the Arminda Ditch Water Right. In the event the District receives a bona fide offer for the sale of the Arminda Ditch Water Right separate from the Property from a third party that is accepted by the District or that

is negotiated by the District into an acceptable agreement for such sale (collectively “Third Party Sale”), the Town shall have the right to exercise its right of first refusal and become the purchaser of the Arminda Ditch Water Right under the same terms and conditions of the Third Party Sale. The Town shall have 60 days from the date of receipt of the written notice from the District of the Third Party Sale to exercise its right of first refusal by agreeing to purchase the Arminda Ditch Water Right on the same terms as the Third Party Sale. If the right of first refusal is not exercised within such time period or otherwise waived by the Town, the sale may be made to such third party purchaser. This right of first refusal shall not terminate simply because the Town has previously been offered the first right to purchase the Arminda Ditch Water Right under Section 2.4.2 and declines to exercise such right, whether once or numerous times.

4. In the event the District determines to sell the Arminda Ditch or portions thereof, any sale shall not include the amount of water that is being and is intended to be used on the Property for irrigation as provided herein. All irrigation on the Property will be served by the Arminda Ditch or pursuant to the 1964 Agreement between the parties, as it is amended herein and as set forth herein.

ARTICLE 3. WASTEWATER TREATMENT SERVICE

Section 3.1 Wastewater Treatment Service. Wastewater treatment service is currently provided by the Eagle River Water and Sanitation District. It is anticipated that such district will continue service for any development of the Property. The easements provided for in Section 2.2 may also include the capability for the installation, operation, and maintenance of wastewater collection and transmission and facilities, provided, however, that nothing herein shall be construed as a grant of permission to utilize any easement, property, or property interest to be conveyed pursuant to this Agreement for purposes of wastewater treatment.

ARTICLE 4. GENERAL DEVELOPMENT OF THE PROPERTY

Section 4.1 Future Development. It is agreed that all future development of non-District Development may be the subject of one of the following processes: (a) a Planned Unit Development and a Planned Unit Overlay Zone District (“Zone District”) may be created upon application therefore by the District; (b) Subdivision Plat Application pursuant to Town regulations and ordinances governing such process; or (c) permitted development pursuant to the Maloit Park Character Area zoning in accordance with the Town regulations and ordinances governing such development. The parties agree that the uses and densities of the Maloit Park Character Area and herein are in compliance with the Town’s applicable goals, policies, and objectives and, accordingly, any future subdivision review of any non-District Development shall be based solely upon conformance with applicable design standards as required by the Municipal Code including without limitation those pertaining to engineering, safety, platting, grading and drainage, erosion, and revegetation, together with an appropriate subdivision improvements agreement consistent with the requirements of the Municipal Code and the provisions herein. Future District Development may, or may not be a part of such non-District Development, at the discretion of the District. In addition, the Zone District shall strictly comply and be consistent with the uses set forth for the Maloit Park Character Area described in Section 1.4, elsewhere in this Agreement and as set forth in the zoning approval for the Property as provided herein.

The parties agree and acknowledge that the District hereby reserves its rights pursuant to

Title 22, Article 32 of the Colorado Revised Statutes to expand or redevelop the existing middle school or to build other schools or District related facilities, (collectively referred to in this Article 4 as “District Development”) according to the development procedures applicable to District Development as set forth in Title 22, Article 32 as such procedures may be amended from time to time.

In the event the District leases or otherwise authorizes third parties to use buildings or facilities within the retained Property or otherwise materially increases its uses with the result that there is a greater demand on Town services, the costs to the Town will be identified and the parties agree in good faith to negotiate a memorandum of understanding that provides for the District or lessee to offset such costs for such uses that are not the subject of property tax payments to the Town. To the extent that any entity leasing or using the buildings or facilities is holding a special event, such entity shall pay the costs of the additional services that are required by the Town in connection with the event, or to the extent the Town has in place a special event permitting process at the time the event is held, such entity shall comply with the Town’s special event permitting process.

Section 4.2 Subdivision Exemptions. At the same time as the approval of the annexation of the Property, the Town has approved a subdivision exemption to create the Town of Minturn 18 acre parcel with access thereto based upon application for the same that has been submitted by the District.

Section 4.3 Development and Control of Development. It is understood by the parties that the District's plans for the Property are in a state of evolution in the context of the District's assessment of its educational mission and use of its properties and facilities and the location of its facilities. Consequently, the District has no definitive plans for the Property and its development or redevelopment with the exception of the conveyance of the 18 acre parcel on the northwest side of Cross Creek to the Town and the possible conveyance of the 1 acre parcel to Meet the Wilderness. Nevertheless, the parties agree that the retained Property is appropriately situated for District Development, public utilities, water-storage, single family residential, duplexes, multi-family residential, accessory apartments, accessory dwellings, recreational facilities, community uses, town related office facilities and recreational facilities and open space. Accordingly, the District and the Town agree to cooperate in good faith in the planning and design of the development of the retained Property, with the exception of the development of District Development (submission of a site plan for which shall be made consistent with the requirements of applicable state statutes, including C.R.S. Section 22-32-124(1), as it may be amended from time to time) in order to facilitate the public process for the review and approval of the same. The District has the right to develop the retained Property for non-District Development for up to 120 residential units subject to terms and conditions of this Agreement and, as appropriate, the completion of the land use process consistent with the provisions of the Municipal Code referenced herein.

The parties acknowledge that at the time of execution of this Agreement, the District is negotiating with the Ski and Snowboard Club of Vail (“Ski and Snowboard Club”) for a potential lease of a portion of the existing school facilities on the Property, together with a long term ground lease for possible construction by the Ski and Snowboard Club for dormitory housing for students and staff housing for both the Ski and Snowboard Club and the District’s Vail Ski and Snowboard Academy. The District has the right to develop up to 48 beds in dormitory housing and up to 8 residential units to be used for staff housing (collectively, the “Academy Housing”). The Academy Housing shall be considered District Development and is expressly excluded from the 120 residential unit maximum for non-District Development.

In the event the District determines to include within the District Development any residential units in

addition to the Academy Housing, such additional units shall be included in the total of 120 units allocated to the retained Property. The District shall have no liability to the Town or any other party for a decision not to develop all or any part of the retained Property.

Section 4.4 Rules Regulations, and Official Policies.

1. Fees, Conditions and Dedications. In partial consideration of the mutual covenants and promises set forth herein, the District shall make only those dedications and pay only those fees expressly provided for in this Agreement for District Development and non-District Development:
 - a. No separate real estate dedications or fees in lieu thereof shall be required for parks/recreation and/or open space in excess of that depicted as open space areas on the Character Map.
 - b. The raw water dedications, which are required pursuant to Municipal Code Section 13-2-20 as may be amended from time to time, for up to and including 150 SFEs shall be deemed waived, regardless of whether such SFEs are utilized for District Development or non-District Development. For purposes of this Agreement, an SFE is defined as a residential unit of up to 3,000 square feet, with assumed potable water requirements for each SFE of an average of 2.3 people using 88 gallons of water per person per day; each 1,000 square feet or fraction thereof greater than the 3,000 square feet base is calculated at 0.3 SFE. In-building use for commercial space is projected to be 6/10ths of an SFE per 1000 square feet. The SFE unit values assigned to water taps for non-residential, non-commercial and non-industrial development projects, which projects may include efficiency rooms, shall be calculated for each project by estimating the volume of water consumptively used as compared to the volume of water consumptively used by an SFE.
 - c. Non-utility easements and rights of way shall be identified and dedicated at the time of development/land use approvals pursuant to Section 4.1 above, as appropriate; provided, however, that the existing private access road to the current District facilities from State Highway 24 ("Access Road") shall not be altered except with the express written consent of the District. Any additional access required by the Town or applicable fire codes regarding future non-District Development shall be granted by the Town through the Town's 18 acre parcel, consistent with the provisions of Section 4.4.5 below.
 - d. Public utility easements shall be granted to the Town for public purposes. The exact location and extent of such utility easements shall be determined in consultation with the District so as to be complimentary with both future District and non-District Development.
 - e. Water tap fees shall be waived for District Development that fall under the 1964 Agreement as described in Section 2.1 above.
2. Improvements Guarantee. Notwithstanding any provision in the Municipal Code to the contrary, the District agrees that the financial security to guarantee any non-District Development improvements for which the security is to be provided under the Municipal Code will be 125% of the estimated costs of such improvements. No guarantee shall be

required for District Development, provided that the District demonstrates to the Town's reasonable satisfaction that the District has duly budgeted and appropriated funds for such public improvements for District Development.

3. Road Maintenance. As of the date hereof, the Access Road is a private road and the Town has no maintenance, repair or replacement responsibilities. At such time as any non-District Development within the Property is approved, and to the extent any roads, streets, and rights of way are proposed to be dedicated to and accepted by the Town, the Town shall determine from a fiscal analysis of the proposed non-District Development whether it is economically feasible for the Town to assume responsibility for the maintenance, repair and replacement of the same based upon projected revenues to the Town from such Development. The decision of the Town shall be based upon the analysis and shall be communicated to the proposing developer in writing. To the extent the Town decides to accept such dedication, all roads, streets and rights of way that are dedicated to the Town must meet the applicable standards under the Municipal Code at the time of such dedication. Notwithstanding the foregoing, to the extent the Town decides to accept such dedication of the Access Road, the Access Road must meet the applicable standards under the Municipal Code except with regard to the conditions of the road's alignment and any constraints on such alignment and the road's width.
4. Park, Open Space, and Public Recreational Areas. In the event that the District determines that its recreational area needs are diminished based upon future District Development or change of District usage in the existing facilities, the parties shall meet and confer regarding the possible transfer of use and maintenance of District recreational areas for Town usage as additional park, open space and recreational areas in order to maintain a generally similar level and quality of recreational uses and facilities that exist at the time of this agreement provided that such newly identified area shall be no less than 3 acres in size. The parties acknowledge and agree that this commitment shall satisfy the Town's existing and future active park/recreation requirements.
5. Access and Emergency Access. The Town acknowledges that the single point of access and the alignment of the existing access road from Highway 24 to the Property are sufficient for both current and anticipated development of the Property, including both District and non-District Development. In the event that the fire department and ambulance service having jurisdiction over the Property, or both require a secondary access for emergency access to any future District or non-District Development, the Town agrees that the Town's access road to the 18 acre parcel may be utilized for such emergency access by authorized responders to the extent authorized by the U.S. Forest Service, the owner of the land on which portions of such road is located. The Town shall coordinate with such agencies regarding such access, including gates, road widths, turnarounds, etc. and the District shall accommodate such requirements and pay for the same; all use of the U.S. Forest Service road would be subject to U.S. Forest Service authorization and subject to such use not materially interfering with the Town's use of such road consistent with its permit.

Section 4.5 Conveyance. In partial consideration of the mutual covenants, promises, and representations stated herein, in addition to the conveyance of easements as provided in Section 2.2 herein, the District agrees to convey to the Town, by general warranty deed, title to the 18 acre parcel upon which the Town currently has located and operates its municipal potable water treatment plant and related facilities. The District's conveyance of the 18 acre parcel to the Town shall contain a reserved right of establishing an access through the parcel for emergency vehicles if

such access is required by any fire/emergency rescue local authority, together with other reserved easements or covenants, all as more fully set forth herein in Section 4.4.5 and shall be subject to a covenant running with the land restricting the use of the 18 acre parcel for the following: ten individual dwelling units for Town, public or community service employees; and municipal utility purposes and associated municipal offices and facilities, excluding wastewater treatment, storage, or collection other than for collection of wastewater from the uses thereon. Any remodel or replacement of the Town's water treatment plant will be done in a rustic aesthetic manner consistent with the small town character of the Town and shall have appropriate landscaping. All such dwelling units, offices, and facilities shall be in accordance with the applicable design standards as required by the Municipal Code.

The District's conveyance of the 18 acre parcel shall also contain a reserved nonexclusive easement for the benefit of the public to provide recreational access to the segment of Cross Creek that crosses the Property, including the bed of Cross Creek and extending 20 feet onto the bank of Cross Creek that is located on the 18 acres. Such easement will reserve the District's right, subject to prior consultation with the Town, to impose reasonable controls with respect to fishing activities within such easement (e.g., catch and release restrictions) and reserve the District's right, in coordination with the Town, to construct or cause to be constructed stream improvements provided such improvements do not interfere with the Town's current or future water, water related, and water treatment plant facilities. By a covenant running with the land, grant of a similar easement or other appropriate instrument, the District shall ensure public recreational access to the segment of Cross Creek that crosses the Property, including the bed of Cross Creek and extending 20 feet onto the bank of Cross Creek that is located on the retained Property. Such instrument will reserve the District's right to impose reasonable controls with respect to fishing activities (e.g., catch and release restrictions). Such covenants, easements, or instruments shall not restrict public access, including without limitation the District's invitees and licensees, to either side of Cross Creek or to crossover the bed of said Creek. The deed and easement or other appropriate instruments shall be prepared, executed, and recorded within 30 days after the effective date of the annexation ordinance.

ARTICLE 5. COOPERATION & IMPLEMENTATION

Section 5.1 Statement of Intent. It is the express intent of the District and the Town to cooperate and diligently work to implement any PUD zoning and related preliminary subdivision plat and final subdivision plat, associated land use approvals, building permits or approvals which are necessary or desirable in connection with the development of the Property in substantial conformance with any land use approvals except as modified by this Agreement. The Town, the District, the applications submitted by the District, and the parties' dealings with one another in connection with all phases and aspects of the Project each shall conform to a high standard of good faith and fair dealing.

Section 5.2 Scope of this Agreement.

1. This Agreement is intended to set forth the parties' understanding and agreements regarding the annexation of the Property pursuant to the Municipal Annexation Act of 1965, as amended; the procedures, limitations and standards applicable to the construction of future non-District improvements that may be installed to serve the Property and District improvements, to the extent applicable; the responsibilities of the parties for various costs, fees and charges; and such other matters the parties believe can be adequately addressed at this time.

2. Except as otherwise provided in this Agreement, this Agreement is not intended to address those matters which are more appropriately considered at the time the District submits to the Town for its review and approval appropriate land use applications for non-District Development of the Property.
3. It is not the intention of the parties in any to diminish or limit the Town's legislative, judicial, quasi-judicial or other non-delegable discretionary powers. Except as otherwise provided in this Agreement, it is not the intention of the parties to impose on the Town any duty, beyond its ordinances and regulations as they may from time to time exist, nor to impose any special obligation on the Town to approve or accept any items submitted by the District or its successors and assigns including, but not limited to, plans, drawings, reports, security documents, improvements, and conveyance.
4. The future consideration to be provided by the Town for the conveyances by the District and restrictions on the District's property right rights described above shall survive any conveyance or dedication by the District.

Section 5.3 Processing. If necessary or required, upon satisfactory completion by the District of all required preliminary actions and payments of appropriate processing fees, if any, the Town shall proceed to complete all steps required or necessary for the implementation of this Agreement and the non-District Development by the District of the Property in accordance with this Agreement and the applicable provisions of the Municipal Code, including but not limited to, the following:

1. Scheduling, convening and concluding all required public hearings in a manner consistent with applicable laws and regulations in force as if the date the applicable applications are submitted.
2. Processing and approval as appropriate in an expeditious manner, of all plats, plans, grading permits, land use permits, building plans and specifications and other plans relating to the development of the Property.
3. Scheduling and processing any matters related to the District Development that properly come before the Town.

Section 5.4 Other Governmental Permits. The Town shall cooperate with the District in its efforts to obtain such other permits and approvals as may be required by other governmental or quasi-governmental agencies having jurisdiction over the Property in connection with the development of, or provision of services to, the Property, and shall from time to time at the request of the District, attempt with due diligence and in good faith to enter into binding agreements with any such entity necessary to assure the availability of such permits and approvals or services, provided such agreements are reasonable and not detrimental to the Town.

Section 5.5 Cooperation in the Event of a Legal Challenge. In the event of any Legal Challenge or other legal or equitable act, action or other proceeding instituted by a third party, other governmental entity or official challenging the validity of any provision of this Agreement, the parties hereby agree to cooperate in defending said action or proceeding. In the event the Town and the District are unable to select mutually agreeable legal counsel to defend such action or proceeding or it is inappropriate to do so, each party may select its own legal counsel.

Section 5.6 Severability. If any part of this Agreement is held to be invalid or of no effect

by a court of competent jurisdiction, such judicial determination shall not affect any other part of this Agreement, which will continue in full force and effect. If any part of this Agreement is determined by a court of competent jurisdiction to be in excess of party's power and authority, such part shall be unenforceable by either party to this Agreement. In the event of a judicial determination of the nature described herein, which determination has the effect of materially and adversely impairing to a substantial degree any of either party's rights expressly established pursuant to this Agreement, such party may elect either to honor this Agreement as judicially reformed, or to terminate this Agreement and without liability or penalty to either party, in which event this Agreement shall be of no further force or effect.

ARTICLE 6. MISCELLANEOUS

Section 6.1 Time of the Essence. Time is of the essence with respect to the performance of each party's obligations hereunder. However, neither party shall be liable for delays or failures to perform due to acts of God, strikes, civil commotions, epidemics, quarantines, freight embargoes, or other cause of similar nature not reasonably within such party's control.

Section 6.2 Term. The term of this Agreement shall commence upon the date hereof and shall extend until all of the commitments hereunder are satisfied. After the expiration of the term, this Agreement shall be deemed terminated and of no further force or effect; provided however, that such termination shall not affect (a) the annexation of the Property to the Town; and (b) any right arising from Town permits, approvals or other entitlements for the Property or the Project which were granted or approved prior to, concurrently with, or subsequent to the approval of this Agreement.

Section 6.3 Amendment of Agreement. Except as otherwise provided herein, this Agreement, may be amended from time to time by mutual consent of the original parties or their successors in interest in writing following the applicable public notice and public hearing procedures required in the Municipal Code for approval of this Agreement. Neither the approval of nor any amendment to land use approvals nor any subdivision or resubdivision of the Property (or any part thereof) shall require an amendment to this Agreement.

Section 6.4 Default and Remedies. A "breach" or "default by either party under this Agreement shall be defined as failure to fulfill or perform any material obligation of a party contained in this Agreement. In the event of default by one party in the performance of its obligations under this Agreement, written notice of such default shall be given to the defaulting party by the nondefaulting party. If the default is failure to pay any amount of money due pursuant to the terms of this Agreement or to post security as provided herein, then such default shall be cured within thirty (30) days after notice of default is given to the defaulting party. If such default constitutes a breach or violation of any term or provision of this Agreement other than the payment of a monetary amount or the posting of a letter of credit, the defaulting party shall have thirty (30) days after written notice of default is given to the defaulting party within which to institute corrective action and shall proceed diligently thereafter to cure the default within no more than six months from the date of the notice of default. In the event of a material breach or default by such party that is not timely cured, as provided in this section the non-defaulting party shall be entitled to one or more of the following remedies as applicable: (1) the right to seek and obtain injunctive relief; (2) the right to seek and obtain specific performance; and (3) have all rights and remedies allowed at law or in equity.

Section 6.5 No Joint Venture or Partnership. The parties hereby renounce the existence of any form of joint venture or partnership between them and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making them joint ventures

or partners.

Section 6.6 No Third Party Beneficiaries. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any legal person other than the parties, any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions or provisions hereof, and all of the covenants, terms, conditions and provisions in this Agreement by and on behalf of the Parties shall be for the sole and exclusive benefit of the parties. Nothing in this Agreement is intended to interfere with the agreements of the parties with third parties.

Section 6.7 Notices. Any notice or communication required hereunder between the Town and the District must be in writing, and may be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (a) actual receipt by any of the addresses designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. Any party hereto may at any time, by giving written notice to the other party hereto as provided herein, designate any other address in substitution of or in addition to the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

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| If to the Town: | Town of Minturn 302 Pine Street P.O. Box 309 Minturn, CO 81645 Attention: Town Manager |
| with a copy to: | Allen C. Christensen, Esq. 97 Main St. Suite W 206 P.O. Box 4128 Edwards, CO 81632 |
| If to the District: | Office of the Superintendent Eagle County School District RE-50J P.O. Box 740 Eagle, CO 81631 |
| with a copy to: | Richard N. Lyons, Esq. Lyons Gaddis Kahn & Hall, P.C. PO Box 978 Longmont, CO 80502-0978 |

Section 6.8 Assignment. This Agreement shall be binding upon and inure to the benefit of the successors in interest or the legal representatives of the parties hereto. The District shall have the right to assign or transfer all or any portion of its interests, rights or obligations under this Agreement to third parties acquiring any interest or estate in the Property, including but not limited to purchasers or long-term ground lessees of individual lots, parcels, or of any improvements now or hereafter located within the Property. In connection with any such assignment, the express assumption of any of the District's obligations and commitments under this Agreement by its assignee or transferee shall thereby relieve the District of any further obligation under this Agreement with respect to the matter so assumed.

Section 6.9 Authorization. The signatories to this Agreement affirm that they are fully authorized to enter into and execute this Agreement, and all necessary actions, notices, meetings and/or hearings pursuant to any law required to authorize their execution of this Agreement have been made.

Section 6.10 Governing Law. This Agreement be construed and enforced in accordance with the laws of the State of Colorado.

Section 6.11 Enforcement. Unless this Agreement is amended or terminated pursuant to the provisions of this Agreement, this Agreement shall be enforceable by any party hereto notwithstanding, any change hereafter enacted or adopted in any applicable zoning ordinance, subdivision ordinance or any other land use ordinances or building ordinances, resolutions or other rules, regulations or policies adopted by the Town which changes, alters or amends the rules, regulations or policies applicable to the development of the Property at the time of the approval of this Agreement subject to the provisions hereof. This Agreement shall not prevent the Town in subsequent actions applicable to the Property from applying new rules, regulations and policies which apply equally to all citizens and property owners in the Town as provided herein subject to the provisions hereof.

Section 6.12 Conflict with Provisions of the Town's Municipal Code. The parties acknowledge and agree that this Agreement is in conformity with the current Municipal Code. In the event any provision of this Agreement or the application thereof conflicts with any provision of the Municipal Code in the future, as it may be amended from time to time, this Agreement shall control the determination of the rights and obligations of the parties with respect to such conflicting matter.

:

Section 6.13 Waiver of Breach. The waiver by any party to this Agreement of a breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any other term or provision or of any subsequent breach by any party.

Section 6.14 Entire Agreement. This Agreement represents the entire agreement between the parties and supersedes any oral or collateral agreements or understandings between the parties.

Section 6.15 No Additional Annexation Conditions Imposed. The Town and the District acknowledge and affirm that this Agreement does not impose additional terms and conditions within the meaning of Section 31-12-107(1) (g), C.R.S. To the extent that Section 31-12-107(1)(g), C.R.S. might be construed as being ambiguous as to what might be considered additional terms and conditions, the District, as the owner of 100% of the Property, hereby declares that it has voluntarily entered into this Agreement.

Section 6.16 Execution of Other Documents. The parties agree to execute, any additional documents and to take any additional actions necessary to carry out this Agreement.

Section 6.17 Counterparts: Facsimile. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. This Agreement may be executed by facsimile.

IN WITNESS WHEREOF, the Town and the District have executed this Agreement effective as of _____.

TOWN OF MINTURN

By: _____
Mayor

ATTESTED BY:

Town Clerk

APPROVED, as to legal form by:

Allen C. Christensen, Town Attorney

EAGLE COUNTY SCHOOL DISTRICT

By: _____

ATTESTED BY:

APPROVED, as to legal form by:

Richard N. Lyons, Attorney for the District

Town of Minturn

302 PINE STREET
P. O. BOX 309, MINTURN, CO 81645
(970) 827-5645 FAX (970) 827-5545



Town Council

MR. GORDON FLAHERTY, MAYOR
MR. GEORGE BRODIN, MAYOR PRO TEM
MRS. SHELLEY BELLM
MR. JERRY BUMGARNER
MR. EARLE BIDEZ
MR. AGGIE MARTINEZ
MR. JOHN ROSENFELD

| |
|---|
| TOWN OF MINTURN PLANNING DEPARTMENT |
| Subject: Ordinance 4 – 2011; An Ordinance Amending the Official Zone District Map of the Town of Minturn. |
| Chris Cerimele, Town Planner |
| Town Council Staff Report |
| Hearing Date: May 4, 2011 |
| Staff Recommendation: Approval |

APPLICANT – PROPERTY OWNER

Eagle County School District RE-50J
948 Chambers Avenue
PO Box 740
Eagle, CO 81631

PROPERTY LOCATION

1951 Highway 24 – commonly referred to as Maloit Park

AGENDA ITEM BRIEF

This item is a request to amend the official zone district map of the Town of Minturn. The applicant is currently undergoing annexation proceedings with the Town of Minturn for a 104.5 acre parcel of land. Concurrent with this process, the applicant is requesting that the Town of Minturn amend the Official Zone District Map and associated text to include the newly annexed land.

PROPERTY BACKGROUND

The following description of the property was provided by Braun Associates:

The New Jersey Zinc Company developed the property in the 1930's as a recreation center for its employees and area residents. The initial development of Maloit Park included a picnic area, a ball field, tennis courts, and a rodeo arena. With these improvements Maloit Park became a center of social and recreational activity for Minturn and surrounding residents. In 1954, the property was given the name Maloit Park after the company's general superintendent, Frank J. Maloit.

In 1962 New Jersey Zinc and the Eagle County School District entered into a lease for the property in order to allow for the construction of a middle school, a high school and accessory recreation fields. In 1974, following the closing of the mines and the construction of the Battle Mountain High School, the school facility at Maloit Park was modified to serve as a middle school only. In 1978, the “new” Minturn Middle School was developed on the property and the Colorado Mountain College leased the old high school facility. In 1985 the Eagle Country School District exercised its option to purchase the property. In that same year, four additional housing units were added to the original four units that were established in the mid-70s.

During the late 1980's and early 1990's, the School District, the EPA, and others performed environmental studies of the property to determine whether the site was suitable for use as an educational facility. These studies concluded that the site is suitable for school facilities.

In 1996 the School District completed a conceptual land use assessment in order to better understand the development potential of the property. One objective of this assessment involved the feasibility of developing additional housing for District staff. Following the completion of this effort, eight new “pad sites” for manufactured housing units were added to the property.

At the request of the citizens and the Town of Minturn, the School District initiated a Master Plan process in the fall of 2000. The objective of this effort was in part to establish a vision or framework for the future of Maloit Park. This plan was prepared with a significant amount of community input. The main land uses envisioned by this master plan included open space, recreation, institutional (town water plant), housing and school/potential development. The Maloit Park Master Plan was adopted by the School Board and while not formally approved by the Minturn Town Council, the plan was presented to the Town following its completion in 2001.

EXISTING LAND USES

Existing uses include the Minturn Middle School, parking areas, athletic fields, passive parkland, the Minturn water treatment plant, and employee housing for the Eagle County School District.

SURROUNDING LAND USES

| | |
|-------|--|
| North | United States Forest Service – Open Space |
| South | United States Forest Service – Open Space |
| East | Battle Mountain – Planned Unit Development |
| West | United States Forest Service – Open Space |

PROPOSAL

The Maloit Park Character Area will contain three zoning classifications. These include a Mixed Use zoning designation on 46.8 acres, a Public Facilities zone on 87

18.2 acres, and a Recreation and Open Space zone on the remaining 39.5 acres of the property. The following language outlines the purpose of each of these new zones and will be included within Chapter 16 of the Municipal Code. The allowable uses for each zone are included in the attached use table and will also be added to Chapter 16 of the Municipal Code.

Maloit Park Mixed Use Zone

The purpose of the Mixed Use Zone is to provide an area to accommodate a variety of land uses. These may include residential development, educational facilities, recreation and other similar uses, and other community-oriented buildings, facilities and uses. The Mixed Use Zone allows for the continuation of all existing land uses.

Public Facilities Zone

The purpose of this area is to provide a site for the Town's water treatment plant. Other potential uses for this zone include employee housing and recreational fields.

Recreation and Open Space Zone

It is intended that the Recreation and Open Space Zone remain predominately undeveloped. Uses are generally limited to infrastructure and utility installations, trails and other passive recreation uses.

ANALYSIS

Per Section 31-12-115 of the Colorado Revised Statute (C.R.S.), any area annexed on or after January 1, 1966, shall be brought under such zoning ordinance and map within ninety days after the effective date of the annexation ordinance.

The review procedure for a zoning map amendment is outlined in section 16-21-440 § (b) of the Minturn Municipal Code (MMC). This section states:

Review and recommendation of Planning Commission. *The Planning Commission shall conduct a public hearing on an application for amendment to the Character Area Zoning Map, any other map incorporated in these Land Use Regulations or the text of these Land Use Regulations. At the public hearing, the Planning Commission shall consider the application, the relevant support materials, the staff report and the public testimony given at the public hearing. After the close of the public hearing, the Planning Commission shall recommend to the Town Council either to approve or disapprove the application based on the standards in this Chapter and forward the application to the Town Council.*

An application for an amendment to the zone district map should be reviewed according to the standards outlined in section 16-21-450 of the MMC. Staff comments are provided in italics.

Section 16-21-450; Standards:

The wisdom of amending the text of these Land Use Regulations, the Character Area Zoning Map or any other map incorporated in these Land Use Regulations is a matter committed to the legislative discretion of the Town Council and is not controlled by any one (1) factor. In determining whether to adopt, adopt with modifications or disapprove the proposed amendment, the Town Council shall consider the following:

- (1) Consistency with Master Plan. Whether and the extent to which the proposed amendment is consistent with the purposes, goals, policies and Character Area Zoning Map of the Master Plan.

The proposed uses are consistent with the uses outlined in the 2010 Town of Minturn 3 Mile Plan for Annexations. The uses outlined in this plan include schools and related school facilities, public utilities, water storage, single family residential, duplexes, multi-family residential, accessory apartments, accessory dwellings, recreational facilities, town related office facilities and open space.

Additionally, the proposal is consistent with Community Character Goal 1 of the 2009 Town of Minturn Community Plan. This goal states, "Maintain, Build Upon and Promote the Town's Image as a Unique, Eclectic Non-Resort Town With A Strong Sense of Community." This proposal will maintain a large amount of open space within the Town. Also, there will be no increase in commercial space associated with this proposal. These factors will help maintain the Town's small town character. Also, with the departure of the Minturn Middle School, the proposal provides an opportunity for additional community groups to continue to utilize the school facilities.

The proposal is also consistent with the Town's goal to promote affordable housing. An opportunity exists to create additional employee housing units with the development of this property.

Additional Community Plan goals that this proposal supports are the following:

Goal (PFG 1): Ensure that Public Facilities are Planned and Implemented to Support New Growth and Existing Population Centers.

As a result of this annexation, Minturn will own the 18 acre parcel of land that contains the Town's water treatment facilities. By owning this land, the Town will be eligible for grant money to upgrade these facilities.

Goal (NRG 3): Preserve, Protect and Enhance Environmentally Sensitive Lands.

This proposal will result in the designation of 39.5 acres of land as open space and recreation. Furthermore, the 18 acre parcel that is to be designated as Public Facilities contains a riparian area that will remain protected.

Goal (PRG 1): Enhance Recreational Opportunities for all Town Residents and Visitors.

In addition to the 39.5 acres to be zoned Recreation and Open Space, the Annexation Agreement stipulates a 20' easement on either side of Cross Creek for recreational access.

- (2) Compatible with surrounding uses. Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject land and is the appropriate Character Area and zone district for the land, considering its consistency with the purpose and standards of the proposed zone district.

The proposed contains a mix of uses that are compatible with the surrounding area.

- (3) Changed conditions. Whether and the extent to which there are changed conditions that require an amendment to modify the use, density or intensity.

Since the property is being annexed into Minturn, State Statute requires the zoning of this land within 90 days of the annexation.

- (4) Effect on natural environment. Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment, including but not limited to water, air, noise, stormwater management, wildlife habitat, vegetation and wetlands.

The proposal maintains large amounts of open space and preserves environmentally sensitive areas. Any development will largely take place in previously disturbed areas. At the time of a development proposal, staff will ensure that appropriate measures are taken to minimize any adverse impacts.

- (5) Development patterns. Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern and not constitute spot zoning, and whether the resulting

development can logically be provided with necessary public facilities and services.

The proposal is consistent with current development patterns on site. The proposed Mixed-Use Zone encompasses the disturbed portion of the site. Furthermore, a significant portion of the site will remain as open space.

- (6) Public interest. Whether and the extent to which the area to which the proposed amendment would apply has changed or is changing to such a degree that it is in the public interest to encourage a new use or density in the area. (Prior code 16-21-8)

The annexation of this site will result in the Town of Minturn owning the 18 acres where the Minturn water plant is currently located. This will allow the Town to pursue grant funding opportunities for plant maintenance and upgrades.

STAFF RECOMMENDATION

Staff recommends approval of Ordinance 4 – 2011.

DRAFT MOTION

I move to approve Ordinance 4 – 2011 on second reading.

OR:

I move an alternate motion

Respectfully Submitted

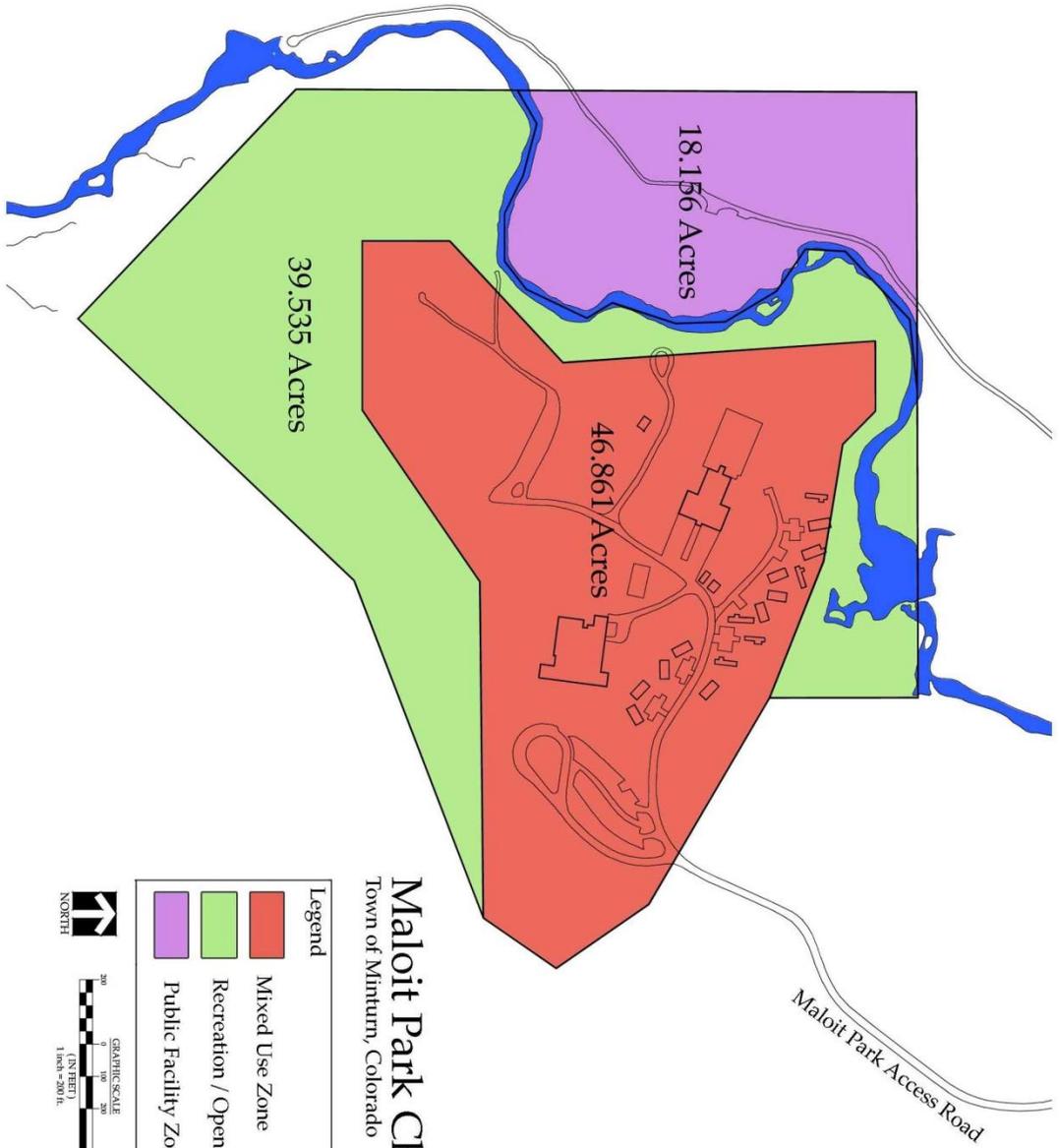
Chris Cerimele, Town Planner

ATTACHMENTS:

Maloit Park Character Area map

Ordinance 4 – 2011

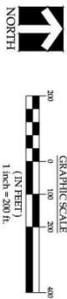
- Exhibit A; property map
- Exhibit B; Maloit Park Character Area Purpose and Objective
- Exhibit C: Maloit Park Character Area Use Table



Maloit Park Character Area

Town of Minturn, Colorado

| Legend | |
|---|------------------------------|
|  | Mixed Use Zone |
|  | Recreation / Open Space Zone |
|  | Public Facility Zone |



**TOWN OF MINTURN
ORDINANCE NO 4 – SERIES 2011**

**AN ORDINANCE ESTABLISHING ZONING ON PARCELS OF
LAND KNOWN AS THE EAGLE COUNTY SCHOOL DISTRICT
MALOIT PARK PROPERTY ANNEXED TO THE TOWN OF
MINTURN, COLORADO AND AMENDING THE OFFICIAL
ZONE DISTRICT MAP OF THE TOWN OF MINTURN, CO.**

WHEREAS, the Town of Minturn, Colorado annexed the Eagle County School District Maloit Park Parcels No. 1 and 2, County of Eagle, State of Colorado pursuant to Ordinances Nos. 1 and 2 – Series 2011; and

WHEREAS, C.R.S. Section 31-12-115 (2) requires the Town to Zone property that is annexed to the Town within ninety days after the effective date of the annexation ordinance; and

WHEREAS, an application has been filed with the Town of Minturn to amend the Official Zone District Map of the Town of Minturn through the inclusion of the area known as the Eagle County School District Maloit Park Parcels No. 1 and 2; and

WHEREAS, this Amendment to the Official Zone District Map will create the Maloit Park Character Area and the following Zone Districts: the Maloit Park Mixed-Use Zone; the Maloit Park Public Facilities Zone and the Maloit Park Recreation and Open Space Zone, all of which are depicted in Exhibit A (attached); and

WHEREAS, the Purpose and Objective of the Maloit Park Character Area is defined in Exhibit B (attached); and

WHEREAS, the allowable uses for the Maloit Park Character Area are defined in Exhibit C (attached); and

WHEREAS, the land use term community-oriented building, facility or use, as stated in the Maloit Park Character Area Use Table, is defined as follows: *A predominantly non-commercial use established primarily for the benefit and service of the general public or the community in which it is located. Such facilities include, but are not limited to: community centers; art/performing arts or cultural centers, libraries, museums and other similar uses;* and

WHEREAS, the following dimensional standards will apply to the Maloit Park Character Area; and

| <i>Character Area</i> | <i>Zones</i> | <i>Min. lot area (sq. ft.)</i> | <i>Min. lot dimension (feet)</i> | <i>Max. lot coverage (%)</i> | <i>Front Setback (feet)</i> | <i>Rear Setback</i> | <i>Side Setback</i> | <i>River Setback</i> |
|-----------------------|--------------------------|--------------------------------|----------------------------------|------------------------------|-----------------------------|---------------------|---------------------|----------------------|
| Maloit Park | Mixed Use | 5,000 | 50 | 40 | 20 | 10 | 5 | C.C= 50 |
| | Public Facilities | N/A | N/A | N/A | 20 | 10 | 10 | |

| | | | | | | | | |
|--|-----------------------|-----|-----|-----|-----|-----|-----|--|
| | Recreation/Open Space | N/A | N/A | N/A | N/A | N/A | N/A | |
|--|-----------------------|-----|-----|-----|-----|-----|-----|--|

WHEREAS, public notice was provided pursuant to Section 16-21-610 of the Minturn Municipal Code; and

WHEREAS, the Minturn Planning Commission held public hearings on January 12, 2011 and January 26, 2011 to review the application and made a recommendation to the Minturn Town Council to approve the Amendment to the Official Zone District Map with the following recommendation:

At the time of subdivision review, the Open Space and Recreation Plan of the Subdivision Improvement Agreement shall provide reasonable public access to the Recreation and Open Space Zone through the Mixed Use Zone of the Maloit Park Character Area; and

WHEREAS, a public hearing was held before the Minturn Town Council on March 16, 2011 and after review of presented evidence, testimony, exhibits, review of the Town Master Plan, comments of public officials and referred agencies, comments from the public and recommendation from Town Staff, the Town Council finds as follows:

1. That proper publication and public notice were provided as required by law for hearings before the Planning Commission and Town Council; and
2. The proposed amendment is consistent with the purposes, goals, policies and Character Area Zoning Map of the Master Plan. The subject property is being annexed to the Town and there is no existing Town zoning on the property. The proposed amendment will zone property and create consistency with the existing Official Zone District Map through the creation of the Maloit Park Character Area and associated zoning districts.
3. The proposed amendment is compatible with existing and proposed uses surrounding the subject land.
4. The proposed amendment is necessary because there will be a change in condition due to the fact that the property has been annexed into the Town and therefore the property is required by state law to be zoned.
5. The proposed amendment will not result in significantly adverse impacts on the natural environment, including but not limited to water, air, noise, storm-water management, wildlife habitat, vegetation, and wetlands.
6. The proposed amendment does address a demonstrated community need. The zoning for the property will provide for the orderly and planned development of the property. As well, it may provide for more property and sales tax revenue for the Town.
7. The proposed amendment will result in a logical and orderly development pattern. The proposed amendment will not constitute spot zoning.

8. The resulting development can logically be provided with necessary public facilities and services.
9. The proposed amendment is changing to such a degree that it **is** in the public interest to encourage a new use or density in the area.

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

SECTION 1. Section 16-3-10 of the Municipal Code of the Town of Minturn is amended by the addition of a new subsection 12 as follows: “(12) Maloit Park Character Area. The character and uses within the Maloit Park Character Area shall be as set forth in Article 16-14(a).

SECTION 2. Section 16-2-20 of the Municipal Code of the Town of Minturn is amended by the addition of a definition for community-oriented building, facility or use as follows: “A predominantly non-commercial use established primarily for the benefit and service of the general public or the community in which it is located. Such facilities include, but are not limited to: community centers; art/performing arts or cultural centers, libraries, museums and other similar uses”.

SECTION 3. The Municipal Code of the Town of Minturn amended by the addition of a new Chapter 16, Article 14(a) as set forth in Exhibits B and C hereto and the dimensional standards set forth above.

SECTION 4. The amendment to the Official Zoning Map of the Town of Minturn, Colorado provided for herein shall take effect in accordance with the Charter and ordinances of the Town of Minturn, and the Mayor and Town Clerk are hereby authorized to execute such documents as may be required to reflect amendment herein authorized.

SECTION 5. Severability. If any part, section, sub-section, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance; and the Town Council for the Town of Minturn, Colorado hereby declares it would have passed this Ordinance and each part, section, sub-section, sentence, clause or phrase thereof, irrespective of the fact that any one or more parts, sections, sub-sections, sentences, clauses or phrases be declared invalid.

SECTION 5. The Town Council hereby finds, determines and declares that this Ordinance is necessary and proper for the health, safety and welfare of the Town of Minturn and the inhabitants thereof.

SECTION 6. The repeal or the repeal and re-enactment of any provision of the Minturn Municipal code as provided in this ordinance shall not affect any right which has accrued, and duty imposed, any violation that occurred prior to the effective date hereof, any prosecution commenced, nor any other action or proceeding as commenced under or by virtue of the provision repealed and re-enacted. The repeal of any provision hereby shall not revive any provision or any ordinance previously repealed or superseded unless expressly stated herein.

INTRODUCED, READ BY TITLE, APPROVED ON THE FIRST READING,
APPROVED AND ORDERED PUBLISHED IN FULL THE 16th DAY OF March, 2011. A

public hearing on this Ordinance shall be held at the regular meeting of the Town Council of the Town of Minturn, Colorado, on the ____ day of ____, 2011, at ____P.M. in the Minturn Town Center in the Town of Minturn, Colorado.

Mayor

Attest:

Town Clerk

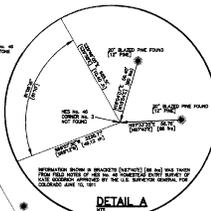
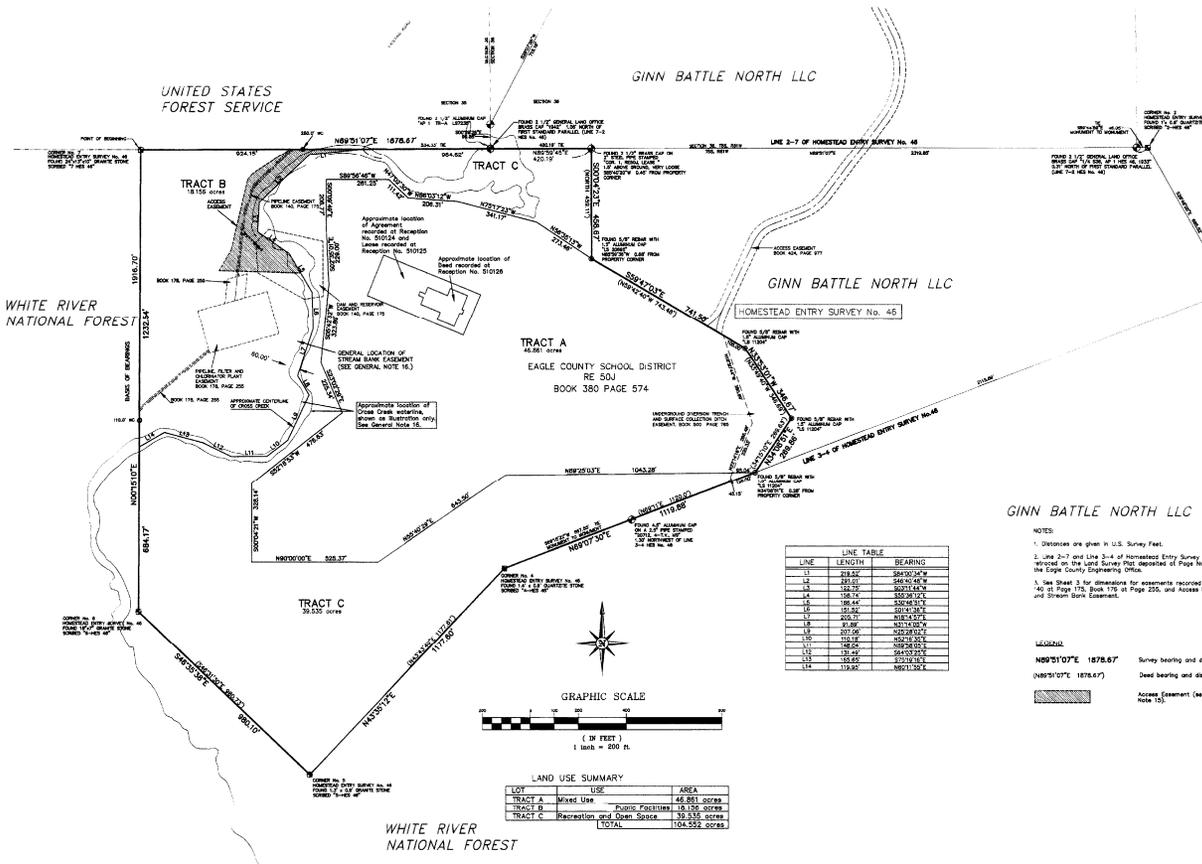
INTRODUCED, READ BY TITLE, PASSED ON SECOND READING, APPROVED AND ORDERED PUBLISHED BY TITLE ONLY THIS ____DAY OF____, 2011.

Mayor

Attest:

Town Clerk

MALOIT PARK
 A PART OF HOMESTEAD ENTRY SURVEY No. 46
 IN SECTION 2 OF UNSURVEYED TOWNSHIP 6 SOUTH, RANGE 81 WEST
 of the 6th PRINCIPAL MERIDIAN
 TOWN OF MONTURN
 EAGLE COUNTY, COLORADO



LINE TABLE

| LINE | LENGTH | BEARING |
|------|--------|-------------|
| L1 | 233.21 | S89°02'49" |
| L2 | 221.01 | S46°40'49"W |
| L3 | 126.26 | S00°00'00"W |
| L4 | 128.73 | S00°00'00"W |
| L5 | 128.44 | S00°00'00"W |
| L6 | 128.44 | S00°00'00"W |
| L7 | 205.71 | N87°13'21"E |
| L8 | 11.96 | N71°30'00"E |
| L9 | 201.06 | S22°28'07"E |
| L10 | 121.16 | N42°00'00"E |
| L11 | 128.20 | S28°28'07"E |
| L12 | 121.22 | S64°02'00"E |
| L13 | 125.85 | S25°00'00"E |
| L14 | 133.85 | N00°00'00"E |

GINN BATTLE NORTH LLC

- NOTES
1. Distances are given in U.S. Survey Feet.
 2. Line 2-7 and Line 3-4 of Homestead Entry Survey No. 46 are printed on the Land Survey this document of Page No. 529 in the Eagle County Engineering Office.
 3. See Sheet 3 for dimensions for easements recorded in Book 40 of Page 175, Book 175 of Page 250, and Access Easement and Stream Bank Easement.

LEGEND

N89°51'07"E 1578.67' Survey bearing and distance
 (N89°51'07"E 1578.67') Dead bearing and distance

Access Easement (See General Note 15)



LAND USE SUMMARY

| TRACT | USE | AREA |
|--------------|---------------------------|---------------------|
| TRACT A | Mixed Use | 44,581 ac.± |
| TRACT B | Public Facilities | 18,120 ac.± |
| TRACT C | Recreation and Open Space | 39,530 ac.± |
| TOTAL | | 102,231 ac.± |

WHITE RIVER NATIONAL FOREST

Exhibit B

ARTICLE XX

Maloit Park Character Area

Zoning Regulations

Section 16.X.X Character Area Characteristics

The Maloit Park is a relatively undeveloped 105 acre parcel that over the years has provided for a variety of public and institutional-oriented community uses. The property is currently owned by the Eagle County School District. Existing uses on the property include the Minturn Middle School and associated uses, school/staff housing, the Eagle County Community Fund/Rummage Sale, and the Town of Minturn water plant. Cross Creek bisects the property, portions of which border United States Forest Service lands.

In 2001 the School District completed a master plan for Maloit Park. The Plan was prepared with a great deal of public involvement. The essence of this Plan was to balance the needs of the School District while also preserving the natural features that make this property special. It is the intention of these regulations that mixed use development on suitable portions of Maloit Park be allowed while preserving the natural characteristics of the Cross Creek corridor, wildlife resources and other areas.

Section 16.X.X Maloit Park Mixed Use Zone

1. Zone Characteristics

The Maloit Park Mixed Use Zone includes 46.8 acres and encompasses the portion of Maloit Park that is already developed or has been previously disturbed. The terrain over vast majority of this zone is very flat and readily accessible via the existing access road. With the exception of the Town's water plant, all existing uses at Maloit Park are located within the Residential/Mixed Use Zone.

2. Purpose and Objectives

The purpose of the Mixed Use Zone is to provide an area to accommodate a variety of land uses. These may include residential development, educational facilities, recreation and other similar uses, and other community-oriented buildings, facilities and uses. The Mixed Use Zone allows for the continuation of all existing land uses.

Section 16.X.X Maloit Park Public Facilities Zone

1. Zone Characteristics

The Maloit Park Public Facilities Zone is located west of Cross Creek and currently accommodates the Town’s water treatment plant and related uses. The zone is approximately 18.2 in size. The zone borders Cross Creek and USFS lands. Access to the site is via an access easement from Hwy 24.

2. Purpose and Objectives

The purpose of this area is to provide a site for the Town’s water treatment plant. Other than potential recreational improvements and a limited amount of employee housing no other uses are contemplated for this portion of the Maloit Park Character Area.

Section 16.X.X Maloit Park Recreation and Open Space Zone

1. Zone Characteristics

The Recreation and Open Space Zone consists of approximately 39.5 acres and includes the Cross Creek corridor and the southern portion of Maloit Park. The Cross Creek corridor includes associated riparian and wetlands and the flood plain associated with Cross Creek. The Recreation and Open Space Zone at the southern portion of Maloit Park is comprised of relatively steep slopes and wildlife habitat.

2. Purpose and Objectives

It is intended that the Recreation and Open Space zone remain predominantly undeveloped. Uses are generally limited to infrastructure and utility installations, trails and other passive recreation uses.

EXHIBIT C

MALOIT PARK CHARACTER AREA USE TABLE

| Use | All Residential Zones | All Commercial Zones | All Mixed-Use Zones | All Recreation and Open Space Zones | All Federally Regulated Zones | Public Facilities Zone | PUD Holding Zone | Railroad Right-of-Way / Transportation Zone |
|---|------------------------------|-----------------------------|----------------------------|--|--------------------------------------|-------------------------------|-------------------------|--|
| <i>R=Use by Right</i> | | | | | | | | |
| <i>N=Not Permitted</i> | | | | | | | | |
| <i>C=Conditional Use</i> | | | | | | | | |
| <i>L=Limited Use</i> | | | | | | | | |
| Accessory Apartment | | | R | N | | R | | |
| Accessory Dwelling | | | R | N | | R | | |
| Accessory Uses customarily associated with allowable uses | | | R | R | | R | | |
| Athletic fields | | | R | N | | R | | |
| Automotive detail shops | | | N | N | | N | | |
| Automotive parts sales | | | N | N | | N | | |
| Bakeries and confectionaries | | | N | N | | N | | |
| Bakeries and delicatessens with food service | | | N | N | | N | | |
| Banks and financial institutions | | | N | N | | N | | |
| Barbershops | | | N | N | | N | | |
| Beauty shops | | | N | N | | N | | |
| Business and office services | | | N | N | | N | | |
| Car washes | | | N | N | | N | | |
| Cocktail lounges, taverns | | | N | N | | N | | |
| Commercial accommodations | | | N | N | | N | | |
| Community-oriented buildings, facilities and uses | | | R | N | | N | | |
| Convenience stores | | | N | N | | N | | |
| Day care, Early Learning | | | | | | | | |
| Delicatessen and specialty food stores | | | N | N | | N | | |
| Dormitory Housing | | | R | N | | N | | |
| Drive thru/up establishments | | | N | N | | N | | |
| Drugstores and pharmacies | | | N | N | | N | | |
| Dry cleaners | | | N | N | | N | | |
| Duplex/Two-family dwellings | | | R | N | | R | | |
| Educational or training facilities and uses | | | R | N | | N | | |
| Garden landscaping supply and seed stores | | | N | N | | N | | |
| Gas stations | | | N | N | | N | | |
| Grocery stores | | | N | N | | N | | |
| Health/medical offices | | | N | N | | N | | |
| Health/wellness Center | | | R | N | | N | | |
| Laundries | | | N | N | | N | | |
| Laundromats | | | N | N | | N | | |
| Liquor stores | | | N | N | | N | | |
| Overnight lodging associated with allowable health/wellness or conference centers | | | R | N | | N | | |
| Manufacturing, light | | | N | N | | N | | |
| Multi-family dwellings | | | R | N | | R | | |
| Office use | | | N | N | | N | | |
| Offices associated with community-oriented or non-profit organizations | | | R | N | | N | | |
| Parks and Playgrounds | | | R | R | | N | | |
| Pawn shops | | | N | N | | N | | |
| Photographic studios | | | N | N | | N | | |
| Professional activities | | | N | N | | N | | |

EXHIBIT C

MALOIT PARK CHARACTER AREA USE TABLE

| | | | | | | | | |
|--|--|--|---|---|--|---|--|--|
| Professional offices, business offices and studios | | | N | N | | N | | |
| Radio and television stores and repair shops | | | N | N | | N | | |
| Arts, recreation , senior or civic centers | | | R | N | | N | | |
| Restaurants | | | N | N | | N | | |
| Retail stores including: apparel stores; art supply stores and galleries; bookstores; camera stores and photographic studios; candy stores; chinaware and glassware stores; florists; gift shops; hobby stores; household appliance stores; jewelry stores; leather good stores; luggage stores; music and record stores; newstands and tobacco stores; sporting goods stores; stationary sores; toy stores; variety stores; yardage and dry goods stores stores | | | N | N | | N | | |
| Retail uses greater than five thousand(5,000) square feet | | | N | N | | N | | |
| School related uses and facilities in accordance with C.R.S. 22-32-124 | | | R | N | | N | | |
| Senior housing, retirement communities | | | R | N | | N | | |
| Service businesses | | | N | N | | N | | |
| Single family dwellings | | | R | N | | R | | |
| Small appliance repair shops, excluding furniture repair | | | N | N | | N | | |
| Studios for arts, crafts, performing arts | | | R | N | | N | | |
| Tailors and dressmakers | | | N | N | | N | | |
| Theaters | | | N | N | | N | | |
| Theaters, meeting rooms and conference centers* | | | R | N | | N | | |
| Trails, trailheads | | | R | R | | R | | |
| Travel and ticket agencies | | | N | N | | N | | |
| Water treatment facilities | | | N | N | | R | | |
| Utility facilities and improvements, including but not limited to water storage, transmission lines, transformers, etc. | | | R | R | | R | | |
| Other uses determined to be similar in nature to other permitted uses | | | R | R | | R | | |

P.O. Box 309 ♦ 302 Pine Street
Minturn, CO 81645
Phone: 970-827-5645
Fax: 970-827-5545
Email: manager@minturn.org



TOWN COUNCIL
Mayor – Gordon “Hawkeye” Flaherty
Mayor Pro Tem – George Brodin
Councilwoman – Shelley Bellm
Councilman – Jerry Bumgarner
Councilman – Earle Bidez
Councilman – Aggie Martinez
Councilman – John Rosenfeld

AGENDA ITEM COVER SHEET

| |
|---|
| AGENDA TITLE: Ordinance 6 – 2011; An Ordinance of the Town of Minturn amending Chapter 7 of the Municipal Code by repealing and re-enacting Sections 7-4-90 and 7-8-80 as they pertain to open burning within the Town of Minturn Colorado. |
| MEETING DATE: May 4, 2011 |
| PRESENTER: Chris Cerimele |
| BACKGROUND: This ordinance is necessary to amend sections of Chapter 7 of the MMC as they pertain to the nuisance ordinance and open burning. These amendments will create consistency with the recreational fire guidelines outlined in the International Fire Code by prohibiting all open burning with the exception of small recreational fires. |
| CORE ISSUES: none. |
| BUDGET/FINANCE IMPLICATIONS: None |
| RECOMMENDED MOTION: I move to approve Ordinance 6 – Series 2011 on second reading. |

**TOWN OF MINTURN, COLORADO
ORDINANCE 6 – SERIES 2011**

**AN ORDINANCE OF THE TOWN OF MINTURN AMENDING CHAPTER 7 OF THE
TOWN OF MINTURN MUNICIPAL CODE BY REPEALING AND RE-ENACTING
SECTIONS 7-4-90 AND 7-8-80 AS THEY PERTAIN TO OPEN BURNING WITHIN THE
TOWN OF MINTURN, COLORADO.**

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

Section 1. Amendment. Minturn Municipal Code, Section 7-4-90 is repealed and re-enacted as follows:

Sec. 7-4-90. Burning; nuisance declared.

No person shall set fire or burn any garbage, rubbish, waste material, yard debris or any other combustible material in the Town of Minturn. Any such act is a nuisance because of smoke and odor. The only exception to this regulation is the burning of a small recreational fire in accordance with the guidelines established in the currently adopted edition of the International Fire Code.

Section 2. Amendment. Minturn Municipal Code, Section 7-8-80 is repealed and re-enacted as follows:

Sec. 7-8-80. Open burning.

Open burning of a small recreational fire is permitted in conjunction with the guidelines established in the currently adopted edition of the International Fire Code for recreational fires.

Section 3. Severability. If any part, section, sub-section, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance; and the Town Council for the Town of Minturn, Colorado hereby declares it would have passed this Ordinance and each part, section, sub-section, sentence, clause or phrase thereof, irrespective of the fact that any one or more parts, sections, sub-sections, sentences, clauses or phrases be declared invalid.

Section 4. The Town Council hereby finds, determines and declares that this Ordinance is necessary and proper for the health, safety and welfare of the Town of Minturn and the inhabitants thereof.

Section 5. The repeal or the repeal and re-enactment of any provision of the Minturn Municipal code as provided in this ordinance shall not affect any right which has accrued, and duty imposed, any violation that occurred prior to the effective date hereof, any prosecution commenced, nor any other action or proceeding as commenced under or by virtue of the

provision repealed and re-enacted. The repeal of any provision hereby shall not revive any provision or any ordinance previously repealed or superseded unless expressly stated herein.

INTRODUCED, READ BY TITLE, APPROVED ON THE FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL THE ____ DAY OF April, 2011. A public hearing on this ordinance shall be held at the regular meeting of the Town Council of the Town of Minturn, Colorado, on the ____ day of May, 2011, at 7 P.M. in the Minturn Town Center in the Town of Minturn, Colorado.

Mayor

Attest:

Town Clerk

INTRODUCED, READ BY TITLE, PASSED ON SECOND READING, APPROVED AND ORDERED PUBLISHED BY TITLE ONLY THIS ___ DAY OF MAY, 2011.

Mayor

Attest:

Town Clerk

P.O. Box 309 ♦ 302 Pine Street
Minturn, CO 81645
Phone: 970-827-5645
Fax: 970-827-5545
Email: manager@minturn.org



TOWN COUNCIL
Mayor – Gordon “Hawkeye” Flaherty
Mayor Pro Tem – George Brodin
Councilwoman – Shelley Bellm
Councilman – Jerry Bumgarner
Councilman – Earle Bidez
Councilman – Aggie Martinez
Councilman – John Rosenfeld

AGENDA ITEM COVER SHEET

| |
|---|
| AGENDA TITLE: Ordinance 8 – 2011; An Ordinance of the Town of Minturn repealing and reenacting sections 18-5-10 and 18-5-20 of Chapter 18 of the Municipal Code to adopt by reference the 2009 Edition of the International Fire Code. |
| MEETING DATE: May 4, 2011 |
| PRESENTER: Chris Cerimele |
| BACKGROUND: This ordinance will adopt the 2009 International Fire Code and establish regulations for recreational fires in the Town of Minturn. |
| CORE ISSUES: None |
| BUDGET/FINANCE IMPLICATIONS: None |
| RECOMMENDED MOTION: I move to approve Ordinance 8 – Series 2011 on first reading. |

**TOWN OF MINTURN, COLORADO
ORDINANCE NO. 8 - SERIES 2011**

**AN ORDINANCE OF THE TOWN OF MINTURN REPEALING AND
REENACTING SECTIONS 18-5-10 AND 18-5-20 OF CHAPTER 18 OF
THE TOWN OF MINTURN MUNICIPAL CODE TO ADOPT BY
REFERENCE THE 2009 EDITION OF THE INTERNATIONAL FIRE
CODE**

WHEREAS, in promotion of the public health, safety and welfare of the inhabitants of the Town of Minturn, the Town Council desires to update its ordinances by adopting the 2009 International Building Codes with amendments; and

WHEREAS, section 11.11 of the Home Rule Charter and section 31-16-202, C.R.S., as amended, permit the contemplated adoption by reference of such codes upon notice and hearing as provided in Section 31-16-203, C.R.S.; and

WHEREAS, the Minturn Town Council held a public hearing, with proper notice provided, to consider adoption of such International Codes as required by law; and

WHEREAS, copies of said International Codes are available in the Planning Office at the Minturn Town Center; and

WHEREAS, the Town Council has determined, based on the evidence and testimony presented at the public hearing, that the adoption of these codes, as amended herein, will further the health, safety and welfare of the inhabitants of Minturn; and

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

Section 1. Article 2 of Chapter 18 of the Minturn Municipal Code is hereby repealed and reenacted to read as follows:

Section 18-7-10. International Fire Code adopted.

a) The *International Fire Code*, 2009 Edition 2nd printing as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001 is hereby adopted by reference as the Town of Minturn Fire Code as if fully set out in this Ordinance with the additions, deletions, insertions and changes as set forth in this Article.

(b) No building shall be hereafter constructed, erected, enlarged, altered, or moved into the Town unless the same shall, as to design, construction, quality of materials and workmanship, conform with the IFC, as adopted and as amended.

Section 18-7-20. Amendments.

The following sections of the 2009 International Fire Code are hereby revised as follows:

- (1) Section 109.3 Violation Penalties shall be amended to read: Persons who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter or do work in violation of the approved construction documents or directive of the fire code official, or of a permit or certificate used under provisions of this code, shall be guilty of misdemeanor, punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment not exceeding one (1) year, or by both such fine and imprisonment. Each day that a violation continues after due notice has been served shall be deemed a separate offense. The imposition of a penalty for any violation of this code shall not excuse the violation or permit it to continue; all such persons shall be required to correct or remedy such violations or defects within a reasonable time; and when not otherwise specifies, each day that a violation occurs or that a prohibited condition is maintained shall constitute a separate offense. The application of the above penalty or penalties shall not be held to prevent the enforced removal of any prohibited condition.

109.3.1 Abatement of violation. In addition to the imposition of the penalties herein described, the fire code official is authorized to institute appropriate action to prevent unlawful construction or to restrain, correct or abate a violation; or to prevent illegal occupancy of a structure or premises; or to stop an illegal act; conduct of business or occupancy of structure on or about any premises.

109.3.2 Issuance of summons and complaint by fire code official. Pursuant to the general enforcement powers conferred upon fire protection districts in Section 30-15-401.5, C.R.S. to enforce fire safety standards, and subject to the provisions of this code, the fire code official may arrest a person without a warrant whenever he or she has reasonable cause to believe that the person to be arrested has committed a misdemeanor in his or her presence which he or she has the discretionary duty to enforce, and to issue a summons to appear in the Eagle County Court or the Municipal Court of the Town in which the violation is alleged to have occurred. The fire code official shall file executed summonses and complaints with Clerk of the County Court or the Clerk of the Municipal Court, and notify the District Attorney or the Town Attorney, as appropriate, of such filing.

- (2) Section 307 is repealed and replaced with the following:

Section 307

Recreational Fires

307.1 General. A person shall not kindle or maintain or authorize to be kindled or maintained any open burning unless conducted in accordance with this section.

307.1.2. Definition. For the purposes of this section, a recreational fire is defined as the burning of clean fire wood where the fuel area is no greater than three (3) feet in diameter and two (2) feet or less in height for pleasure, religious, ceremonial, cooking or similar purposes.

307.2 Prohibited burning. Outdoor burning that will be offensive or objectionable due to excessive smoke or odor emissions when atmospheric conditions or local circumstances make such fires hazardous shall be prohibited. Open burning of rubbish containing paper products, garbage, solid waste, rubber or other petroleum based products (including tires), building material, roofing material, animal carcasses, plastics, tree limbs and leaves, and lawn clippings shall be prohibited.

307.2.1 Extinguishment Authority. The Eagle River Fire Protection District and Minturn Police Department are authorized to order the extinguishment of any recreational fire that creates or adds to a hazardous or objectionable situation.

307.3 Location. The location for recreational fires shall not be less than five (5) feet from any property line and ten (10) feet from any neighboring structure including wooden fences.

307.3.1 Fires within the 30' river setback. No recreational fires shall be permitted within thirty (30) feet of the high water mark of any live stream in the Town of Minturn. Portable cooking devices and portable outdoor fireplaces may be used in this area; however, the dumping of ash in the river or setback area is strictly prohibited.

307.4 Attendance. Recreational fires and portable outdoor fireplaces shall be constantly attended until the fire is extinguished. A minimum of one portable fire extinguisher complying with Section 906 with a minimum 4-A rating or other approved on-site fire extinguishing equipment, such as dirt, sand, water barrel, garden hose or water truck, shall be available for immediate utilization.

307.5 Additional Requirements. The following restrictions shall apply to all recreational fires and portable outdoor burning devices:

1. No recreational fire shall exceed three feet in diameter or two feet in height.
2. Only natural wood which has not been painted, varnished or coated with a similar material, has not been pressure treated with a preservative and does not contain resins or glues as in plywood or other composite wood products shall be used for a recreational fire.

307.6 Bonfires. The Town of Minturn reserves the right to conduct a bonfire in accordance with guidelines established by the Eagle River Fire Protection District.

Section 2. Severability. If any part, section, sub-section, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance; and the Town Council for the Town of Minturn, Colorado hereby declares it would have passed this ordinance and each part, section, sub-section, sentence, clause or phrase thereof, irrespective of the fact that any one or more parts, sections, sub-sections, sentences, clauses or phrases be declared invalid.

Section 3. The Town Council hereby finds, determines and declares that this Ordinance is necessary and proper for the health, safety and welfare of the Town of Minturn and the inhabitants thereof.

Section 4. The repeal or the repeal and re-enactment of any provision of the Minturn Municipal Code as provided in this ordinance shall not affect any right which has accrued, and duty imposed, any violation that occurred prior to the effective date hereof, any prosecution commenced, nor any other action or proceeding as commenced under or by virtue of the provision repealed or repealed and re-enacted. The repeal of any provision hereby shall not revive any provision or any ordinance previously repealed or superseded unless expressly stated herein.

INTRODUCED, TITLE READ IN FULL, APPROVED ON FIRST READING AND ORDERED PUBLISHED IN FULL THE ___ DAY OF MAY, 2011. A PUBLIC HEARING ON THIS ORDINANCE SHALL BE HELD AT THE REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF MINTURN, COLORADO, ON THE 18TH DAY OF MAY, 2011, AT 7 P.M. IN THE MINTURN TOWN CENTER IN THE TOWN OF MINTURN, COLORADO.

Mayor

Attest:

Town Clerk

THE TOWN OF MINTURN, COLORADO, ORDAINS THIS ORDINANCE READ BY TITLE, ENACTED AND ORDERED PUBLISHED BY TITLE ONLY ON SECOND READING THIS ___th DAY OF MAY, 2011.

Mayor

Attest:

Town Clerk

P.O. Box 309 ♦ 302 Pine Street
 Minturn, CO 81645
 Phone: 970-827-5645
 Fax: 970-827-5545
 Jay Brunvand, Treasurer/Clerk
 Email: treasurer@minturn.org



TOWN COUNCIL
 Mayor – Gordon “Hawkeye” Flaherty
 Mayor Pro Tem – George Brodin
 Councilwoman – Shelley Bellm
 Councilman – Earle Bidez
 Councilman – Jerry Bumgarner
 Councilman – Aggie Martinez
 Councilman – John Rosenfeld

AGENDA ITEM COVER SHEET

| |
|--|
| AGENDA TITLE: Ordinance No. 7 - 2011 |
| MEETING DATE: April 26, 2011 |
| PRESENTER: Brunvand |
| <p>BACKGROUND: Staff has been attempting to lease and utilize Little Beach Park on a more consistent basis. In order to allow an existing liquor license holder to use the park we have to “opt in” to the state law that allows the issuance of an Optional Premise License or Hotel/Restaurant License with an Optional Premises. This ordinance would make this possible.</p> <p>During the April 20 Council meeting, after in depth discussion, this item was tabled to the May 4 Council Meeting in order to allow further research by Staff. The Council concern was that the Optional Premises License would supersede any attempt by a nonprofit organization or the Town itself to obtain a Special Event Permit.</p> |
| <p>CORE ISSUES: Currently, events held at the Little Beach Park when alcohol is to be served are required to obtain a Special Events Liquor Permit through the Town and the State which must be applied for and issued. This process can take upwards of 45days for any event. An Optional Premises Liquor License would alleviate this time frame by issuing a license to a single preapproved vendor who would handle any liquor concerns for the park. Last summer this issue was successfully circumvented by allowing 3.2% alcohol to be brought by the park guests on a BYOB basis. Although no issues were officially noted, the potential does exist that an alcohol related event could occur.</p> <p>This Ordinance only allows the Town to accept an Optional Premise application; the vendor would still need to apply and be approved by Council.</p> <p>A second issue exists whereby the State of Colorado is currently positioned to pass Senate Bill 066 which would modify the existing laws on the issuance of Special Event Permits. SB 066 (attached), if passed and opted by the Town, would significantly reduce the application process by allowing a Special Event Permit to be issued solely by the Town in as little as two weeks while additionally allowing a nonprofit to obtain up to 15 such permits per year. Currently, a nonprofit is allowed only 10 permits per year.</p> |
| <p>STAFF RECOMMENDATION/MOTION: It is recommended by Staff that this ordinance be tabled until such time as the State legislative session is concluded currently scheduled to end approximately May 16th. At that time the Council may consider foregoing the Optional Premises alternative in lieu of the alternative revised Special Event Permit process.</p> <p>Motion to table Ordinance 7 – 2011 on First Reading until the June 1, 2010 Council meeting.</p> |

**TOWN OF MINTURN, COLORADO
ORDINANCE NO. 7 – SERIES 2011**

**AN ORDINANCE ADOPTING STANDARDS FOR THE
ISSUANCE OF OPTIONAL PREMISES LIQUOR
LICENSES AND FOR OPTIONAL PREMISES FOR A
HOTEL AND RESTAURANT LICENSE PURSUANT TO
THE PROVISION OF SECTION 12-47-310 C.R.S. AS
AMENDED.**

WHEREAS, pursuant to Section 12-47-310 C.R.S., an optional premises liquor license shall be granted for optional premises approved by the state and local licensing authorities to persons selling malt, vinous, and spirituous liquors by the drink only to customers for consumption on the optional premises and for storing malt, vinous, and spirituous liquors in a secure area on or off the optional premises for future use on the optional premises; and,

WHEREAS, pursuant to Section 12-47-310, C.R.S., as amended, no optional premises license, or optional premises for a hotel and restaurant license, as defined in section 12-47-103(13.5), C.R.S. shall be issued within any municipality unless the governing body of the municipality has adopted, by ordinance, specific standards for the issuance of optional premises licenses or for optional premises for a hotel and restaurant license; and

WHEREAS, Section 12-47-310(2), C.R.S., as amended, no optional premises license, or optional premises for a hotel and restaurant license, as defined in Section 12-47-103(22)(b), C.R.S., shall be issued within any municipality unless the governing body of the municipality has adopted, by ordinance, specific standards for the issuance of optional premises licenses of for optional premises for a hotel and restaurant license; and,

WHEREAS, in the interest of protecting and preserving public health, safety and welfare, it is desirable that the citizens of the Town of Minturn, Eagle County, Colorado the Minturn Town Council desires to adopt such standards.

NOW THEREFORE, be it ordained by the Town Council of the Town of Minturn, Colorado:

Section 1: Article 10 Section 2 is amended by the addition of new sections 2-10-50 through 2-10-100, as follows:

Section 2-10-50 Optional Premises License – Standards Adopted. The following standards for the issuance of annually renewable optional premises liquor licenses, or optional premises for a hotel and restaurant licenses, (referred to throughout this chapter as “Optional Premises License(s)”) for the sale of alcoholic beverages or for storing alcoholic beverages on or off the optional premises for future use on the optional premises, are hereby adopted pursuant to Section 12-47-310 C.R.S., as amended.

Section 2-10-60 Standards Additional To Standards Under The Colorado Liquor Code. The standards contained in this Chapter shall be considered in addition to all other standards and

requirements applicable to the issuance of licenses under Section 12-47-101 et seq., C.R.S., the “Colorado Liquor Code,” for Optional Premises Licenses.

Section 2-10-70 Eligible Facilities. An Optional Premises License may only be approved when the optional premises applied for are:

- (A) In the case of an application for a hotel and restaurant license, the hotel and restaurant’s related outdoor sports and recreational facilities established for the convenience of its guests or the general public, located on or adjacent to the hotel or restaurant; or
- (B) In the case of an application for an optional premises license, located on an applicant’s outdoor sports and recreational facility (as defined in Section 12-47-103(22)(b), C.R.S.).
- (C) The types of outdoor sports and recreation facilities which may be considered for an Optional Premises License include, without limitation the Little Beach Park, and other areas as amended.
- (D) There are no restrictions on the minimum size of the outdoor sports and recreational facilities which may be eligible for the approval of an Optional Premises License.

However, the local licensing authority (as defined in Section 12-47-310) of the Town of Minturn (referred to throughout this Chapter as the “Local Authority”) may consider the size of the particular outdoor sports or recreational facility in relationship to the number of optional premises requested for the facility.

Section 2-10-80 Submittal Requirements. When submitting a request for the approval by the Local Authority of an Optional Premises License, an applicant shall submit the following information to the Local Authority:

- (A) A map or other drawing illustrating the outdoor sports or recreational facility boundaries and the approximate location of each optional premises applied for;
- (B) A legal description of the approximate area within which the optional premises shall be located;
- (C) A map or diagram showing seating, restrooms, and restricted access areas;
- (D) A description of the method which shall be used to identify the boundaries of the optional premises when it is in use;
- (E) A description of the provisions which have been made for storing malt,

vinous, and spirituous liquors in a secured area on or off the optional premises for future use on the optional premises;

- (F) A written statement setting forth what will be done to secure the optional premises and storage area or areas;
- (G) A written statement indicating why the local licensing authority should grant the license;
- (H) If the applicant does not own the proposed optional premises, a written statement by the owner of the premises, approving the application and license sought; and
- (I) Other information deemed necessary, by the Local Authority, to insure the control of the optional premises, the ease of enforcement, and the health, safety and welfare of the neighborhood and outdoor sports and recreational facility users will not be adversely affected should the license be issued.

Section 2-10-90 Advance Notification. Pursuant to Section 12-47-310(3), C.R.S., as amended, no alcoholic beverages may be served on the optional premises until the licensee provides written notice to the State and Local Licensing authorities not less than forty eight (48) hours prior to serving alcoholic beverages on the optional premises. Said notice shall contain the specific days and hours on which the optional premises are to be used.

Section 2-10-100 Ultimate Authority – Illegal Acts.

- (A) Nothing contained herein shall preclude the Local Authority, in its sole discretion, from denying an application for an Optional Premises License or imposing conditions, restrictions, or limitations on any Optional Premises License in order to serve the public health, safety and welfare. Any such conditions may be imposed when the license is initially issued or should any specific event or use of the optional premises so warrant.
- (B) It is unlawful for any person to sell, dispense or store alcoholic beverages at an outdoor sports and recreational facility:
 - a. Without having first obtained a valid Optional Premises License as provided in this Chapter and the Colorado Liquor Code; or
 - b. In violation of any issued Optional Premises License.

Section 2. Penalty. It is unlawful for any person to violate any provision of, or fail to comply with any of the requirements of this Ordinance. Any person who violates any provisions of this Ordinance shall be punished by a fine of not more one thousand dollars or by imprisonment for a period of not more than one year or by both such fine and imprisonment; provided, no person under the age of eighteen years shall be punished by imprisonment.

Section 3. Severability. If any part, section, sub-section, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance; and the Town Council for the Town of Minturn, Colorado, hereby declares that it would have passed this Ordinance and each part, section, sub-section, sentence, clause or phrase thereof, irrespective of the fact that any one or more parts, sections, sub-sections, sentences, clauses or phrases be declared invalid.

INTRODUCED, READ BY TITLE, APPROVED ON THE FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL THE 20th DAY OF APRIL, 2011. A public hearing on this ordinance shall be held at the regular meeting of the Town Council of the Town of Minturn, Colorado, on the 4TH day of MAY, 2011, at 7:00 P.M. in the Minturn Community Center in the Town of Minturn, Colorado.

Mayor

Attest:

Town Clerk

INTRODUCED, READ BY TITLE, PASSED ON SECOND READING, APPROVED AND ORDERED PUBLISHED BY TITLE ONLY THIS 4TH DAY OF APRIL, 2011.

Mayor

Attest:

Town Clerk

First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 11-0471.01 Jery Payne

SENATE BILL 11-066

SENATE SPONSORSHIP

Jahn,

HOUSE SPONSORSHIP

Gardner B.,

Senate Committees

Local Government and Energy
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE ISSUANCE OF SPECIAL EVENT PERMITS TO SERVE**
102 **ALCOHOL BEVERAGES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill authorizes local licensing authorities to issue special event permits to consume alcohol and raises the number of days a permit may be issued from 10 to 15 in one calendar year. The local licensing authority must check the state licensing authority to determine the applicant's permitting activity and ensure compliance with the annual

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
3rd Reading Unamended
April 21, 2011

SENATE
2nd Reading Unamended
April 19, 2011

limit on permits. The bill repeals the requirement that an applicant show that existing facilities are inadequate and also repeals the authority to require bonds to be posted for special event permits.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** 12-48-101, Colorado Revised Statutes, is amended
3 to read:

4 **12-48-101. Special licenses authorized.** The state OR LOCAL
5 licensing authority, as defined in articles 46 and 47 of this title, may issue
6 a special event permit for the sale, by the drink only, of FERMENTED malt
7 beverages, AS DEFINED IN SECTION 12-46-103, or the sale, by the drink
8 only, of malt, spirituous, or vinous liquors, AS DEFINED IN SECTION
9 12-47-103, to organizations and political candidates qualifying under this
10 article, subject to the applicable provisions of articles 46 and 47 of this
11 title and to the limitations imposed by this article.

12 **SECTION 2. Repeal.** 12-48-103 (1), Colorado Revised Statutes,
13 is repealed as follows:

14 **12-48-103. Grounds for issuance of special permits.** (1) ~~A~~
15 ~~special event permit may be issued only upon a satisfactory showing by~~
16 ~~an organization or a qualified political candidate that other existing~~
17 ~~facilities are not available or are inadequate for the needs of the~~
18 ~~organization or political candidate and:~~

19 ~~(a) Existing licensed facilities are inadequate for the purposes of~~
20 ~~servicing members or guests of the organization or political candidate and~~
21 ~~that additional facilities are necessary by reason of the nature of the~~
22 ~~special event being scheduled; or~~

23 ~~(b) The organization or political candidate is temporarily~~
24 ~~occupying premises other than the regular premises of such organization~~

1 ~~or candidate during such special events as civic celebrations or county~~
2 ~~fairs and that members of the general public will be served during such~~
3 ~~special events.~~

4 **SECTION 3.** 12-48-104 (2), Colorado Revised Statutes, is
5 amended to read:

6 **12-48-104. Fees for special permits.** (2) All ~~such~~ fees are
7 payable in advance to the department of revenue ~~and the state licensing~~
8 ~~authority may require any applicant to post a performance bond to assure~~
9 ~~compliance with the provisions of this article~~ FOR APPLICATIONS FOR
10 SPECIAL EVENT PERMITS SUBMITTED TO THE STATE LICENSING AUTHORITY
11 FOR APPROVAL.

12 **SECTION 4.** 12-48-105 (3), Colorado Revised Statutes, is
13 amended to read:

14 **12-48-105. Restrictions related to permits.** (3) THE STATE OR
15 A LOCAL LICENSING AUTHORITY SHALL NOT ISSUE a special event permit
16 ~~may not be issued~~ to any organization for more than ~~ten~~ FIFTEEN days in
17 one calendar year.

18 **SECTION 5.** 12-48-106 (1), Colorado Revised Statutes, is
19 amended to read:

20 **12-48-106. Grounds for denial of special permit.** (1) The state
21 OR LOCAL licensing authority may deny the issuance of a special event
22 permit upon the grounds that ~~such~~ THE issuance would be injurious to the
23 public welfare ~~by reason~~ BECAUSE of the nature of the special event, its
24 location within the community, or the failure of the applicant in a past
25 special event to conduct ~~such~~ THE event in compliance with applicable
26 laws. ~~and regulations.~~

27 **SECTION 6.** 12-48-107 (2), Colorado Revised Statutes, is

1 amended, and the said 12-48-107 is further amended BY THE
2 ADDITION OF A NEW SUBSECTION, to read:

3 **12-48-107. Applications for special permit.** (2) In addition to
4 the fees provided in section 12-48-104, ~~applications shall be accompanied~~
5 ~~by such~~ AN APPLICANT SHALL INCLUDE PAYMENT OF A fee as ESTABLISHED
6 BY the local licensing authority, ~~may fix~~, not to exceed one hundred
7 dollars, for both investigation and issuance of a permit. Upon approval
8 of any application, the local licensing authority shall notify the state
9 licensing authority of ~~such~~ THE approval, EXCEPT AS PROVIDED BY
10 SUBSECTION (5) OF THIS SECTION. The state licensing authority shall
11 ~~thereupon~~ promptly act and either approve or disapprove ~~such~~ THE
12 application. ~~The state licensing authority shall not issue any permit under~~
13 ~~this article until the local licensing authority has approved such~~
14 ~~application.~~ In reviewing an application, the local licensing authority
15 shall apply the same standards for approval and denial applicable to the
16 state licensing authority ~~pursuant to~~ UNDER this article.

17 (5) (a) A LOCAL LICENSING AUTHORITY MAY ELECT NOT TO NOTIFY
18 THE STATE LICENSING AUTHORITY TO OBTAIN THE STATE LICENSING
19 AUTHORITY'S APPROVAL OR DISAPPROVAL OF AN APPLICATION FOR A
20 SPECIAL EVENT PERMIT. THE LOCAL LICENSING AUTHORITY IS REQUIRED
21 ONLY TO REPORT TO THE LIQUOR ENFORCEMENT DIVISION, WITHIN TEN
22 DAYS AFTER IT ISSUES A PERMIT, THE NAME OF THE ORGANIZATION TO
23 WHICH A PERMIT WAS ISSUED, THE ADDRESS OF THE PERMITTED LOCATION,
24 AND THE PERMITTED DATES OF ALCOHOL BEVERAGE SERVICE.

25 (b) A LOCAL LICENSING AUTHORITY ELECTING NOT TO NOTIFY THE
26 STATE LICENSING AUTHORITY SHALL PROMPTLY ACT UPON EACH
27 APPLICATION AND EITHER APPROVE OR DISAPPROVE EACH APPLICATION

1 FOR A SPECIAL EVENT PERMIT.

2 (c) THE STATE LICENSING AUTHORITY SHALL ESTABLISH AND
3 MAINTAIN A WEB SITE CONTAINING THE STATEWIDE PERMITTING ACTIVITY
4 OF ORGANIZATIONS THAT RECEIVE PERMITS UNDER THIS ARTICLE. IN
5 ORDER TO ENSURE COMPLIANCE WITH SECTION 12-48-105 (3), WHICH
6 RESTRICTS THE NUMBER OF PERMITS ISSUED TO AN ORGANIZATION IN A
7 CALENDAR YEAR, THE LOCAL LICENSING AUTHORITY SHALL ACCESS
8 INFORMATION MADE AVAILABLE ON THE WEB SITE OF THE STATE
9 LICENSING AUTHORITY TO DETERMINE THE STATEWIDE PERMITTING
10 ACTIVITY OF THE ORGANIZATION APPLYING FOR THE PERMIT. THE LOCAL
11 LICENSING AUTHORITY SHALL CONSIDER COMPLIANCE WITH SECTION
12 12-47-105 (3) BEFORE APPROVING ANY APPLICATION.

13 **SECTION 7. Act subject to petition - effective date -**
14 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day
15 following the expiration of the ninety-day period after final adjournment
16 of the general assembly (August 10, 2011, if adjournment sine die is on
17 May 11, 2011); except that, if a referendum petition is filed pursuant to
18 section 1 (3) of article V of the state constitution against this act or an
19 item, section, or part of this act within such period, then the act, item,
20 section, or part shall not take effect unless approved by the people at the
21 general election to be held in November 2012 and shall take effect on the
22 date of the official declaration of the vote thereon by the governor.

23 (2) The provisions of this act shall apply to applications submitted
24 on or after the applicable effective date of this act.