



2011

Minturn Council Meeting

Wednesday May 18, 2011

Work Session: **5:45pm**
(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 18, 2011

Work Session – 5:45pm
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 – 5:45pm

- Discussion re: Ordinance ___ - 2011 an ordinance regarding the sale of Medicinal Marijuana – Brunvand/Metteer (60min) |

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. **Minturn Liquor Authority**
 - Gourmet Cowboy, Inc Hotel/Restaurant Liquor License annual renewal; 455 Main Street; Tom McNeill, Owner/Manager – Brunvand (5min) pg 29
4. **Approval of Minutes and Action Report**
 - May 4, 2011 pg 34
 - Action Item Report pg 42
5. **Public comments on items, which are NOT on the agenda (5 minute time limit per person)**
6. **Special Presentations/Citizen Recognition**
 - Cleanup Day recognition – Martinez
7. **Planning Commission Update** pg 43
8. **Town Manager's Report** pg 44
9. **Town Council Comments**

PUBLIC HEARINGS AND DISCUSSION/ACTION ITEMS

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 (10min)** pg 47
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 (10min)** pg 54
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 (10min)** pg 61
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 (10min)** pg 67
14. **Discussion/Action – Ordinance 8 – 2011 (Second 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 81

15. Discussion/Action – Council Meeting Start time – White (15min)

FUTURE AGENDA ITEMS

16. Next Meeting – June 1, 2011

- Discussion/Action – Ordinance ____ - 2011 an Ordinance allowing the sale of Medical Marijuana

17. 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 an Ordinance allowing the sale of Medical Marijuana – June 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 – Brunvand/Martinez (30min)
- 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)

18. Set Future Meeting Dates

a) Council Meetings:

- June 1, 2011
- June 15, 2011
- July 6, 2011

b) Planning & Zoning Commission Meetings:

- May 26, 2011
- June 8, 2011
- June 22, 2011

c) Other Dates:

- June 18, 2011 1st Day of Minturn Market
- June 22-24 CML Annual Conference/Vail

19. Adjournment

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Town Council
 Mayor – Gordon “Hawkeye” Flaherty
 Mayor Pro Tem – George Brodin
 Councilwoman – Shelley Bellm
 Councilman – Earl Bidez
 Councilman – Jerry Bumgarner
 Councilman – Aggie Martinez
 Councilman – John Rosenfeld

AGENDA TITLE: Medical Marijuana – Work Session reference materials
MEETING DATE: May 18, 2011
PRESENTER: Brunvand/Metteer
<p>BACKGROUND:</p> <p>Upon the initial work session review at the May 4th Council meeting, questions were brought forth pertaining to the following main areas of reference:</p> <ul style="list-style-type: none"> ○ HB 1043 ○ Medical Marijuana Enforcement Division Rules ○ Pharmacy regulations (both DEA/Federal and State of Colorado) ○ Liquor License regulations (State of Colorado) ○ Overview of other municipalities’ medical marijuana fee structures ○ Council oath of office <p><i>These documents will be available online for complete review or may be printed by request (it is significant amounts of paper)</i></p> <p>The issue of medical marijuana is continuing to evolve here in Colorado. Within this last week, HB 11-1043 was passed and further clarified requirements to the medical marijuana code. In addition, the Medical Marijuana Enforcement Division Rules were recently released and go into effect 07/01/2011. Due to reoccurring scenarios such as these (laws constantly evolving and changing) it has been difficult to reference other municipalities and their structured outlines on this issue. Minturn is literally one of the first municipalities working to implement the new regulations and guidelines set forth by the state.</p> <p>It is important to note, that the Town is now in a holding pattern for another year and cannot allow any medical marijuana centers until July 1, 2012 at the earliest. This will give the state time to complete the regulatory work on their level (the state has not yet set forth the guidelines for instructions to local licensing authorities and law enforcement officers, inspections, investigations, search and seizures, informational and product displays, record retention by licensee and access by others). As is evident, there is still a great deal needing to be covered at the state level and we are hopeful they will complete that work over the next year of this moratorium.</p>
<p>CORE ISSUES:</p> <ul style="list-style-type: none"> ● Application fees ● Duties of Permittee ● Location ● Governmental Immunity ● Provisions to limit # of facilities in Town (if so desired) ● Taxation (if so desired & upon voter approval) ● MMC 10-11-20 ● Infused products ● Optional premise cultivation ● Potential regulation of Caregivers and Home growers
STAFF RECOMMENDATION/MOTION: Review and discuss

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ORDINANCE NO. _____

Series 2011

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

THE TOWN OF MINTURN, COLORADO ORDAINS:

Section 1. Regulations Adopted. Chapter 6 of the Minturn Municipal Code is amended by the addition of a new article 3, to be entitled "Medical Marijuana Centers", 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 ADMINISTRATOR
- 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 prohibits 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 Centers and their customers.
- F. If medical marijuana Centers operating pursuant Amendment 20 were allowed to be established and to operate without appropriate local regulation of their location, medical marijuana Centers 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 Centers, 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 Centers 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 _10-10-10 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.

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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.
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 10-8-90 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.~~ Chapter 16 of the Minturn Municipal Code.

Comment [MM1]: Chris Cerimele.

MEDICAL MARIJUANA CENTER OR CENTER:

The use of any property or structure within the Town to distribute, transmit, provide, 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 1-2-10 of this code.

PRIMARY CARE-GIVER:

Has the meaning provided in Amendment 20.

RESIDENTIAL USE:

~~Has the meaning provided in section _____ of this code.~~ A single family, duplex or multi-family structure or hotel, long or short term occupancy.

Comment [MM2]: Chris Cerimele.

SPLIT LEVEL STRUCTURE:

~~A structure,~~ structure or portion of a ~~structure,~~ 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.

STATE:

Shall mean the state of Colorado.

TOWN:

Has the meaning provided in section 1-2-10 of this code.

TOWN ADMINISTRATOR :

The Town Administrator of the Town, or the Town Administrator's designee authorized to

act pursuant to section 2-3-10 – 2-3-40 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 Administrator. The form of the application shall be provided by the Town Administrator.
- B. A permit issued pursuant to this chapter does not eliminate the need for the permittee to obtain other required State and Town licenses and permits related to the operation of the approved medical marijuana center, including, without limitation:

1. a State sales tax license;
2. any and all State licensing requirements
3. a Town business license; and
4. a Medical Marijuana center permit has been obtained from the Town of Minturn and all applicable fees shall be paid in full.
5. a building permit, mechanical permit, plumbing permit, or electrical permit as necessary

Comment [MM3]: Permit fees will be set by Council in the annual fee schedule

- 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;
- 3-4. a copy of any deed reflecting the applicant's ownership of, or lease reflecting the right of the applicant to possess the proposed licensed premises;
- 4-5. a statement of the applicant's personal history;

Comment [MM4]: This establishes legal possession

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5.6. a completed set of the applicant's fingerprints on a form approved by the Town Administrator;

6.7. an operation plan for the center to ensure compliance with law. The operation plan must contain the following items:

- i. description of security provisions and systems as required by the Colorado Medical Marijuana Enforcement Division Rules
- ii. Plans and specifications for the interior of the building if the building to be occupied is in existence at the time. If the building is not in existence, the applicant shall file a plot plan and a detailed sketch for the interior and submit an architect's drawing of the building to be constructed. C.R.S 12-43.3-301(4)
- iii. ~~Number of employees~~
- iv. ~~Lighting plan~~
- v.iii. If cultivating on site. 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 for the grow area

Comment [MM5]: This is taken directly out of the C.R.S. and was effective July 1, 2010. There is nothing in HB 11-1043 that amends this requirement.

7.8. 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;

8.9. 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

9.10. any additional information that the Town Administrator reasonably determines to be necessary in connection with the investigation and review of the application.

Applications shall be processed by the Town Administrator 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 2012 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 Administrator 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 Administrator 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-fourty five (45)~~ 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 Administrator with comments concerning the application.

Comment [MM6]: The increase in this number is to ensure enough time for CBI's criminal background search. If Council determines background checks can be done solely at the State level, thi number can be significantly decreased.

6-3-10: STANDARDS FOR ISSUANCE OF PERMIT: The Town Administrator 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 Administrator 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 Administrator shall be governed by the provisions of section 24-5-101, C.R.S. If the Town Administrator takes into consideration information concerning the applicant's criminal history record, the Town Administrator 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 Administrator shall deny an application for a permit under this chapter if the Town Administrator 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 Administrator 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 ADMINISTRATORADMINISTRATOR:

- A. The Town Administrator shall approve, deny, or conditionally approve an application permit within ~~thirty-sixty~~ 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 Administrator to complete the review of the application.
- B. If an application is denied, the Town Administrator shall clearly set forth in writing the grounds for denial.
- C. In the event an application is conditionally approved, the Town Administrator shall clearly set forth in writing the conditions of approval.

Comment [MM7]: Currently the State requires applicants to have approval from local licensing authorities before it will approve licensing at the State level. Therefore, if the Town decides to conduct it's own background checks enough time must be allowed for CBI timelines. If this should prove to not be the case, and the Town can rely on the State for background checks, then this number (60 days) can be significantly reduced.

6-3-14: NOTICE OF DECISION: The Town Administrator 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 Administrator'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 Administrator's denial or conditional approval of an application to the Town ~~Administrator~~Council.
- B. The applicant's written notice of appeal shall be filed with the Town Administrator within ten days after the date of mailing of the Town Administrator's decision on the application.
- C. ~~Within ten days of mailing of applicant's appeal of the Town Administrator's decision, the Town Administrator shall concur, overrule or modify the decision. The applicant has the right to appeal the decision of the Town Administrator to the Town Council by written request within ten days of after the date of mailing of the Manger's decision.~~
- D.C. 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.

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E.D. The burden of proof in an appeal filed under this section shall be on the applicant.

F.E. 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.F. 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 Administrator pursuant to section 6-3-12; and
- E. The date of the expiration of the permit.
- F. 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;
- G. 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

Comment [MM8]: Added here at the request of Council. Subsections F & G of 6-3-16 are also located in 6-3-7, the application section of this ordinance, and will be on the actual application. It is important for the applicant to know this information/liability BEFORE they pay the nonrefundable application fee.

A permit must be signed by both the applicant and the Town Administrator 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. During all business hours and other times of apparent activity, all licensed premises shall be subject to inspection by Police Services and all other Town departments designated by the Town Administrator for the purpose of investigating and determining compliance with the provisions of this Article and any other applicable state and~~

local laws or regulations. Said inspection may include, but need not be limited to, the inspection of books, records, inventory and security. Where any part of the licensed premises consists of a locked area, such area shall be make available for inspection without delay, upon request.

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 Administrator shall send a copy of the permit to:

- A. The Town Clerk;
- 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 Administrator.

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 Administrator not less than forty-five days prior to the date of expiration. No application for renewal shall be accepted by the Town Administrator after the date of expiration. The Town Administrator 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 Administrator'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 Administrator 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 Administrator pursuant to section 6-3-12;
- B. Comply with all of the requirements of this ~~chapter~~article;
- 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, the Colorado Medical Marijuana Enforcement Division Rules, 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 Administrator 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 Administrator 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 Administrator 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 Administrator pursuant to section 6-3-12;
 - 4. a violation of any of the provisions of this chapter;

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5. operations have ceased at the medical marijuana center for more than 90 days~~48 hours~~, 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.

Comment [MM9]: Pursuant to C.R.S 12-43.3-901(o)

- B. In connection with the suspension of a permit, the Town Administrator -may impose reasonable conditions.
- C. A hearing held pursuant to this section shall be processed in accordance with 6-3-15 -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 Administrator 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 Administrator -suspends a permit, the permittee may appeal the suspension or revocation to 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 Administrator acted correctly in suspending or revoking the permit, the Town Council shall uphold the Town Administrator's order of suspension or revocation. If the Town Council finds by a preponderance of the evidence that the Town Administrator acted improperly in suspending or revoking the permit, the appeal shall be sustained, and the Town Administrator'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.

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6-3-24: ~~LIMITATIONS ON SALE OF MARIJUANA:~~

- A. No marijuana may be sold, given away, or transferred at a medical marijuana center except to patients and to primary care-givers.
- B. All cultivation of medical marijuana shall be conducted entirely within a building or other fully enclosed, permanent structure.

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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;
 - 6. within 500 feet of another medical marijuana center.
- 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;

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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" or a "home business" as described in 16-2-20 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 article 19 of chapter 16 of this code. No signage associated with medical marijuana Centers shall use the word "marijuana," "cannabis" or any other word or phrase commonly understood to refer to marijuana unless such word or phrase is immediately preceded by the word "medical." In addition no signage shall contain 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 Administrator, 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.
- E. A warning that no person may be permitted on the licensed premises other than:
 - i. The licensee, the licensee's manager, licensed employees and financial interest holders

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- ii. A patient in possession of a registry identification card under Article XVIII, Section 14(3)(d) of the Colorado Constitution
- iii. A minor patient accompanied by a parent or lawful guardian in possession of the minor patient's registry identification card
- iv. A primary caregiver in possession of his or her patient's registry identification card under Article XVIII, Section 14(3)(d) of the Colorado Constitution and the patient's written designation of said person as the patient's primary caregiver
- v. A person whose physical presence and assistance are necessary to assist a patient, or
- vi. A person who is actively engaged in the maintenance, repair or improvement of the licensed premises or in the provision of accounting, inspection, or other professional services directly related to the conduct of the licensee's marijuana business.

D.

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

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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.

A. All activities of medical marijuana business, including, without limitation, cultivating, growing, processing, displaying, manufacturing, selling and storage, shall be conducted indoors

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B. Sufficient measures and means of preventing smoke, odors, debris, dust, fluids and other substances from exiting a medical marijuana business must be provided at all times

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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 including:

A. Security requirements 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; as outlined in the Medical Marijuana Enforcement Division Rules 10.200-10.400.~~

- ~~B. Robbery and burglary alarm systems which are professionally monitored and maintained in good working conditions;~~
- ~~C.B. 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.C. 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 article 2 of chapter 6 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 article 4 of chapter 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 Administrator 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 Administrator 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 Administrator 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. Municipal Code. Except as specifically amended hereby, the Minturn Municipal 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. Effective Date. This ordinance shall be published and become effective as provided by section 11.5 of the Minturn Town Charter.

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 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, READ BY TITLE IN FULL, APPROVED ON THE FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL THE _____ DAY OF _____, 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 7:00 p.m. at the Minturn Town Center, 302 Pine Street, 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
_____ DAY OF _____, 2011.

MAYOR

ATTEST:

TOWN CLERK

~~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.

Municipal Charges for Medical Marijuana submissions

5/5/2011	Fort Collins	Olathe	Palmer Lake	Littleton	Fountain	Garden City
New license application						
Medical Marijuana center	\$1,500.00	\$3,000.00	\$1,000.00	\$2,500.00	\$875.00	\$2,000.00
Optional presmises cultivation operation	\$1,000.00	\$3,000.00	\$1,000.00	\$2,500.00	\$875.00	\$2,000.00
marijuana infused products manufacturer	\$1,000.00	\$3,000.00	\$1,000.00	\$2,500.00	\$875.00	\$2,000.00
Annual License fee				\$2,000.00	\$2,000.00	
Transfer of Ownership to a new entity	\$1,500.00					
Additional fee per associated optional premises cultivation operation or marijuana-infused products manufacturere	\$500.00					
Change of ownership	\$500.00					
Change of location	\$1,000.00					
Manager Registration	\$100.00					
Change of Registered Manager				\$400.00		
Change of Corporate Structure (per person)				\$200.00		
Change of Trade Name/Corporate Name				\$200.00		
Modification of Premises	\$100.00			\$400.00		
Renewal of License (any type)	\$100.00					
Inspection fee (upon issuance of new or renewal license)	\$700.00					
Fingerprinting (per person-matching CBI/FBI charges)	\$38.50		\$44.50 residents \$64.50 non-residents	\$38.50		\$38.50
Business sales tax license			\$50.00			
Review fee						\$800.00

Kerry Bush, City of Englewood

Michelle Metteer
Deputy Clerk
P.O. Box 309 ♦ 302 Pine Street
Minturn, CO 81645
Phone: 970-827-5645
Fax: 970-827-5545
Email: mmetteer@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

Executive Summary

BASIC OVERVIEW OF HB 11-1043

Update on HB 1043 – Third reading passed: May 10, 2011

- Prolong the current moratorium on the issuance of licenses to open/operate a medical marijuana dispensary until June 30, 2012
- Make clear which physicians can recommend medical marijuana
- Require patients who want to grow their own marijuana at home to register the location of the plants
- Repeal the provision that made the location of optional premises cultivation operations confidential
- Two new classes of medical marijuana license created:
 - Primary caregiver cultivation license
 - Infused products manufacturing facility license
- Enact certain patient privacy restrictions for medical marijuana dispensaries
- Limit the number of cloned marijuana plants that could be sold by medical marijuana dispensaries
- Limit the number of marijuana plants that makers of marijuana-infused products could possess to 500

**TOWN OF MINTURN, COLORADO
ORDINANCE _____-2011**

**AN ORDINANCE OF THE TOWN OF MINTURN AMENDING SECTION
10-11-20 OF THE TOWN OF MINTURN MUNICIPAL CODE
REGARDING POSSESSION OF MARIJUANA; AND SETTING FORTH
DETAILS IN REGARD THERETO**

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 bringing it in compliance with changes to Colorado law.

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

Section 1. Section 10-11-20 of the Minturn Municipal Code is amended to read as follows:

Sec. 10-11-20. Possession of Marijuana.

(a) Any person who knowingly possesses not more than one (1) ounce of marijuana without documented legal authority to do so pursuant to Section 25-1.5-106, C.R.S. commits a criminal offense and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars (\$100.00).

(b) Whenever a person is arrested or detained for a violation of Subsection (a) above, the arresting or detaining officer shall prepare a written notice or summons for such person to appear in court. The written notice or summons shall contain the name and address of such arrested or detained person, the date, time and place where such person shall appear and a place for the signature of such person indicating the person's written promise to appear on the date and at the time and place indicated on the notice or summons. One (1) copy of said notice or summons shall be given to the person arrested or detained, one (1) copy shall be sent to the Municipal Court and such other copies as may be required by the Police Department shall be sent to the places designated by the Police Department. The date specified in the notice or summons to appear shall be at least five (5) days after such arrest or detention unless the person arrested or detained demands an earlier hearing. The arrested or detained person, in order to secure release from arrest or detention, shall promise in writing to appear in court by signing the notice or summons prepared by the arresting or detaining officer.

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Section 2. 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 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.

Section 5. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are repealed to the extent only of such inconsistency. This repealer shall not be construed to revise any bylaw, order, resolution or ordinance, or part thereof, theretofore repealed.

INTRODUCED, READ BY TITLE IN FULL, APPROVED ON THE FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL THE _____ DAY OF _____, 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 7:00 p.m. at the Minturn Town Center, 302 Pine Street, 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 _____ DAY OF _____, 2011.

Mayor

ATTEST:

Town Clerk

Copy of oath of office:

Sec. 2-3-70. Oath.

Each of the appointed officers or employees, before entering upon the duties as such officer or employee, shall make oath before some officer qualified by law to administer such oath, that he or she will support the Constitution and laws of the United States and of the State and the ordinances of the Town, and faithfully perform the duties of his or her office. Such oath shall be made and subscribed substantially in the following form:

"I, _____, do solemnly swear that I will support the Constitution and laws of the United States, the Constitution and laws of the state of Colorado and the ordinances of the Town of Mintum, and that I will faithfully perform all the duties of the office of _____, upon which I am about to enter.

"Sworn to and subscribed before me this _____ day of _____, A.D. 20__.

(Official Title)"

(Prior code 2-28)

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
MR. HAWKEYE FLAHERTY, MAYOR
MR. GEORGE BRODIN, MAYOR PRO TEM
MR. AGGIE MARTINEZ, COUNCILMAN
MR. EARLE BIDEZ, COUNCILMAN
MS. SHELLEY BELLM, COUNCILWOMAN
MR. JERRY BUMGARNER, COUNCILMAN
MS. JOHN ROSENFELD, COUNCILWOMAN

AGENDA ITEM COVER SHEET

AGENDA TITLE: – The Gourmet Cowboy Inc, annual renewal of a Hotel/Restaurant Liquor License; 455 Main Street; Tom McNeill, Owner/Manager

MEETING DATE: May 18, 2011

PRESENTER: Brunvand

BACKGROUND: This is an application for annual renewal of a Hotel/Restaurant liquor license. The application has been reviewed by the Clerk, Police Chief, and the Town Attorney. Any concerns were addressed at Staff level and this application is clear for approval.

CORE ISSUES:

BUDGET/FINANCE IMPLICATIONS: An annual renewal fee of \$125.00 has been paid to the Town.

STAFF RECOMMENDATION/MOTION: “Motion to approve the Gourmet Cowboy annual renewal of a Hotel/Restaurant Liquor License; 455 Main Street; Tom McNeill, Owner/Manager as presented.”

ATTACHMENT TO LIQUOR OR 3.2 BEER LICENSE RENEWAL APPLICATION

**This page must be completed and attached to your signed renewal application form.
 Failure to include this page with the application may result in your license not being renewed.**

Trade Name of Establishment Gourmet Cowboy Bar		State License Number 1814498	
1. Operating Manager Thomas McNeill		Home Address 0634 Deer Blvd Avon CO 81620	
		Date of Birth 9.3.53	
2. Do you have legal possession of the premises for which this application for license is made? Are the premises owned or rented: rent If rented, expiration date of lease: 06.01.12			Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
3. Has there been any change in financial interest (new notes, loans, owners, etc.) since the last annual application? If yes, explain in detail and attach a listing of all liquor businesses in which these new lenders or owners, (other than licensed financial institutions) are materially interested.			Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
4. Since the date of filing of the last annual application, has the applicant, or any of its agents, owners, managers, principals, or lenders (other than licensed financial institutions), been convicted of a crime? If yes, attach a detailed explanation.			Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
5. Since the date of filing of the last annual application, has the applicant, or any of its agents, owners, managers, principals, or lenders (other than licensed financial institutions), been denied an alcoholic beverage license, had an alcoholic beverage license suspended or revoked, or had interest in any entity that had an alcoholic beverage license denied, suspended or revoked? If yes, attach a detailed explanation.			Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
6. Does the applicant, or any of its agents, owners, managers, principals, or lenders (other than licensed financial institutions), have a direct or indirect interest in any other Colorado liquor license (include loans to or from any licensee, or interest in a loan to any licensee)? If yes, attach a detailed explanation.			Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
7. Corporation or Limited Liability Company (LLC) or Partnership applicants must answer these questions.			
Since the date of filing of the last annual license application:			
(a) Are there, or have there been: any officers or directors; or managing members; or general partners added to or deleted from applicant for renewal of a 3.2 beer or liquor license?			Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
(b) Are there or have there been: any stockholders with 10% or more of the issued stock of the Corporation; or any members with 10% or more membership interest in the LLC; or any partners with 10% or more interest in the partnership added to or deleted from the applicant for renewal of a 3.2 beer or liquor license?			Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
(c) If Yes to (a) or (b), complete and attach Form DR 8177: Corporation, Limited Liability Company or Partnership Report of Changes, and all supporting documentation, and fees your Local Licensing Authority immediately.			
8. Sole proprietorships, Husband-Wife Partnerships or Partners in General Partnerships:			
EVIDENCE OF LAWFUL PRESENCE			
Each person identified above must complete and sign the following affidavit. Please make additional copies if necessary. Each person must also provide a copy of their driver's license or state issued identification card.			
In lieu of form DR 4679, the undersigned swears or affirms under penalty of perjury under the laws of the State of Colorado that (check one):			
<div style="display: flex; align-items: flex-start;"> <div style="font-size: 2em; margin-right: 10px;">N/A</div> <div> <input checked="" type="checkbox"/> I am a United States Citizen <input type="checkbox"/> I am not a United States Citizen but I am a Permanent Resident of the United States <input type="checkbox"/> I am not a United States Citizen but I am lawfully present in the United States pursuant to Federal Law <input type="checkbox"/> I am a foreign national not physically present in the United States </div> </div>			
I understand that this sworn statement is required by law because I have applied for a public benefit. I understand that state law requires me to provide proof that I am lawfully present in the United States prior to receipt of this public benefit. I further acknowledge that making a false, or fraudulent statement or misrepresentation in this sworn affidavit is punishable under the criminal laws of Colorado Revised Statute 18-8-503 and it shall constitute a separate criminal offense each time a public benefit is fraudulently received.			
Signature 		Printed name Thomas McNeill	
		Date 4.18.11	

OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE

I, Scott Gessler, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office,

THE GOURMET COWBOY, INC.

is a **Corporation** formed or registered on 09/10/2001 under the law of Colorado, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 20011176165.

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 05/06/2011 that have been posted, and by documents delivered to this office electronically through 05/11/2011 @ 07:34:44.

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, authenticated, issued, delivered and communicated this official certificate at Denver, Colorado on 05/11/2011 @ 07:34:44 pursuant to and in accordance with applicable law. This certificate is assigned Confirmation Number 7942600.



A handwritten signature in black ink, appearing to read "Scott Gessler".

Secretary of State of the State of Colorado

*****End of Certificate*****

Notice: A certificate issued electronically from the Colorado Secretary of State's Web site is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Certificate Confirmation Page of the Secretary of State's Web site, <http://www.sos.state.co.us/biz/CertificateSearchCriteria.do> entering the certificate's confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our Web site, <http://www.sos.state.co.us/> click Business Center and select "Frequently Asked Questions."



TOWN OF MINTURN
P.O. Box 309 (302 Pine Street)
Minturn, Colorado 81645-0309
970-827-5645 Fax: 970-827-4049
treasurer@minturn.org

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

MEMORANDUM

To: Chief Lorenzo Martinez
Allen C., Town Attorney (via fax PDF email)
CC:
Date: 5/11/11 1:34 PM
RE: Liquor License

Attached please find a copy of the Annual Liquor License Renewal Application for the Gourmet Cowboy located at 455 Main Street. I have reviewed the application and obtained a Certificate of Goodstanding from the Secretary of State's Office. This Renewal looks fine to me and is ready for your on-site investigation. Let me know if you have any questions.

The lease does not extend to the end of the renewal. I called the state and talked to Stephanie who stated that because the lease expires two weeks prior to the proposed renewal as long as the applicant does not let the lease lapse they are fine. I noted to her that I did not think the state would grant a renewal if the lease period did not run longer than the license, she stated they would and all was fine.

PLEASE NOTE: Our standard reviewing process is for both Lorenzo and Allen to review AND approve PRIOR to this being scheduled for a Council meeting. Please inform me if you have any questions when you approve for forwarding to the Council.

Please let me know if you have any questions or concerns, which I may be able to answer.

Thanks, jay



OFFICIAL MINUTES

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

Wednesday May 4, 2011

**Work Session – 5:00pm
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

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 – 5:00pm

- Discussion re: Ordinance ___ - 2011 () an ordinance regarding the sale of Medicinal Marijuana – White/Metteer (45min)
- Discussion – Change of Council Meeting Start Time – White (15min)
- Discussion – USFS Bone Yard Update – White (15min)
- Discussion/Action – Holy Cross Franchise Agreement – White (30min)

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 7:15pm.

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, , Administrative Assistant/Deputy Clerk, Michelle Metteer, Town Planner Chris Cerimele and Attorney Allen Christensen.

2. Approval of Agenda

a. Items to be Pulled or Added

Add section 8a. Council meeting start time.

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

3. Approval of Minutes and Action Report

- April 6, 2011
- April 20, 2011
- Action Item Report

Motion by Shelley B., second by George B., to approve the Minutes of April 6, 2011 as presented; all voted in favor.

Motion by George B., second by Aggie M., to approve the Minutes of April 20, 2011 as presented; all voted in favor.

Additions to Action Item Report:

Scholarship Fund progress

OSAC funding for the purchase of the Boneyard property

Town Sidewalks

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

- Jodi Born, Minturn Community Fund, look for informational post cards in your mailbox. The Minturn Community Fund has been accepted by the City Market program, and residents can sign up their City Market cards for the benefit of the Community Fund. Also, voting is still taking place for the Minturn Movie nights. Go to the Community Fund's Facebook page to fill out your survey.
- Vail Ski and Snowboard Club – Aldo Radamus, the Club and Academy have received approval for the use of the Minturn Middle School location. As operations move forward they look to be a positive partner with the Minturn community. The Minturn Senior's Group will be permitted the use of room in the school. Call Geoff Grimmer, 328-2832, with any questions. Aldo asked if the Town Council supported the plan to return to the use of the historic "Panthers" as the name affiliated with the VSSC and VSSA at the Minturn middle School. All offered support.
- Geoff Grimmer, Head of School, is looking forward to moving forward with this new chapter in the school's history.

5. Special Presentations/Citizen Recognition

- Maren Lantzy was recognized by Town Manager, Jim White, and Andy Kaufman, Minturn Community Fund, for her extraordinary work with the Minturn Community Fund and the entire Town of Minturn.

6. Planning Commission Update

7. Town Manager's Report

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.

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.

8. Town Council Comments

George B., will be leading the Highway cleanup from the top of Battle Mountain to Maloit Park on Saturday, May 7th. Call 476-1810 for more information or to sign up to volunteer.

Jerry B., and Town Manager, Jim W, attended the Eagle County Airport tour and were informed of upgrades and improvements being recommended to the facility. United and American Airlines will both be flying out of Eagle County starting in June of 2011.

John R., would like to invite everyone to stop by the Lady Bug Release at Johnie's Garden this Saturday for their annual Lady Bug release. The festivities start at 10:00am.

Aggie M., reminds everyone that spring runoff is approaching and sand and bags are available at the Municipal parking lot for the use of residents. Please bring your own shovel for bagging of sand.

Hawkeye F., reminds everyone that with spring comes the bears. Trash should not be put out the night before.

PUBLIC HEARINGS AND DISCUSSION/ACTION ITEMS

8a. Discussion/Action – Council start time changing to 6:00pm.

Hawkeye F. discussed the concern for Town residents to be able to get to the meetings on time as well as the ability for staff to continue Town services until 5:00pm.

Shelley B. is in support of moving the time to 6:00pm.

Earle B. asked for a survey of the residents.

Motion by George B., second by Shelley B., to table this discussion until May 18th, upon which time a survey will have been taken at the Town Cleanup Day and results can be examined.

Boots Ferguson, Holland & Hart, representing the Town of Minturn, stated that the annexation will take place in two pieces. Staff recommends that all four ordinances be tabled so that the School Board can approve the conditions stated by the Minturn Council at the School Board's May 11th meeting.

Town benefits to annexation: 3 acres for recreational use and facilities, 18 acres deeded to the Town for the Town's water treatment plant, nonexclusive easement for access to Cross Creek, 39.5 acres designated recreation and open space. A total of 58% of the site will be designated to open space.

Tom Braun, Braun Associates, representing the School District, brought three issues to attention: Town's acceptance of roads, total number of residences and assurances of parkland. Roads will be to the specifications of the Town. The total number of units will be decreased from 150 to 120, excluding the Academy housing units being 48 dormitories and eight staff units.

Hawkeye F. would like to see 85 units plus the Academy residences and to keep the ball fields. Discussion ensued.

Shelley B., asked about the vision of the staff housing, which was explained as being in a townhome style configuration.

Direction to staff by Council to confirm staff housing language is clarified.

Shelley B., Earle B., Aggie M., Jerry B., and George B all recommend the agreement remain in its current form, excepting the clarification of the redefining of the staff housing.

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)

Motion by Shelley B., second by George B., to table Ordinance 1 – 2011 (Second Reading) until May 18, 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.

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)

Motion by John R., second by Aggie M., to table Ordinance 2 – 2011 (Second Reading) until May 18, an Ordinance annexing to the Town of Minturn, County of Eagle, State of Colorado, Eagle County School District Maloit Park Parcel No. 2

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)

Motion by Shelley B., second by John R., to table Ordinance 3 - 2011 (Second Reading) until May 18, 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.

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)

Motion by Earle B., second by Jerry B., to table Ordinance 4 – 2011 (Second Reading) until May 18, 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.

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)

Motion by Shelley B., second by John R., to approve Ordinance 6 – 2011 (Second Reading) as amended, 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. All voted in favor.

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)

Motion by Shelley B., second by Aggie M., to approve Ordinance 8 – 2011 (First Reading) as amended, 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. Motion passed 4-3 (Earle B., George B & Hawkeye F., nay votes)

Direction was given to staff to review the River Restoration agreement to clarify river setback requirements.

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)

Motion by John R., second by George B., to table 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. All voted in favor.

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 the Town Prosecuting attorney's 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

Motion by George B., second by Shelley 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 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; all voted in favor.

17. Executive Session – Public direction to Staff as a result of the Executive Session (5min)

Follow up on the negotiation of the water cases. Review the contract for the Town Prosecuting Attorney.

FUTURE AGENDA ITEMS

18. Next Meeting – May 18, 2011

- Work Session – Ordinance ____ - 2011 an Ordinance allowing the sale of Medical Marijuana –

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 () an Ordinance allowing the sale of Medical Marijuana –
- 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

Motion by Shelley B., second by George B., to adjourn the meeting at 10:50pm. All voted in favor.

Mayor Hawkeye Flaherty

ATTEST:

Town Clerk, Jay Brunvand

4/1

**Town of Minturn
Council Action Item Memo**

TO: Staff Members/Council Members
FROM: Jim White/ Town Manager
DATE: May 18, 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 being reviewed at work session level.
Minturn Scholarship Fund	White	Pursue interest money from Battle Mountain scholarship fund contributions.
Town Sidewalks	A. Martinez/White	Clarify installation plans (add language to code to require for new construction).
OSAC Funding for Boneyard purchase	White	Seek fundraising partners. Town staff to meet with Eagle County Staff.

Post Office Box 309
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Phone: 970-827-4272
Fax: 970-827-7420



Town Council
Mayor – Gordon "Hawkeye" Flaherty
Mayor Pro Tem – George Brodin
Councilwoman – Shelley Bellm
Councilman – Jerry Bumgarner
Councilman – Aggie Martinez
Councilman – Earle Bidez
Councilman – John Rosenfeld

To: Minturn Town Council
Cc: Jim White, Town Manager
From: Chris Cerimele, Town Planner
Re: Planning Department Update
Date: May 13, 2011

5.11.11 Planning Commission Meeting Update

The Planning Commission met to continue discussing up open space dedication requirements for subdivisions and planned unit developments. We reviewed the Department of Local Affairs Model Land Use Code as it pertains to parks and open space dedication requirements. The Commission agreed that the DOLA code could be used as a guideline for creating regulations specific to Minturn. Currently, we are considering requiring a parks and open space dedication of 10-12% of the total gross land area for subdivisions greater than 1 acre. A cash-in-lieu payment could be made for smaller subdivisions. This money could be used for park maintenance or open space acquisition. Staff and Planning Commission will continue to review the DOLA Model Land Use Code and use it as a guide in our efforts to refine the Town's code.

Additionally, the Planning Commission is contemplating a code amendment that would reduce the rear yard setback to allow for garages only. This would give homeowners greater flexibility to construct a garage on their property and help to alleviate the on-street parking problem. This amendment is being considered for the Old Town Character Area due to the fact that most of the existing garages in this area are non-conforming structures since they have been constructed within the 10' rear yard setback. The proposed amendment would reduce the rear setback to 5' for a garage only.

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
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Councilmember – Shelley Bellm
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Councilmember – Jerry Bumgarner
Councilmember – Aggie Martinez
Councilmember – John Rosenfeld

To: Mayor Flaherty and Minturn Town Council
From: Jim White, Town Manager
Date: May 12, 2011
Re: **Manager’s Report for the May 18, 2011 Town Council Meeting**

Maloit Park Annexation

On Wednesday evening, May 11, 2011, the Eagle School District unanimously approved the annexation agreement for the Maloit Park Character Area and directed the Board President to sign the agreement once approved by the Minturn Town Council. The Minturn Town Council is scheduled to review four ordinances related to the project at its May 18, 2011 meeting.

North Main Waterline Project Formal Completion

Town staff met on Thursday, May 12, 2011 to complete the final walk through on the North Main Waterline Project. Due to the onset of winter, the final walk through was not able to be completed in November last year. The final monetary retainage will be released pending a positive review of the project based on observations during the walk through.

XCEL Natural Gas Pipeline Project Begins!

Monday, May 16, 2011 was the official construction start date for the XCEL Pipeline Project slated for this summer from Edwards to Minturn. Monday was set aside primarily for staging the project, bringing in equipment and supplies. XCEL will be replacing 6” and 12” existing lines with a new 16” line. The old lines will be abandoned in place and filled with an inert gas. XCEL crews anticipate 6-10 hour days, Mondays-through Saturdays. Work stoppage will occur several times this summer due to large events planned, such as bike races. Project completion is set for September 15, 2011. For questions, please call XCEL at 1-877-481-6380.

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. The Town staff has initiated correspondence with the Eagle County staff to ask assistance in completing the application for funding from the county to make this purchase viable. We will also begin communications with GOCO to consider potential financial contributions.

Back Flow Preventer/Turntable

The Turntable had a back flow preventer installed on Thursday, May 12, 2011. The Town and the Turntable have been communicating about this for a long time. We are very pleased to have had the cooperation from the Turntable to complete this project.

2/4

5/13/2011

Battle Mountain Update

We communicate with Dave Kleinkopf on a regular basis about the status of the Battle Mountain project. Many of the issues discussed currently involve pending lawsuits related to quiet title action and challenges to the annexation agreement.

Elizabeth Mitchell, Holland & Hart attorney, continues her discussions with Battle Mountain representatives to prepare responses to the EPA. No new information is available at this time. Once it is available, we will reschedule a visit from Elizabeth to update the Town Council.

Canning Grant Secured

The Town of Minturn secured a grant for our Minturn Market. We were one of only two markets selected from Colorado. It supports an educational canning program which involves the use of locally grown foods, a healthy lifestyle, and economic benefits. We will be doing canning demonstrations at the Minturn Market and giving away six free canning kits and other canning products as a result of this grant. We will receive a stipend check to help promote this project. This grant was received based on the efforts of Michelle Metteer. The website www.farmersmarketcoalition.org is where this originated. The Minturn Market is a proud member of this coalition.

Signage

We have received the Special Use Permit from the US Forest Service which allows the Town of Minturn to construct its entryway sign on Forest land. The formal contract has been signed and sent back to the Forest Service for its signature. The sign is currently being constructed.

Holy Cross Franchise Agreement Extension

The Town of Minturn and Holy Cross have extended our franchise through September 21, 2011. Holy Cross representatives will meet with Town staff to consider other issues as we move toward franchise renewal.

Annual Town Clean Up Day

The Town of Minturn held its Annual Town Clean Up Day this year on Saturday, May 14, 2011@ the Municipal Lot. A resounding THANK YOU to all the volunteers, Town Council members, Fire District personnel, staff and all others who contributed to the planning efforts or during the event itself!

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. Early bird registration ends on Friday, May 20, 2011.

Out of the Office

I will be out of the office on May 19th, 20th and 23rd...Thursday, Friday, and next Monday.

Respectfully submitted,

4/5

5/13/2011

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
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AGENDA ITEM COVER SHEET

AGENDA TITLE:

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

MEETING DATE: May 18, 2011

PRESENTER: Chris Cerimele

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.

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.

BUDGET/FINANCE IMPLICATIONS: Annexation of the Maloit Park property will result in additional revenue for the Town if and when the property is developed.

RECOMMENDED MOTION: I move to approve Ordinance 1 – Series 2011 on second reading.

**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 had an annexation impact report prepared and filed in accordance with the provisions of C.R.S. 31-12-108.5, 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 18th DAY OF May, 2011.

Mayor

Attest:

Town Clerk

Exhibit A

LEGAL DESCRIPTION

Property Owned by Eagle County School District RE-50J

Parcel 1

A tract of land embracing a portion of Homestead Entry Survey No. 46 in the Northwest Quarter and the West One-half of the Northeast Quarter of Section 2 of unsurveyed Township 6 South Range 81 West of the Sixth Principal Meridian, being also a portion of the parcel described in the Deed and Agreement recorded March 19, 1984 in Book 380 at Page 574, more particularly described as follows:

Beginning at corner No. 7 of Homestead Entry Survey No. 46 (HES 46), a found 24 x 13 x 10" granite stone scribed "7 HES 46", whence a 250' witness corner (found 2" aluminum cap on 5/8" rebar, "LS 33655") bears N89°51'07"E, 674.15 feet; thence S00°15'10"W, 1916.70 feet to Corner No. 6 of said HES 46 (18"x7" granite stone scribed "6-HES 46"; thence S46°35'38"E, 980.10 feet to Corner No. 5 of said HES 46 (1.4'x 0.5' quartzite stone scribed "4-HES 46"; thence N01°52'29"E, 1741.9 feet to a point on Line 7-2 of said HES 46; thence S89°51'07"W, 1458.51 feet to the Point of Beginning.

The described parcel contains 75.907 acres more or less.

TOWN OF MINTURN ORDINANCE CHECKLIST

Ord 1-2011

FIRST READING

3/16/11 The ordinance shall be introduced and read by title at any regular or special meeting. Copies shall be available to the public.

Pub 3/21/11 If the ordinance is approved on first reading, Mayor and Clerk must sign ordinance after first reading. It shall be published in full in a newspaper of general circulation within the Town. The minutes shall reflect number of votes for and against each ordinance.

Tabled several times Final setting 5/18/11 If the ordinance is tabled, it shall be reconsidered at subsequent meetings until it is approved with or without amendment or rejected by vote of the Council.

_____ The Council shall set a day, hour and place at which the Council shall hold a public hearing on the ordinance, and notice of such day, hour and place shall be included in the first publication.

SECOND READING

5/18/11 The ordinance shall be introduced a second time at the meeting at which the public hearing on the ordinance is held. The ordinance may be read by title only on second reading. The ordinance may be amended before final approval or rejection by vote of the Council. The text of any such amendment or amendments shall be read in full.

_____ If the ordinance is substantially amended it shall be published in full after final passage. If not amended in substance, it may be published either by title or in full, as the Council may determine, after final passage.

_____ The minutes shall reflect the number of votes for and against the ordinance.

_____ A true copy of every ordinance shall be numbered and recorded in the official records of the Town. Its adoption and publication shall be authenticated by the signatures of the Mayor or Mayor Pro Tem and the Town Clerk and by the certificate of publication. Proof of publication for both readings shall be attached to the ordinance.

_____ The effective date of ordinances is seven (7) days after publication following final passage unless a later date is prescribed in the ordinance.

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 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

MEETING DATE: May 18, 2011

PRESENTER: Chris Cerimele

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.

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.

BUDGET/FINANCE IMPLICATIONS: Annexation of this parcel will result in additional revenues to the Town if and when the property is developed.

RECOMMENDED MOTION: I move to approve Ordinance 2 – 2011 on second reading.

**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 had an annexation impact report prepared and filed in accordance with the provisions of C.R.S. 31-12-108.5, 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

Exhibit A

LEGAL DESCRIPTION

Property Owned by Eagle County School District RE-50J

Parcel 2

A tract of land embracing a portion of Homestead Entry Survey No. 46 in the Northwest Quarter and the West One-half of the Northeast Quarter of Section 2 of unsurveyed Township 6 South Range 81 West of the Sixth Principal Meridian, being also a portion of the parcel described in the Deed and Agreement recorded March 19, 1984 in Book 380 at Page 574, more particularly described as follows:

Beginning at corner No. 4 of Homestead Entry Survey No. 46 (HES-46), a found 1.3' x 0.6' quartzite stone scribed "4-HES 46", whence Corner No. 5 of said HES 46 (1.3' x 0.6' granite stone scribed "5-HES 46" bears S43°35'12"W, 1777.60 feet; thence along the southerly line of said HES 46 N69°07'30"E, 1119.80 feet; thence departing said southerly line N34°08'51"E, 269.86 feet; thence N33°53'01"W, 346.67 feet; thence N59°47'03"W, 741.58 feet; thence N00°04'23"W, 458.67 feet to Line 7-2 of HES 46; thence along said Line 7-2 S89°51'07"W, 420.16 feet; thence departing said Line7-2 S01°52'29"E 1741.90 feet to the Point of Beginning.

The described parcel contains 28.645 acres more or less.

TOWN OF MINTURN ORDINANCE CHECKLIST

0201 2 - 2011

FIRST READING

3/16/11 The ordinance shall be introduced and read by title at any regular or special meeting. Copies shall be available to the public.

^{sub} 3/21/11 If the ordinance is approved on first reading, Mayor and Clerk must sign ordinance after first reading. It shall be published in full in a newspaper of general circulation within the Town. The minutes shall reflect number of votes for and against each ordinance.

5/18/11 ^(several confirmations) If the ordinance is tabled, it shall be reconsidered at subsequent meetings until it is approved with or without amendment or rejected by vote of the Council.

_____ The Council shall set a day, hour and place at which the Council shall hold a public hearing on the ordinance, and notice of such day, hour and place shall be included in the first publication.

SECOND READING

_____ The ordinance shall be introduced a second time at the meeting at which the public hearing on the ordinance is held. The ordinance may be read by title only on second reading. The ordinance may be amended before final approval or rejection by vote of the Council. The text of any such amendment or amendments shall be read in full.

_____ If the ordinance is substantially amended it shall be published in full after final passage. If not amended in substance, it may be published either by title or in full, as the Council may determine, after final passage.

_____ The minutes shall reflect the number of votes for and against the ordinance.

_____ A true copy of every ordinance shall be numbered and recorded in the official records of the Town. Its adoption and publication shall be authenticated by the signatures of the Mayor or Mayor Pro Tem and the Town Clerk and by the certificate of publication. Proof of publication for both readings shall be attached to the ordinance.

_____ The effective date of ordinances is seven (7) days after publication following final passage unless a later date is prescribed in the ordinance.

P.O. Box 309 ♦ 302 Pine Street
Minturn, CO 81645
Phone: 970-827-5645
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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 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 18, 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 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 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.

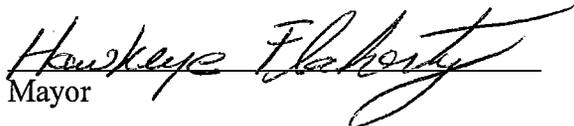
Section 3. This Ordinance shall not take effect until the Eagle County School District RE 50J Annexation Agreement is signed by the representatives of all of the necessary parties thereto.

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.

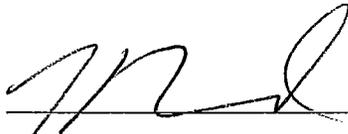
Section 5. The Town Council hereby finds, determines and declares that this Ordinance is necessary and proper for the health, safety and welfare of the Town of Minturn and the inhabitants thereof.

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 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 6th DAY OF APRIL, 2011.

Mayor

Attest:

Town Clerk

TOWN OF MINTURN ORDINANCE CHECKLIST

Ord 3-2011

FIRST READING

3/16/11 The ordinance shall be introduced and read by title at any regular or special meeting. Copies shall be available to the public.

^{pub}
3/23/11 If the ordinance is approved, on first reading, Mayor and Clerk must sign ordinance after first reading. It shall be published in full in a newspaper of general circulation within the Town. The minutes shall reflect number of votes for and against each ordinance.

5/18/11 *(several continuations)*
If the ordinance is tabled, it shall be reconsidered at subsequent meetings until it is approved with or without amendment or rejected by vote of the Council.

_____ The Council shall set a day, hour and place at which the Council shall hold a public hearing on the ordinance, and notice of such day, hour and place shall be included in the first publication.

SECOND READING

_____ The ordinance shall be introduced a second time at the meeting at which the public hearing on the ordinance is held. The ordinance may be read by title only on second reading. The ordinance may be amended before final approval or rejection by vote of the Council. The text of any such amendment or amendments shall be read in full.

_____ If the ordinance is substantially amended it shall be published in full after final passage. If not amended in substance, it may be published either by title or in full, as the Council may determine, after final passage.

_____ The minutes shall reflect the number of votes for and against the ordinance.

_____ A true copy of every ordinance shall be numbered and recorded in the official records of the Town. Its adoption and publication shall be authenticated by the signatures of the Mayor or Mayor Pro Tem and the Town Clerk and by the certificate of publication. Proof of publication for both readings shall be attached to the ordinance.

_____ The effective date of ordinances is seven (7) days after publication following final passage unless a later date is prescribed in the ordinance.

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 agreed to the Town approximately 195 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 parcels listed by Eagle County School District RE 50J in November 2010, which parcels 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, its 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, subsection, 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, subsection, 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 duly 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 which was 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 8th day of April, 2011, at 7 P.M. in the Minturn Town Center in the Town of Minturn, Colorado.

Mayor _____
Allast: _____
Town Clerk _____
INTRODUCED, READ BY TITLE, PASSED ON SECOND READING, APPROVED AND ORDERED PUBLISHED IN FULL THIS 6th DAY OF APRIL, 2011.
Mayor _____
Allast: _____
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,"

Recital 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 petitions for the proposed annexation complied with C.R.S. Section 31-12-107, as amended;

E. WHEREAS, the Property is presently zoned residential 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 fully defined herein for 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 Widemess, a Colorado non-profit school 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 Widemess, Inc. 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 Development Plan, 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 it is in the Town's best interests 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 pursuant to Resolution No. Series 2011 and Ordinance Resolution No. Series 2011 and Ordinance _____

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 parties, as tenants in common, do hereby acknowledge, and the parties hereby agree as follows:

ARTICLE 1. ANNEXATION AND ZONING OF THE PROPERTY

Section 1.4. Zoning. The Property has been zoned Resort 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 Mixed Use, approximately 41.2 acres as Open Space, and approximately 18.2 acres as Public Facilities. The intent of this rezoning is to provide for the following general purposes:

- (a) District Development purposes; (b) public utility, facilities and up to ten individual residential units for Town employees; (c) District and non-District residential dwellings; (d) District and non-District residential dwellings; (e) public recreational facilities; and (f) 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, including facilities for 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 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 specific uses of the land area 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 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 with potable water service by the Town pursuant to the terms and conditions of that certain Agreement between the parties dated May 5, 1984 ("1984 Agreement"). Paragraph 1 of the 1984 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 serviced to the Property pursuant to Section 13-2-40 of the Minturn Municipal Code. The first full paragraph on page 2 of the 1984 Agreement is hereby amended to provide that the District shall pay the pumping power costs for the pumping of water from the Minturn water plant clear well to the Property and within the Property, because the 1984 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 1984 Agreement is hereby amended further to provide that it shall remain in full force and effect with respect to any water service and product provided to the Property for District and Non-District Development including District residential dwellings and public recreational facilities. All other provisions of the 1984 Agreement shall remain in full force and effect. The District owns interests in the Armdia 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 Minturn Municipal Code and this Annexation Agreement. In the event that District Development of the Property is located in an area that requires 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 foot per year, which represents a twenty-five percent (25%) increase in the historical water demands under the 1984 agreement set forth in paragraph 1 of the water monthly demands for the area (3) year 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 in paragraph 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 project 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 with easements for utility easements and lines, with the then existing infrastructure and other structures and development on the District property. Such easements are anticipated to begin in the areas generally depicted along Cross Creek and end in the areas on the eastern 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. 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 Right 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 Armdia Ditch Water Right being used for raw water irrigation, the Town shall waive dedication requirements under the Minturn Municipal Code, Article 13, Section 13-2-20 for up to and including 150 single family equivalents on the Property.

Section 2.4 Armdia Ditch. The District owns an interest in the Armdia Ditch, Priority No. 339, adjudicated March 5, 1918, appropriation date December 28, 1918 in the portion of the Armdia Ditch water right that has been historically used upon and in connection with and is appurtenant to the Property ("Armdia Ditch Water Right"). The Armdia 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 Armdia 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 acre development as depicted on paragraph 1.4 above, not including any taps covered by the 1984 agreement pursuant to paragraph 2.1 above, the District shall convey such Armdia Ditch Water Rights to the Town. The District shall retain the first right to use the Armdia Ditch Water Right for outdoor irrigation of any portion of the Property.

2. Subject to conveyance to the Town, the Town shall assume all operations, maintenance and administration duties with respect to such Armdia Ditch Water Right (including ditch operation and maintenance). The users of the yield of the Armdia 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 Armdia Ditch Water Right. In the event the District receives a bona fide offer for the sale of the Armdia 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, the "Third Party Sale"), the District shall exercise its right of first refusal and become the purchaser of the Armdia Ditch Water Right under the same terms and conditions of the Third Party Sale. The Town shall have sixty (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 Armdia 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 waived the first right to purchase the Armdia Ditch Water Right under subparagraph 2.4(2) and declines to exercise such right, whether once or numerous times.

4. In the event the District determines to sell the Armdia 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 Armdia Ditch or pursuant to the 1984 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 County 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 maybe 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 as hereinafter by the District; (b) Subdivision Plan 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 codes, policies, and objectives and, accordingly, any future subdivision review of any non-District Development shall be based solely upon compliance with applicable design standards as required by the Municipal Code and the subdivision process 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 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 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 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 placed 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 shall approve a subdivision exemption to create the Town of Minturn 18 acre parcel with access hereto based upon application for the same that has been submitted by the District.

Section 4.3 Redevelopment and Control of Development. It is intended 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 any development or redevelopment, including the creation 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 Widemess. 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 apart

ments, 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 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. The District shall file 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 150 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 applicable state statutes referenced herein. In the event the District determines to include within the District Development any residential units, such units shall be included in the total of 150 units allocated to the retained Property herein. 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 Policy.

1. Fees, Conditions and Deductions. In partial consideration of the mutual covenants and promises set forth herein and the District shall make any such 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 amended 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 Minturn Municipal Code Section 13-2-20 to 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 2.5 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 and use approvals pursuant to Section 4.1 above, as appropriate; provided, however, that the existing access to the current District facilities from State Highway 24 shall not be altered except with the express 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 paragraph 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 complementary with both future District and non-District Development.

e. Water tap fees shall be waived for District Development that fall under the 1984 Agreement as described in paragraph 2.1 above.

2. Improvements Guarantee. Notwithstanding any provision in the 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. At such time as any non-District Development within the Property is approved, the Town shall include in such approval a commitment to assume the maintenance of all roads, streets, and rights of way that are dedicated to the public in connection with the non-District development.

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 use 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.

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 existing 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 signs, easements, 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 Minturn's use of such road consistent with its permit.

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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-school 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 ordinance 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 conveyances.

4. The future consideration to be provided by the Town for the conveyances by the District and restrictions on the District's property rights described above shall survive any conveyance or dedication by the District.

Section 5.3 **Processing.** If necessary or required, required preliminary actions and payments of appropriate processing fees. If any, the Town shall propose 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 Minutun Municipal Code, including but not limited to, the following:

1. Scheduling, convening and conducting all required public hearings in a manner consistent with applicable laws and regulations in force as of the date the applicable applications are submitted.
2. Processing and approval as appropriate in an expeditious manner, of all plans, 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 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 the taking of such 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 **Survivability.** 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.

ended 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 shall no 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 addressees designated below as the party to whom notices are to be sent, or (b) 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 notices or communications shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

If to the Town: Town of Minutun
302 Pine Street
P.O. Box 309
Minutun, CO 81645
Attention: Town Manager

with a copy to: Allen C. Christensen, Esq.
87 Main St. Suite W 205
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 leasees 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 release 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 **Enforceability.** 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 ordinance or building or-

dinances, resolutions or other rules, regulations or policies adopted by the Town which changes or 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 hereunder 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 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 Amortization 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.** 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 MINUTUN
By: Mayor
Town Clerk
APPROVED, as to legal form by:
Allen C. Christensen, Town Attorney

EAGLE COUNTY SCHOOL DISTRICT
By: _____
APPROVED, as to legal form by:
Richard N. Lyons, Attorney for the District

Published in the Vail Daily March 23, 2011.

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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 4 – 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.

MEETING DATE: May 18, 2011

PRESENTER: Chris Cerimele

BACKGROUND: This Ordinance will create the Maloit Park Character on a 104.552 acre parcel of land commonly referred to as Maloit Park. This newly created Character Area will be comprised of the following zones:

- Mixed-Use (46.861 acres)
- Public Facilities (18.156 acres)
- Recreation and Open Space (39.535 acres)

CORE ISSUES: Per State Statute, all newly annexed land is required to be zoned within 90 days of an annexation.

BUDGET/FINANCE IMPLICATIONS: none

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

**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>
	Mixed Use	5,000	50	40	20	10	5	C.C= 50
Maloit Park	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	
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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 6th day of April, 2011, at 7 P.M. in the Minturn Town Center in the Town of Minturn, Colorado.

Henkay Elaberty
Mayor

Attest:

[Signature]

Town Clerk



INTRODUCED, READ BY TITLE, PASSED ON SECOND READING, APPROVED AND ORDERED PUBLISHED IN FULL THIS 15th DAY OF May, 2011.

Mayor

Attest:

Town Clerk

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 stores; 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		

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
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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		
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Liquor stores			N	N		N		
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Multi-family dwellings			R	N		R		
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Pawn shops			N	N		N		
Photographic studios			N	N		N		
Professional activities			N	N		N		

EXHIBIT C

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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		
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Service businesses			N	N		N		
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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		

TOWN OF MINTURN ORDINANCE CHECKLIST

ORD 4-2011

FIRST READING

3/16/11 The ordinance shall be introduced and read by title at any regular or special meeting. Copies shall be available to the public.

^{pub}
3/23/11 If the ordinance is approved on first reading, Mayor and Clerk must sign ordinance after first reading. It shall be published in full in a newspaper of general circulation within the Town. The minutes shall reflect number of votes for and against each ordinance.

5/18/11 *(several continuations)*
If the ordinance is tabled, it shall be reconsidered at subsequent meetings until it is approved with or without amendment or rejected by vote of the Council.

_____ The Council shall set a day, hour and place at which the Council shall hold a public hearing on the ordinance, and notice of such day, hour and place shall be included in the first publication.

SECOND READING

_____ The ordinance shall be introduced a second time at the meeting at which the public hearing on the ordinance is held. The ordinance may be read by title only on second reading. The ordinance may be amended before final approval or rejection by vote of the Council. The text of any such amendment or amendments shall be read in full.

_____ If the ordinance is substantially amended it shall be published in full after final passage. If not amended in substance, it may be published either by title or in full, as the Council may determine, after final passage.

_____ The minutes shall reflect the number of votes for and against the ordinance.

_____ A true copy of every ordinance shall be numbered and recorded in the official records of the Town. Its adoption and publication shall be authenticated by the signatures of the Mayor or Mayor Pro Tem and the Town Clerk and by the certificate of publication. Proof of publication for both readings shall be attached to the ordinance.

_____ The effective date of ordinances is seven (7) days after publication following final passage unless a later date is prescribed in the ordinance.

6314842

Ad Ticket #5

Acct: 1003134
Phone: (303)827-5645

Name: Town of Minturn
Address: PO Box 309

E-Mail:

Client:

Caller: Jay

City: Minturn

State: CO

Zip: 81645-0309

Receipt

Ad Name: 6314842D

Original Id: 0

Editions: 8VDI/8VDI

Class: 0990

Start: 03/23/11

Stop: 03/23/11

Color:

Issue 1

Copline: 6314842 pg 1-2 ord 4-2011 +exhibit

Rep: Pam Schultz

Lines:	0
Depth:	15
Columns:	5
Discount:	0.00
Commission:	0.00
Net:	0.00
Tax:	0.00
Total	360.00
Payment	0.00

Ad shown is not actual print size

80

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 18, 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. The Colorado Department of Public Health and Environment (CDPHE) recommended prohibiting all types of burning devices, including portable cooking devices, from the 30’ river setback. The CDPHE is currently reviewing the grant application and contract documents for the river restoration project. Staff will provide a report at the May 18th meeting.

Maps have been included that show building footprints and a 30’ buffer of the Eagle River.

CORE ISSUES: None

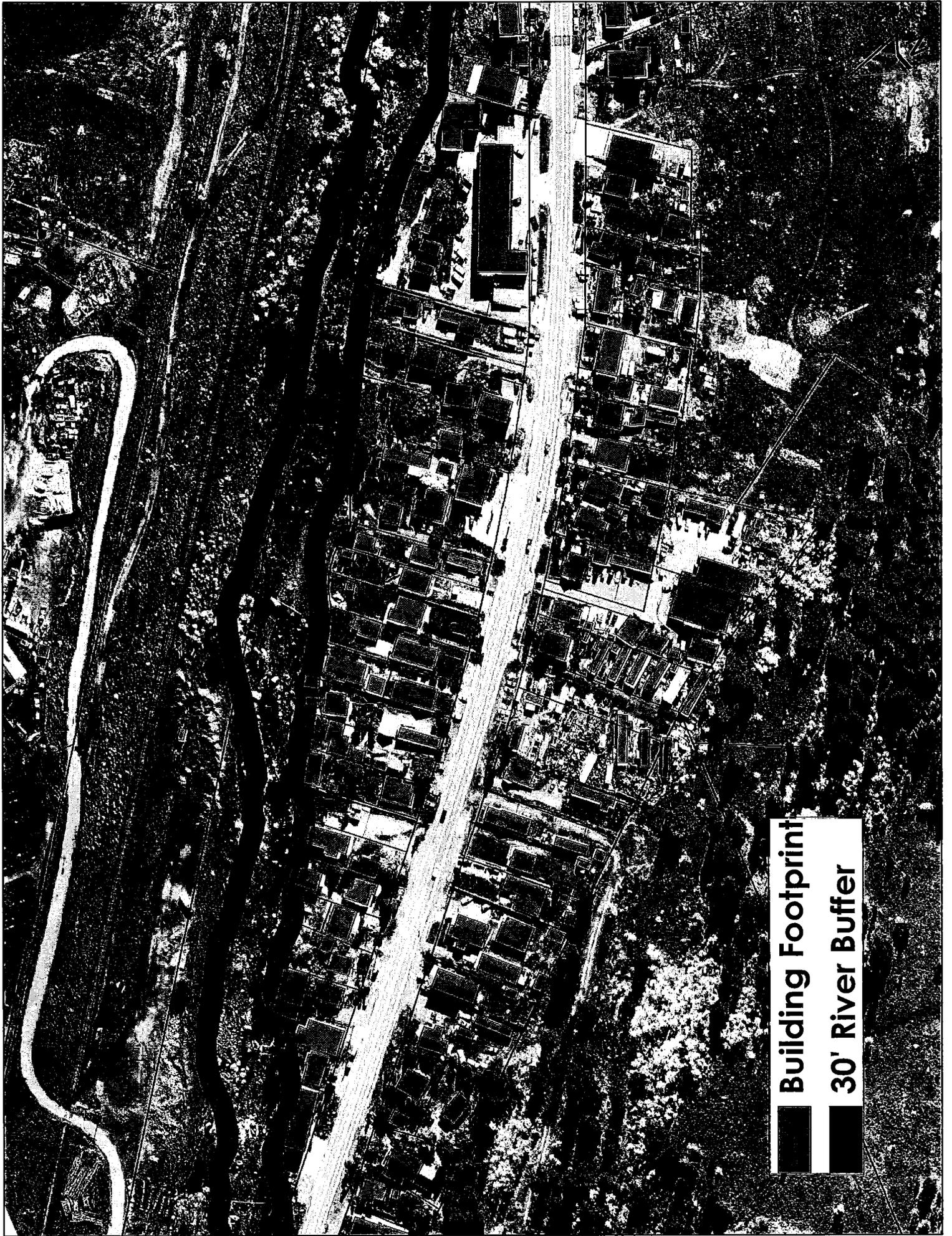
BUDGET/FINANCE IMPLICATIONS: None

RECOMMENDED MOTION: I move to approve Ordinance 8 – Series 2011 on second reading



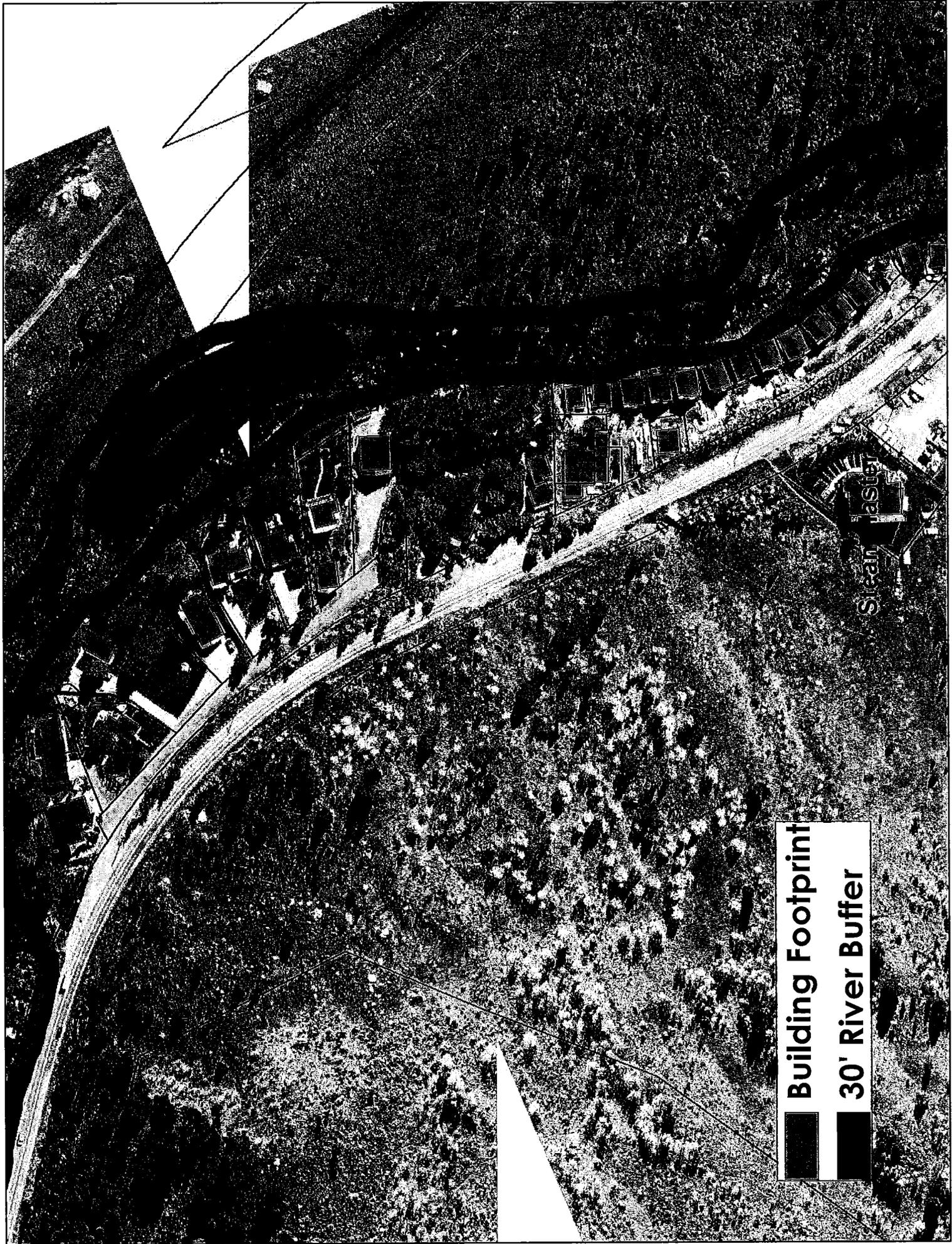
Town Hall

- Building Footprint
- 30' River Buffer



Building Footprint

30' River Buffer



■ Building Footprint
■ 30' River Buffer

Stream Gauge

**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 4th 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

TOWN OF MINTURN ORDINANCE CHECKLIST

ord 8-2011

FIRST READING

5/4/11 The ordinance shall be introduced and read by title at any regular or special meeting. Copies shall be available to the public.

Pub 5/11/11 If the ordinance is approved on first reading, Mayor and Clerk must sign ordinance after first reading. It shall be published in full in a newspaper of general circulation within the Town. The minutes shall reflect number of votes for and against each ordinance.

_____ If the ordinance is tabled, it shall be reconsidered at subsequent meetings until it is approved with or without amendment or rejected by vote of the Council.

_____ The Council shall set a day, hour and place at which the Council shall hold a public hearing on the ordinance, and notice of such day, hour and place shall be included in the first publication.

SECOND READING

_____ The ordinance shall be introduced a second time at the meeting at which the public hearing on the ordinance is held. The ordinance may be read by title only on second reading. The ordinance may be amended before final approval or rejection by vote of the Council. The text of any such amendment or amendments shall be read in full.

_____ If the ordinance is substantially amended it shall be published in full after final passage. If not amended in substance, it may be published either by title or in full, as the Council may determine, after final passage.

_____ The minutes shall reflect the number of votes for and against the ordinance.

_____ A true copy of every ordinance shall be numbered and recorded in the official records of the Town. Its adoption and publication shall be authenticated by the signatures of the Mayor or Mayor Pro Tem and the Town Clerk and by the certificate of publication. Proof of publication for both readings shall be attached to the ordinance.

_____ The effective date of ordinances is seven (7) days after publication following final passage unless a later date is prescribed in the ordinance.

