



2011

Minturn Council Meeting

Wednesday July 20, 2011

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

Regular Session: **6:30pm**
(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 July 20, 2011

Work Session – 5:00pm

Regular Session – 6:30pm

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

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

COUNCIL MEMBERS:

Shelley Bellm

Earle Bidez

Jerry Bumgarner

Aggie Martinez

John Rosenfeld

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

Work Session – 5:00pm

- Work Session Review: Discussion/Action – Ordinance 9 – 2011 (_____ Reading) an Ordinance allowing the sale of Medical Marijuana (45min)
- Work Session Review: Discussion/Action – Ordinance 5 – 2011 (First Reading) an Ordinance adopting the 2009 IBC as amended – Cerimele/Lanci (30min)

Regular Session – 6:30pm

- 1. Call to Order**
 - a. Roll Call
 - b. Pledge of Allegiance
- 2. Approval of Agenda**
 - a. Items to be Pulled or Added

3. **Approval of Minutes and Action Report**
 - July 6, 2011
 - Action Item Report
4. **Public comments on items, which are NOT on the agenda (5 minute time limit per person)**
5. **Special Presentations/Citizen Recognition**
 - Daniel Chisholm
6. **Planning Department Update**
7. **Town Manager's Report**
8. **Town Council Comments**

PUBLIC HEARINGS AND DISCUSSION/ACTION ITEMS

9. **Discussion/Action – Ordinance 5 – 2011 (First Reading) an Ordinance adopting the 2009 IBC as amended – Cerimele/Lanci (Meeting 15min)**
10. **Discussion/Action – Ordinance 11 – 2011 (First Reading) Holy Cross Franchise Agreement – White (30min)**
11. **Discussion/Action – Ordinance 10 - 2011 (First Reading) an Ordinance granting and approving an Encroachment Agreement between the Minturn Towne Homes and the Town of Minturn – Cerimele (15min)**
12. **Discussion/Action – Update and discussion regarding the River View Cemetery – White (10min)**

EXECUTIVE SESSION

13. **Executive Session – Pursuant to CRS 24-6-402(4)(a) for the purposes to consult with the Town's Attorney(s) and receive direction regarding the negotiations of the USFS Boneyard property 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, water right issues, and EPA update – White/Christensen**

FUTURE AGENDA ITEMS

14. Next Meeting – August 3, 2011

- Meeting: Discussion/Action – Resolution 4 – Series 2011 a Resolution approving a subdivision exemption plat for the Maloit Park Area – Cerimele (20min)
- Meeting: Discussion/Action – Ordinance 11 – 2011 (_____ Reading) Holy Cross Franchise Agreement – White (15min) (8/3/11)
- Meeting: Discussion/Action – Ordinance 5 – 2011 (_____ Reading) an Ordinance adopting the 2009 IBC as amended – Cerimele/Lanci (15min) (8/3/11)

15. Future Meeting

- Meeting: Discussion/Action – Ordinance 9 – 2011 (First Reading) an Ordinance allowing the sale of Medical Marijuana (TBA Meetings 45min, NOTE: this will require two readings)

16. Set Future Meeting Dates

a) Council Meetings:

- August 3, 2011
- August 17, 2011
- September 7, 2011

b) Planning & Zoning Commission Meetings:

- July 27, 2011
- August 10, 2011
- August 24, 2011

c) Other Dates:

17. Adjournment

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

AGENDA ITEM COVER SHEET

AGENDA TITLE: Medical Marijuana Center, Ordinance 9 – Series 2011
MEETING DATE: July 20, 2011
PRESENTER: Brunvand/Metteer
BACKGROUND: During the scheduled Worksession Council will review the second half of the most current draft of the proposed medical marijuana ordinance. The most recent updates to the draft reflect questions and discussions from the previous medical marijuana ordinance work session. During the last review on June 15 th we ended after Section 6-13-19 so will begin at section 6-13-20. Once the review is complete there should be time remaining for general Council discussion.
CORE ISSUES: The following still requires addressing at both the Staff and Council level: <ul style="list-style-type: none">• Currently, this ordinance is outlined with the Town Administrator as the licensing authority and for applications to be handled at the Staff level. Any applicant appeals would come before Council.• Appropriate fees for permit application and permit renewal. An updated spreadsheet of other Town’s fee schedule for medical marijuana center licensing/permitting has been included. At first glance the fee schedule dollar amounts look high, but in light of the amount of staff labor Minturn has already dedicated to this, I would say (after taking Rocky Ford out of the mix) taking the average of the initial application fees (for a Medical Marijuana Center license only) is a good starting point. The average comes to roughly \$1700.00 for the initial license. Renewal fees would be less, pending the Center has remained in compliance and is up to date on all inspections.• Any verbiage for the ordinance that would specifically limit the number of potential centers within the Town limits. Two possible options include limiting the number of centers by Town population size (i.e. “shall not have more than one (1) center per 2,500 ppl) and directly specifying an allowable limit (i.e. “shall not have more that two within the Town limits). Both of these options are meant to work as a catch-all in the event zoning changes are made or loopholes are discovered.
STAFF RECOMMENDATION/MOTION:

ORDINANCE NO. ~~89~~

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 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.

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: Chapter 16 of the Minturn Municipal Code.

LOCAL LICENSING AUTHORITY For the purposes of this article, means the Town Administrator of the Town of Minturn or Administrator's designee.

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: A single family, duplex or multi-family structure or hotel, long or short term occupancy.

SPLIT LEVEL STRUCTURE: A structure or portion of a structure that includes multiple floors with the lowest floor visible from the street front having a finished grade below the finished grade level of the street front sidewalk.

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
- C. An application for a permit under this chapter shall contain the following information:
1. the applicant's name, address, telephone number, birthdate and social security number;
 2. the street address of the proposed medical marijuana center;
 3. if the applicant is not the owner of the proposed location of the medical marijuana center, a notarized statement from the owner of such property authorizing the submission of the application;
 4. a copy of any deed reflecting the applicant's ownership of, or lease reflecting the right of the applicant to possess the proposed licensed premises;
 5. a statement of the applicant's personal history;

Comment [MM1]: Permit fees will be set by Council in the annual fee schedule

Comment [MM2]: This establishes legal possession

6. a completed set of the applicant's fingerprints on a form approved by the Town Administrator;
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. 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
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;
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
10. any additional information that the Town Administrator reasonably determines to be necessary in connection with the investigation and review of the application.

Comment [MM3]: 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.

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 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 [MM4]: Again, this timeframe is only achievable if the State is conducting all necessary background checks.

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. A standard cure time of seven(7) business days will be extended.

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 ~~ADMINISTRATOR~~ADMINISTRATOR:

- A. The Town Administrator shall approve, deny, or conditionally approve a permit within thirty days of the receipt of the completed application unless, by written notice to the applicant, the decision period is extended for an additional ten days if necessary for the Town 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.

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

- 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~~

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

6-3-17: INSPECTION OF PREMISES:

- A. 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 dispensary 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 dispensary 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.
- B. During all business hours and other times of apparent activity, all licensed premises shall be subject to inspection by Police Services, Fire 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 made available for inspection without delay, upon request.

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C. Reoccurring inspections shall be conducted not less than once per year and proof of a completed, passing inspection by either the State Licensing Authority or a pre-approved third party, as determined by the Town Administrator, must be submitted at time of permit renewal. Any and all possible costs for inspections, and required maintenance requested as a condition of a passing inspection shall be the sole responsibility of the applicant.

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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.

Do we need to have a caveat to review this prior to the state's passage on July 2012
Start here on second meeting in July worksession

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F.
6-3-20: DURATION OF PERMIT; RENEWAL

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- 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. The term of the permit shall be from April 1 to March 31 of the following year.
- 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 day 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, and section 6-3-17(C), 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.

Comment [MM5]: This is in accordance with the Town's current licensing cycle.

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Comment [MM6]: Requires proof of a passing inspection for renewal of a permit.

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- 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 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;

~~5. operations have ceased at the medical marijuana center for more than 48 hours, including during a change of ownership of the center; or~~

~~6-5.~~ ownership of the medical marijuana center has been transferred without the new owner obtaining a permit pursuant to this chapter.

Comment [MM7]: This is covered in the State law and does not require specific addressing in Minturn's ordinance.

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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.

6-3-24: LIMITATIONS:

- 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.

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 ~~500-1000~~ feet of a a school, an alcohol or drug treatment facility, the principal campus of a college, university, or seminary, or a residential child care facility~~licensed child care facility~~;
 - 2. ~~within 500 feet of any educational institution or school, college or university, either public or private;~~
 - 3-2. ~~within 500 feet of any halfway house;~~
 - 4-3. ~~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;~~
 - 5-4. ~~within any building or structure that contains a residential unit;~~
 - 6-5. ~~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 land used for the purposes stated in subsections (B)(1), (B)(2), (B)(3), (B)(4) and (B)(5) adjacent to the nearest portion of the building, or unit 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.

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Comment [MM8]: 1000' is per the State's requirements for those specific facilities.

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Comment [j9]: This should have been deleted from the previous version.

E. Subsection D shall not prevent the physical delivery of medical marijuana to a patient or the patient's primary caregiver at a location off of the premises of the permittee's medical marijuana center if:

1. the marijuana was lawfully purchased by the patient or the patient's primary caregiver from the permittee's medical marijuana center;
2. the marijuana is delivered only to the patient or the patient's primary caregiver;
3. the marijuana is delivered only by the permittee or an employee of the permittee;
4. the marijuana is delivered to a location within the Town; and
5. the marijuana is delivered only by the use of a motor vehicle, bicycle, or other lawful means of transportation.

F. The suitability of a location for a medical marijuana center shall be determined at the time of the initial issuance of the permit for such center. The fact that changes in the neighborhood that occur after the initial issuance of the permit might render the site unsuitable for a medical marijuana center under this section shall not be grounds to suspend, revoke or refuse to renew the permit for such center so long as the permit for the center remains in effect.

G. Meadow Mountain Business Park shall be deemed an approved site if allowed by section 6-3-25(B)(5).

H. 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

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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:
 - 1. The licensee, the licensee's manager, licensed employees and financial interest holders
 - 2. A patient in possession of a registry identification card under Article XVIII, Section 14(3)(d) of the Colorado Constitution
 - 3. A minor patient accompanied by a parent or lawful guardian in possession of the minor patient's registry identification card
 - 4. 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
 - 5. A person whose physical presence and assistance are necessary to assist a patient, or
 - 6. 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.

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

6-3-30: PARAPHERNALIA: Devices, contrivances, instruments, and paraphernalia for inhaling or otherwise consuming marijuana including, but not limited to, rolling papers and related tools, water pipes, and vaporizers may lawfully be sold at a medical marijuana center. Such items may be sold or provided only to patients or primary care-givers.

6-3-31: ON-SITE CULTIVATION, GROWING AND PROCESSING: The growing, cultivation, or processing of marijuana on or within the premises of a medical marijuana center is prohibited unless:

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

- 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

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 including:

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

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

<p>AGENDA TITLE:</p> <p>Ordinance 5 – 2011; An Ordinance of the Town of Minturn repealing and reenacting multiple sections of Chapter 18 of the Municipal Code to adopt by reference the 2009 International Building Codes with amendments.</p>
<p>MEETING DATE: June 1, 2011</p>
<p>PRESENTER: Chris Cerimele</p>
<p>BACKGROUND: The Town of Minturn is currently on the 2003 edition of the building codes. Passage of this ordinance will adopt the 2009 editions of the following codes: <i>International Building Code; International Residential Code; International Fuel Gas Code; International Energy Conservation Code; International Plumbing Code; International Mechanical Code; International Property Maintenance Code and the National Electrical Code.</i></p> <p><i>Since the last meeting, staff has eliminated the section of the International Residential Code that required the installation of sprinkler systems in residential homes.</i></p>
<p>CORE ISSUES: <i>The Town Council requested more information on the cost associated with implementing the 2009 International Energy Conservation Code (IECC). The Governor’s Energy Office concluded that the average cost to implement the 2009 IECC would be \$922.73. Additional information on the 2009 IECC from the US Department of Energy is included for Council review.</i></p>
<p>BUDGET/FINANCE IMPLICATIONS: None</p>
<p>RECOMMENDED MOTION: I move to approve Ordinance 5 – Series 2011 on first reading.</p>

Post Office Box 309
302 Pine Street
Minturn, CO 81645
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: 2009 Building Codes
Date: May 26, 2011

Why Adopt Building Codes???

- SAFETY
- Building longevity
- Adherence to best practices in the building industry
- Energy efficiency and associated cost savings

International Residential Code

Since the April 20, 2011 meeting when the 2009 building codes were last discussed, staff has completely eliminated the requirement for residential sprinkler systems. The previous version stated that sprinkler systems would be required in all residential homes effective January 1, 2013.

International Energy Conservation Code (IECC)

The Governor’s Energy Office of Colorado published a report in July 2009 that outlined the findings of a survey that was conducted to determine which of the 329 jurisdictions that have an adopted building code also had an energy conservation code. There were 174 jurisdictions that completed the survey, including Minturn. Of those 174 jurisdictions that responded, 128 (73.5%) had adopted either the 2003 or 2006 Edition of the International Energy Conservation Code.

The Minturn Town Council was concerned with the added cost that the 2009 IECC would add to a new home. A study conducted for the Governor’s Energy Office in December 2010 concluded that the average incremental cost of implementing the 2009 IECC would be \$922.73 per home and the median energy savings would be \$239.50 per year.

The minimal initial investment in the above example would be recouped within 3.9 years and the homeowner would be able to pocket the additional energy savings in the subsequent years that they owned the home.

Table 1. Annual Savings in Residential Energy Costs

Savings Current Practice vs. 2009 IECC		
City (Climate Zone)	Savings (\$/year)	Percent Savings
Wichita, KS (Zone 4B)	\$266	14%
Boulder (Zone 5B)	\$213	13%
Eagle (Zone 6B)	\$246	13%
Alamosa (Zone 7B)	\$239	13%

Source: [2009 IECC Residential Nationwide Analysis](#), U.S. Department of Energy

Table 3. Incremental Cost of Building to the 2009 IECC

Weighted Average Incremental Cost	Median Energy Savings	Simple Payback
\$922.73 per home	\$239.50 per year	3.9 years

Source: [Estimated Energy Savings](#), Building Codes Assistance Project

Analysis of 2009 International Energy Conservation Code Requirements for Residential Buildings in Colorado

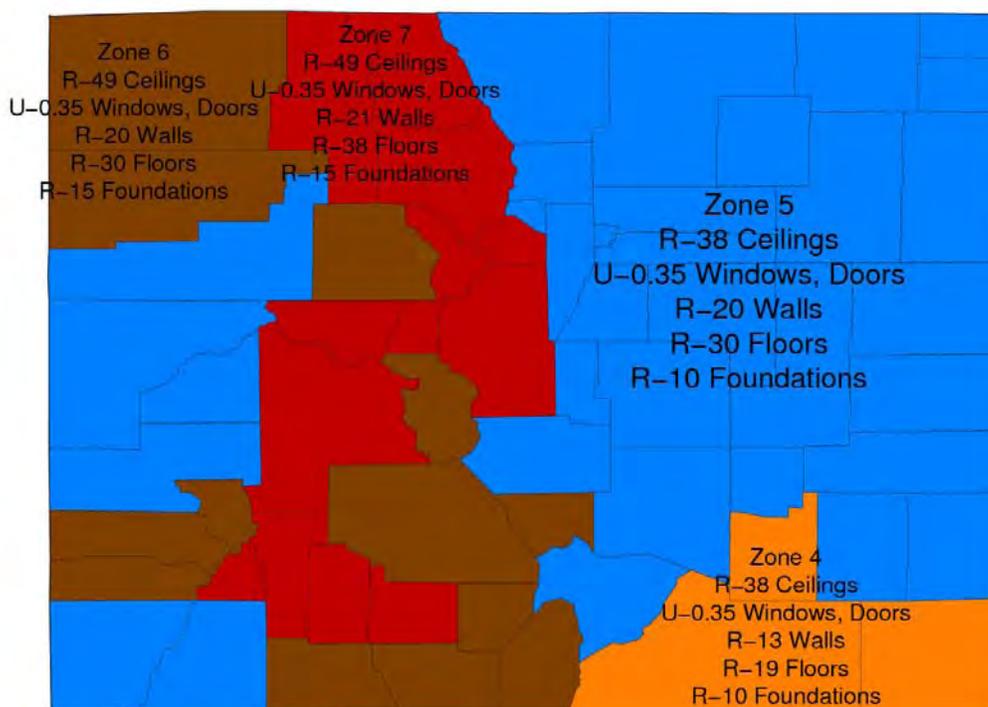
Summary

The 2009 International Energy Conservation Code (IECC) contains several major improvements in energy efficiency over the current state code, the 2003 IECC. The most notable changes are improved duct sealing and efficient lighting requirements. A limited analysis of these changes resulted in estimated savings of \$213 to \$266 a year for an average new house at recent fuel prices.

Overview of the 2009 IECC

The IECC scope includes residential single-family housing and multifamily housing three stories or less above-grade intended for permanent living (hotel/motel is not “residential”). The code applies to new buildings and additions/alterations/renovations/repairs.

The map below shows the primary building envelope requirements for all residential buildings in the 2009 IECC.



Notable requirements in the 2009 IECC:

- Building envelope must be caulked and sealed.
- Slab-on-grade insulation is R-10 to a depth of 2 feet in Zones 4 and 5 and 4 feet in Zones 6 and 7.
- Supply ducts in attics must be insulated to R-8. Return ducts in attics and all ducts in crawlspaces, unheated basements, garages, or otherwise outside building envelope must be insulated to R-6.
- All ducts must be sealed and either:
 - *verified by pressure testing* – the duct system has to be tested and the air leakage out of ducts must be kept to an acceptable maximum level.

- *installed entirely within the building thermal envelope* – testing is not required if all ducts are inside the building thermal envelope (for example in heated basements), though the ducts still have to be sealed.
- Piping for hydronic (boiler) heating systems must be insulated to R-3.
- Although vapor retarders are not required by the IECC, the I-codes do set wall vapor retarder requirements in Section R601.3 of the 2009 IRC, and vapor retarders are required in Zones 5, 6, and 7.
- Less insulation is allowed for mass walls and more insulation is required for steel framing.
- 50% of the lighting “lamps” (bulbs, tubes, etc.) in a building must be high efficacy. Compact fluorescents qualify, standard incandescent bulbs do not.
- Standard I-code administrative requirements (inspections, documentation) apply.
- A certificate must be posted near the electrical panel listing insulation levels and other energy efficiency measures.

Exemptions/Allowances from prescriptive measures:

- One door and 15 ft² of window area are exempt
- Skylight U-factors are allowed to be U-0.60
- 500 ft² or 20% of ceiling area of cathedral ceiling, whichever is less, is allowed to have R-30 insulation

Mandatory Requirements:

Windows can never exceed an area-weighted U-factor of 0.48 in Zones 4 and 5 and 0.40 in Zones 6 and 7. The 2009 IECC also identifies a set of other requirements that are strictly “mandatory” that must be done in all buildings, such as building envelope and duct sealing.

Compliance Paths:

The IECC effectively contains three alternative compliance paths.

- 1) Prescriptive measures. This is considered the simplest path. These requirements do not vary by building size, shape, window area, or other features. The IECC has a single table of requirements for insulation R-values and window and door U-factors and SHGC. There is a corresponding U-factor table that permits compliance of less common component types (e.g., structural insulated panels), albeit without any cross-component trade-offs.
- 2) Total building envelope UA (U-factor multiplied by area). This is the path predominantly used by the REScheckTM software. Based on the prescriptive U-factor table, it allows trade-offs whereby some energy efficiency measures can fall below code requirements if balanced by other measures that exceed code requirements.
- 3) Simulated performance (requires software programs). This path allows compliance if the home has a calculated annual energy consumption (or energy cost) equal to or less than that of a standard reference design that just meets the code’s prescriptive requirements. This path allows for crediting energy efficiency measures not accounted for in the other paths, such as renewable energy measures. The 2009 performance path differs from previous editions of the IECC in that it allows no tradeoff credit for the use of high efficiency space heating, space cooling, or water heating equipment.

Main Differences between the Colorado Code and the 2009 IECC

Colorado requires the 2003 IECC as the minimum code though many municipalities have adopted the 2006 IECC, and the 2006 IECC is therefore compared to the 2009 here. The 2006 IECC has the same format (including the same climate zones) and many of the same requirements as the 2009 IECC. The major differences are listed below:

- The current state code requires ducts to be sealed but not to a specific leakage rate verified by testing as is required in the 2009 IECC (if any ducts are outside the building envelope).
- 50% of the lighting “lamps” (bulbs, tubes, etc.) in a building have to be high efficacy in the 2009 IECC; the 2006 IECC has no lighting requirement. Compact fluorescents qualify, standard incandescent bulbs do not.
- Trade-off credit can no longer be obtained for high efficiency HVAC equipment in the 2009 IECC. For example, if a high efficiency furnace is used, no reduction in wall insulation is allowed. (This will have a substantial impact on the flexibility allowed by the REScheck™ software and other energy performance analysis tools.)
- A number of thermal envelope requirements have improved in the 2009 IECC. These are highlighted in Table 10.

Table 10. Comparison of Envelope Requirements

<i>Components</i>	Climate Zone 4B		Climate Zone 5B		Climate Zone 6B		Climate Zone 7B	
	2006 IECC	2009 IECC	2006 IECC	2009 IECC	2006 IECC	2009 IECC	2006 IECC	2009 IECC
Ceiling	38	38	38	38	49	49	49	49
Skylight U-factor	.60	.60	.60	.60	.60	.60	.60	.60
Fenestration U-factor	.40	.35	.35	.35	.35	.35	.35	.35
Fenestration SHGC	NR	NR	NR	NR	NR	NR	NR	NR
Wood Frame Wall	13	13	19	20	19	20	21	21
Mass Wall	5/13	5/10	13/19	13/17	15/19	15/19	19/21	19/21
Floor	19	19	30	30	30	30	30	38
Basement Wall	10/13	10/13	10/13	10/13	10/13	15/19	10/13	15/19
Slab	10, 2ft	10, 2ft	10, 2ft	10, 2ft	10, 4ft	10, 4ft	10, 4ft	10, 4ft
Crawl Space	10/13	10/13	10/13	10/13	10/13	10/13	10/13	10/13

Energy Analysis

A brief energy analysis was conducted comparing the current state code to the 2009 IECC. The EnergyGauge™ software was used to determine the energy impacts of changes in envelope requirements. EnergyGauge™ is based on the DOE-2 energy simulation software developed by DOE (Lawrence Berkeley National Laboratory 1981).

Two sets of buildings were simulated: one with energy efficiency levels set to the prescriptive requirements of the current state code, and one with energy efficiency levels set to the prescriptive requirements of the 2009 IECC. All inputs other than the changes in energy efficiency levels were identical in the two sets of simulations.

The analysis assumed a two-story, single-family house with a conditioned floor area of 2,400 ft². It was assumed that the house had 8.5-ft high ceilings, a ceiling area (bordering the unconditioned attic) of 1,200 ft², a gross exterior wall area of 2,380 ft², and a window area of 357 ft² (15% of the wall area) equally oriented north, south, east, and west. Heating with a natural gas furnace (\$1.20/therm) and central electric air conditioning (\$.12/kWh) were assumed.

High-efficacy lighting was assumed to increase from 10% to 50% of all lighting within the building, reducing lighting energy use by 26%, or \$74 a year. Savings attributable to the lighting requirements in the IECC will decrease as Federal law requires improved light bulbs in 2012 to 2014. Improved duct sealing was assumed to save 10% of the heating and cooling costs. Actual savings will vary depending on many factors, including how well ducts are currently sealed in the absence of any testing requirements.

Table 11 shows the estimated annual energy savings per house that result from meeting the improved requirements in the 2009 IECC. Total savings includes heating, cooling, and lighting and is shown as a percentage of the end-uses covered by the 2009 IECC (heating, cooling and water heating).

Table 11. Energy End Use and Percentage Savings

Climate Zone	Annual Energy Cost (\$)				Savings 2009 IECC vs. 2006 IECC	
	2006 IECC		2009 IECC		Savings (\$/yr)	
	Heating	Cooling	Heating	Cooling		
Wichita KS (CZ 4B)	1247	305	1085	275	266	14
Boulder (CZ 5B)	1152	150	1029	134	213	13
Eagle (CZ 6B)	1530	88	1367	79	246	13
Alamosa (CZ 7B)	1475	68	1318	60	239	13

**TOWN OF MINTURN, COLORADO
ORDINANCE NO. 5 - SERIES 2011**

AN ORDINANCE OF THE TOWN OF MINTURN REPEALING AND REENACTING ARTICLES 1-4 AND 5-8 OF CHAPTER 18 OF THE TOWN OF MINTURN MUNICIPAL CODE AND REPLACING THOSE SECTIONS WITH ARTICLES 1-4 AND 5-8 AND ADDING A NEW ARTICLE 9 AND 10 AND RENUMBERING SUBSEQUENT SECTIONS TO ADOPT BY REFERENCE THE 2009 EDITIONS OF INTERNATIONAL BUILDING CODE, INTERNATIONAL RESIDENTIAL CODE, INTERNATIONAL FUEL GAS CODE, INTERNATIONAL ENERGY CONSERVATION CODE, INTERNATIONAL PLUMBING CODE, INTERNATIONAL MECHANICAL CODE, INTERNATIONAL PROPERTY MAINTENANCE CODE AND THE NATIONAL ELECTRICAL CODE AS CURRENTLY ADOPTED BY THE STATE OF COLORADO

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

Section 18-1-10. Title.

The provisions of the ordinance codified herein shall be know and cited collectively as the “Town of Minturn Building Code” or “International Codes.”

Section 18-1-20. Codes adopted.

- (1) The Town of Minturn adopts by reference the following codes:

- a. *International Building Code, 2009 Edition*, as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001
- b. *International Residential Code, 2009 Edition*, as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001
- c. *International Fuel Gas Code, 2009 Edition*, as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001
- d. *International Energy Conservation Code, 2009 Edition* as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001
- e. *International Plumbing Code, 2009 Edition*, as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001
- f. *International Mechanical Code, 2009 Edition*, as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001
- g. *International Property Maintenance Code, 2009 Edition*, as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001
- h. *National Electrical Code as currently adopted by the State of Colorado.*
- i. *International Fire Code, 2009 Edition, as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001 (adopted by Ordinance 8 - Series 2011)*

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

Building Code

Section 18-2-10. International Building Code adopted.

(a) The *International Building Code, 2009 Edition, 2nd printing*, as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001, Chapters 1 through 35 inclusive, exclusive of any Appendices, (“IBC”) is hereby adopted by reference as the Town of Minturn Building 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 IBC, as adopted and as amended.

Section 18-2-20. Amendments.

The following sections of the adopted code are hereby revised as follows:

- (1) Section 111.2 Certificate Issued shall read: “Final Certificate of Occupancy Inspection approval shall be the Certificate of Occupancy.”
- (2) Section 419.2 Occupancies. The following sentence shall be added: “F and I occupancies shall not be permitted in a live/work unit.”
- (3) Section 1029 Emergency Escapes and Rescue is amended to delete *Exception 1*
- (4) Section 1608.2 Ground Snow Loads is hereby deleted and replaced with the following: “Snow loads for roods and decks shall be 75 pounds per square foot.”
- (5) Section 1809.5 Frost Protection. This section is amended by deleting the section in its entirety and replacing it with the following language: “Foundation walls, piers and other permanent supports of buildings and structures shall be protected from frost by the following method – Footings subject to frost shall have a minimum depth of 48” measured from finished grade to the bottom of the footing or the depth specified by the soils engineer of record.”
- (6) Section 1809.12 Timber Footings is deleted in its entirety.
- (7) Section 2111.13 Exterior Air Intake is amended by adding the following: “Outside combustion air intake shall be required for all gas-fired and wood burning fireplaces. Combustion air ducts shall be a minimum 26 gauge sheet metal for the portion of duct extending through the building on the outside of the fire-resistive shaft. Ducts extending from the fireplace and exiting directly to the outside without passing through any other portion of the building may be of any material permitted by the fireplace manufacturer or the International Mechanical Code. Fireplaces: Where dampers are required to be removed, clamped or welded open- doors in front of fireplace openings are required.
- (8) Section 3001.5 is amended to read as follows: “A fee for each permit and plan review shall be paid to the Northwest Colorado Council of Governments. The annual certificate of inspection will be administered by the certified elevator inspection agency. For permit applications and inspections, contact Elevator Inspection Program at (970) 468-0295. Ext. 108

Section 3. Article 3 of Chapter 18 of the Minturn Municipal Code is hereby repealed and reenacted to read as follows:

Residential Code

Section 18-3-10. International Residential Code adopted

- (a) The *International Residential Code*, 2009 Edition, 2nd printing, as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001, Chapters 1 through 44 inclusive and Appendices A, C, G, H, and N, (“IRC”) is hereby adopted by reference as the Town of Minturn Residential Building Code as if fully set out in this Ordinance, with the additions, deletions, insertions and changes as set forth in this Article.
- (b) No residential 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 IRC, as adopted and as amended.

Section 18-3-20. Amendments.

The following sections of the adopted code are hereby revised as follows:

- (1) Section R104.4 Inspections is amended by the addition of the following paragraph: “A third party inspection by a certified log inspection agency shall be required of all structural members in log framed buildings. A letter from the log grading agency certifying log grades are in accordance with the plan specifications shall be required at, or prior to frame inspection. Elevators installed in all structures shall require a third party plan review and inspection by Northwest Colorado Council of Governments.”
- (2) Section R301.2.3 Snow Loads is amended by the addition of the following: “Snow loads for roofs and decks shall be 75 pounds per square foot.”
- (3) Section R302.2.2 Townhouses is amended by the deletion of the exception.
- (4) Section R302.5.1 is amended by the addition of the following statement at the end, *Doors shall be self closing.*
- (5) Section R302.7 is amended to read enclosed accessible spaces under stairs shall have walls, under stair surfaces and any soffit protected on the enclosed side with 5/8” Type X gypsum board.
- (6) Section R313.1 Townhouse automatic fire sprinkler systems is deleted in its entirety.
- (7) Section R313.2 One and two-family dwelling automatic fire systems is deleted in its entirety.
- (8) Section R315.1 Carbon Monoxide alarms is amended by deleting this section and replacing it with the following language: “For new construction, an approved carbon monoxide alarm shall be installed within fifteen feet of the entrance to each bedroom in dwelling units within which fuel-fired appliances are installed and in dwelling units that have attached garages.”
- (9) Section R403.1.4.1 Frost Protection is amended by deleting the section in its entirety and replacing it with the following: “Foundation walls, piers, and other permanent supports of buildings shall be protected from frost by the following method – Footings subject to frost shall have a minimum depth of 48” measured from finished grade to the bottom of the footing or the depth specified by the soils engineer of record.”

- (10) Section R403.2 Footings for Wood Foundations is amended by adding the following:
“Foundations shall be designed by a registered Colorado Engineer or Architect and approved by a Geotechnical Engineer.
- (11) Section R403.3 Frost Protected Shallow Foundations is amended by adding the following: “Foundations shall be designed by a registered Colorado Engineer or Architect and approved by a Geotechnical Engineer.
- (12) Section R404.2 Wood Foundation Walls is amended by adding the following:
“Foundations shall be designed by a registered Colorado Engineer or Architect and approved by the Geotechnical Engineer.”
- (13) Section G2425.8 (501.8) Equipment Not Required to be Vented is amended by deleting item #7. The sentence after this exception should be amended to read: “Where the appliances listed in Items 5 and 6 above...”
- (14) Section G2445 (621) is amended by removing all subsections and replacing it with “Section G2445.1 General. Unvented room heaters are prohibited from installation.”
- (15) Table R301.2(1) is amended by deleting it in its entirety and replacing it with the following:

Table R301.2(1)

CLIMATIC AND GEOGRAPHIC DESIGN CRITERIA

Roof Snow Load	WIND DESIGN		SEISMIC DESIGN CATEGORY	SUBJECT TO DAMAGE FROM			WINTER DESIGN TEMP	ICE BARRIER UNDERLAYMENT REQUIRED	FLOOD HAZARDS	AIR FREEZING INDEX	MEAN ANNUAL TEMP
	Speed (mph)	Topographic effects		Weathering	Frost line depth	Termite					
75 psf	90	NO	B	SEVERE	48"	NONE TO SLIGHT	-15° F	YES	2007	2000	45° F

(16) Table R302.6 is amended to read:

SEPERATION	MATERIAL
From residence and attics	not less than 5/8" Type X gypsum board applied on the garage side
From all habitable rooms above the garage	not less than 5/8" Type X gypsum board
Structure(s) supporting floor ceiling assemblies used for separation required by this section	not less than 5/8" Type X gypsum board
Garages located less than 6 feet from a dwelling unit on the same lot	not less than 5/8" Type X gypsum board applied to the interior side of exterior walls of the garage that are within this area

(17) Add a new Section R303.1.2 Mechanical ventilation to read:

R303.1.2 Mechanical ventilation. Dwelling units shall be provided with a mechanical exhaust system, supply system, or combination thereof to provide whole-building ventilation with outdoor air. Such system shall comply with Section R303.1.2.1 through R303.1.2.2.

Exception:

1. Other *approved* mechanical ventilation systems.

(18) Add a new Section R303.1.2.1 Mechanical ventilation rate to read:

R303.1.2.1 Mechanical ventilation rate. The mechanical ventilation system shall provide outdoor air continuously at a rate of not less than that determined in accordance with Table R303.4(1)

Exception: Continuous operation of the system is not required where the system has controls that enable operation for not less the 25% of each 6 hour segment and the ventilation rate prescribed in Table R303.1.2.1 (1) is multiplied by the factor in accordance with Table R303.1.2.1 (2)

(19) Add a new table, TABLE R303.1.2.1 (1) to read:

TABLE R303.1.2.1 (1)
VENTILATION AIR REQUIREMENTS, CFM¹

FLOOR AREA (SQ. FT.)	BEDROOMS				
	0-1	2-3	4-5	6-7	>7
<1,500	30	45	60	75	90
1,500-3,000	45	60	75	90	105
3,001-4,500	60	75	90	105	120
4,501-6,000	75	90	105	120	135
6,001-7,500	90	105	120	135	150
>7,500	105	120	135	150	165

For SI: 1 square foot = 1 square foot = 0.0929 m².

- Equation R303.1.2.1 (1) can be used as an alternative to Table R303.1.2.1 (1)

$$Q_{fan} = 0.01 A_{floor} + 7.5 (N_{br} + 1)$$

Where:

Q_{fan} = fan flow rate in cubic feet per minute (cfm).

A_{floor} = floor area in square feet (ft²)

N_{br} = number of bedrooms; not to be less than 1

- Add a new table, TABLE R303.1.2.1 (2) to read:

TABLE R303.1.2.1 (2)

INTERMITTENT MECHANICAL VENTILATION RATE FACTORS^{a b}

Run-Time Percentage In each 6 hour Segment	25%	33%	50%	66%	75%
Factor	4	3	2	1.5	1.3

- Interpolation between entries is permitted.
- The ventilation system run time shall be not less than 25%

- Add a new section R303.1.2.2, System design, to read:

R303.1.2.2 System design. The required whole-house ventilation system shall consist of one or more supply or exhaust fans or a combination thereof and associated ducts and controls. Outdoor air ducts connected to the return side of an air handler shall be considered to be supply ventilation where the manufacturer's requirements for a minimum return air temperature for the air handler are met.

- Add a new section R303.1.2.3 System Controls, to read:

R303.1.2.3 System Controls. The mechanical ventilation system shall be provided with controls that enable occupant override.

(23) Add a new section R303.3.1 Bathroom ventilation to read:

R303.3.1 Bathroom ventilation. Bathrooms shall be mechanically exhausted in accordance with section 1507.

Section 4. Article 4 of Chapter 18 of the Minturn Municipal Code is hereby repealed and reenacted to read as follows:

International Fuel Gas Code

Section 18-4-10. International Fuel Gas Code adopted.

(a) The *International Fuel Gas Code*, 2009 Edition 2nd printing as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001, Chapters 1 through 8 inclusive, (“IFGC”) is hereby adopted by reference as the Town of Minturn Fuel Gas 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 IFGC, as adopted and as amended.

Section 18-4-20. Amendments.

The following sections of the adopted code are hereby revised as follows:

(1) Section 303.3 Prohibited Locations is amended by deleting exceptions number 3 and 4.

(2) Section 402.6.2 Liquefied Petroleum Gas Facilities and Piping is amending by the addition of the following sentence: “Liquefied petroleum gas facilities and equipment shall not be located in any pit or basement, under show windows or interior stairways, in engine, boiler, heater, or electric meter rooms”. The following exception shall apply: “equipment may be installed with an approved means of detection and removal of unburned liquid petroleum gas. A minimum 3” drain pipe to the exterior of the building, propane sensor and automatic safety shutoff shall be installed. The drain shall not be trapped and shall be protected from snow closure and rodents. When the above listed means cannot be achieved, an engineered mechanical exhaust system with a propane sensor, and an automatic safety shut-off, shall be required”.

(3) Section 501.8 Equipment Not Required to be Vented is amended by the deletion of item No. 8

Section 5. Article 6 of Chapter 18 of the Minturn Municipal Code is hereby repealed and reenacted to read as follows:

International Energy Conservation Code

Section 18-5-10. International Energy Conservation Code adopted.

(a) The *International Energy Conservation Code*, 2009 Edition 5th printing as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001, Chapters 1 through 6 inclusive, (“IECC”) is hereby adopted by reference as the Town of Minturn Energy 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 IECC, as adopted and as amended.

Section 18-5-20. Amendments.

The following sections of the adopted code are hereby revised as follows:

- (1) Chapter 1 Administration shall be deleted and chapter 1 of the IBC and IRC shall apply.

Section 6. Article 7 of Chapter 18 of the Minturn Municipal Code is hereby repealed and reenacted to read as follows:

International Plumbing Code

(a) The *International Plumbing Code*, 2009 Edition 3rd printing as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001, Chapters 1 through 13 inclusive, (“IPC”) is hereby adopted by reference as the Town of Minturn Plumbing 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 IPC, as adopted and as amended.

Section 7. Article 8 of Chapter 18 of the Minturn Municipal Code is hereby repealed and reenacted to read as follows:

Mechanical Code

Section 18-8-10. International Mechanical Code adopted.

(a) The *International Mechanical Code*, 2009 Edition 4th printing as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001, Chapters 1 through 15 inclusive, (“IMC”) is hereby adopted by reference as the Town of Minturn Mechanical 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 IMC, as adopted and as amended.

Section 8. Article 9 of Chapter 18 of the Minturn Municipal Code is hereby repealed and reenacted to read as follows:

Property Maintenance Code

Section 18-9-10. International Property Maintenance Code adopted.

(a) The *International Property Maintenance Code*, 2009 Edition 1st 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 Property Maintenance 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 IPMC, as adopted and as amended.

Section 9. Article 10 of Chapter 18 of the Minturn Municipal Code is hereby repealed and reenacted to read as follows:

National Electrical Code

Section 18-9-10. National Electrical Code adopted.

(a) The *National Electrical Code*, as published by the National Fire Protection Association, and the rules and regulations thereunder, as adopted, amended and updated to the most current edition by the Colorado State Electrical Board from time to time (“NEC”) pursuant to the authority set forth in Article 23 of Title 12, C.R.S., is hereby adopted by reference as the City of Centennial Electrical 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 City unless the same shall, as to design, construction, quality of materials and workmanship, conform with the NEC, as adopted and as amended.

Section 10. **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 11. 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 12. The repeal or the repeal and re-enactment of any provision of the Minturn Municipal Code as provided in this ordinance shall not affect any right which has accrued, and duty imposed, any violation that occurred prior to the effective date hereof, any prosecution commenced, nor any other action or proceeding as commenced under or by virtue of the provision repealed or repealed and re-enacted. The repeal of any provision hereby shall not revive any provision or any ordinance previously repealed or superseded unless expressly stated herein.

INTRODUCED, TITLE READ IN FULL, APPROVED ON FIRST READING AND ORDERED PUBLISHED IN FULL THE _____ DAY OF JULY, 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 AUGUST, 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 _____ DAY OF _____, 2011.

Mayor

Attest:

Town Clerk



Official Minutes

MEETING OF THE MINTURN TOWN COUNCIL

**Minturn Town Center, 302 Pine Street
Minturn, CO 81645 • (970) 827-5645**

Wednesday July 6, 2011

**Work Session – 6:00pm
Regular Session – 6:30pm**

**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 – 6:00pm

- Discussion/Action – Holy Cross Franchise agreement – White (30min)

Regular Session – 6:30pm

1. Call to Order

- a. Roll Call
- b. Pledge of Allegiance

The meeting was called to order by Mayor Pro Tem Brodin at 6:36 pm.

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

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

2. Approval of Agenda

- a. Items to be Pulled or Added

Motion by John R., second by Aggie M., to approve the agenda as amended; all voted in favor. (*Note: Hawkeye Flaherty & Shelley Bellm absent, excused*)

3. Approval of Minutes and Action Report

- June 15, 2011
- Action Item Report

Motion by Earle B., second by Jerry B., to approve the Minutes of June 15, 2011 as presented; all voted in favor. (*Note: Hawkeye Flaherty & Shelley Bellm absent, excused*)

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

Mr. Frank Lorenti, 1081 Main St, wanted to follow up on the drug testing of Town staff. Also, the question was presented if trailers are now allowed within the Town limits, as it appears there is an additional trailer on a property in the south end of Town.

Direction from Council to follow up with the property owner where the trailer in question currently resides, to ensure no additional trailers are setup in Town.

5. Special Presentations/Citizen Recognition

6. Planning Commission Update

The Planning Commission met on 6.22.11 to discuss the following topics:

- Design Review Board procedures
- Open space requirements
- Sidewalk installation requirements
- Rear setback amendment for garages

We will continue to refine these code amendments and present them to the Town Council at an upcoming work session.

251 Main Street

The property owner has commenced demolition of the mobile home in advance of the construction of the approved single family residence. The building official and I recently met with the owner and we anticipate that the construction plans will be submitted soon. After a

review of the plans by the building official, a building permit will be issued. We will notify the Council and neighbors once the building permit has been issued.

Downtown Colorado Inc.

Downtown Colorado Inc. (DCI) is hosting a two-day meeting for the Colorado Main Street managers in Minturn on July 14-15. DCI is offering the Town 10 free meeting invites to be used by Town staff, elected officials and business owners. Please let me know if you are interested.

Hotel Minturn

The Hotel Minturn project is nearing completion and the building owner anticipates opening in early July. A sidewalk was recently installed along Williams Street and the portion of the roadway that was disturbed by the construction activity has been repaved. Additionally, the owner received a sign permit the neon sign on the building. Per the sign guidelines, the sign must be turned-off no later than 11:00 pm each night.

7. Town Manager's Report

XCEL Natural Gas Pipeline Project Continues!

The XCEL Pipeline Project from Edwards to Minturn has moved out of Dowd Junction on the Minturn side. XCEL is replacing 6" and 12" existing lines with a new 16" line. Project completion is set for September 15, 2011. With any questions, please call XCEL at 1-877-481-6380.

Battle Mountain Update

Most of the issues discussed currently involve pending lawsuits related to quiet title action and challenges to the annexation agreement. Dave Kleinkopf has requested that we restart our committee meetings. Councilmembers Earle Bidez, and Shelley Bellm would represent Town Council. The Town Manager, Town Attorney, and Water Attorney would also be invited to participate.

Signage

Plans for signage at the south end of Minturn are in progress. In addition, we are looking at signage for the entrance to Little Beach Park. We will be working on access agreements or easements needed for both signs.

Maloit Park Water Tank

Inspection of the Maloit Park water tank finds the need to make repairs. Public Works is securing bids for the job. The plan would be to complete restoration of both the inside and outside of the tank. One bid is in thus far.

"The Show"

A county-wide baseball tournament will be held later this summer at fields throughout Eagle County. Dubbed "The Show" by its sponsors, it plans to bring players from 8 years to 18 years old to compete. More details will be presented as they become available.

Holy Cross Franchise Agreement Extension

The Town of Minturn and Holy Cross have extended our franchise through September 21, 2011. Due to scheduling issues, the work session to review the agreement will take place on July 6, 2011 followed by 1st and 2nd reading of the ordinance currently planned on July 20th and August 3, 2011.

Park Update

Little Beach Park has had repairs made to the fence at the park's upper entrance. Dead shrubs have been removed and new mulch placed around the base of the entry sign. All defunct electrical light have been removed and plans are in place to install solar lights along walking paths in the park. The latrine has been scrubbed several times and the walls and floor will be repainted; lime has been used to mitigate odors in the bowl. An additional porta-potty has been brought to the park.

Bone Yard Parcel

We have secured both the agreement for the appraisal and the cooperation of the Forest Service to resume negotiations on this property. The new appraisal is in. On Tuesday last week, I toured the Bone Yard parcel with Toby Sprunk, new director for Eagle County's Open Lands Program. Chris Cerimele, Town Planner and I are working on an application to be presented at the July 11, 2011 Open Space Advisory Committee (OSAC) meeting in Eagle, CO.

CDOT I-70 Record of Decision Signed

On June 16, 2011 the Federal Highway Administration signed the Record of Decision approving the Preferred Alternative for the I-70 Mountain Corridor Programmatic Environmental Impact Statement (PEIS). This approval marks the end of nearly twenty years of study and discussions about improvements to the I-70 corridor.

Minturn Community Garden

I will be meeting with representatives of the Minturn Community Fund to discuss possible locations and plans to begin a Minturn Community Garden. Though the growing season is relatively short here in the mountains, we will consider what types of plants to begin this endeavor. A location has not yet been selected.

Colorado Municipal League Annual Conference

The CML Annual Conference was held this year in Vail, CO. The conference was June 22-June 24, 2011. I completed my year as Executive Board President on Thursday afternoon. I received an Honorary Lifetime Membership plaque for my year of service as president..

Kayak Course

We walked the stretch of the river to consider the prospect of installing a kayak course along the Eagle River. Installation options were presented.

Movies in the Park

The 2nd Annual Movies in the Park started on Saturday, June 25, 2011 at Little Beach Park. The Town of Minturn sponsored the first feature movie in the park in 2011..."Back to the Future." The next movie will be July 9th featuring "School of Rock." Primary sponsorship was provided

by Mobloggy, Kirby Cosmos, and by Earle and Patty Bidez. Special thanks to Jodi Born; and to Lisa and Tim Osborne.

Concert Series at Little Beach Park

The 2nd Annual Concert Series at Little Beach Park begins tomorrow night, July 7, 2011 at Little Beach Park from 6pm-8pm. Billy Franklin's NOLA Live will be the featured band.

Many thanks to all the volunteers who have collaborated to raise funds, secure quality music, and cover all the planning and logistics required for such events to be successful. Special thanks are extended to Terry and Jeff Armistead, Chris Alexander, Chris Cerimele, Michelle Metteer, Lisa Osborne, Chief Martinez, and to several others.

8. Town Council Comments

John R., noted the Independence Day Celebration was excellent and he thanked all the volunteers throughout Town who came together to make such a great event happen.

Aggie M., thanked the Town Council for allowing his attendance at the recent Colorado Municipal League conference.

Earle B., also stated his appreciation for Minturn's local volunteers who came together to make such a great Independence Day Celebration.

George B., attended the Mountain Philanthropy Days and is encouraged that Minturn may be able to utilize potential available funding.

PUBLIC HEARINGS AND DISCUSSION/ACTION ITEMS

9. Discussion/Action – Feasibility report and discussion on the placement of the south entrance Town sign – White (25min)

Possible signage options discussed included: leaving the south sign the same as the current north town sign, implementing an ore cart or miner, and different potential locations for the sign. Concern was raised that the Tigowan location may be too far outside the main area of Town and thus leave the sign open to possible vandalism.

10. Discussion/Action – Resolution 4 – Series 2011 a Resolution approving a subdivision exemption plat for the Maloit Park Area – Cerimele (20min)

Motion by Earle B., second by John R., to table Resolution 4 – Series 2011, a Resolution approving a subdivision exemption plat for the Maloit Park Area.

EXECUTIVE SESSION

11. 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's annual Market contract and

Pursuant to CRS 24-6-402(4)(a) for the purposes to consult with the Town's Attorney(s) and receive direction regarding the negotiations of the USFS Boneyard property – White/Christensen

Motion by John R., second by Aggie M., 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's annual Market contract and Pursuant to CRS 24-6-402(4)(a) for the purposes to consult with the Town's Attorney(s) and receive direction regarding the negotiations of the USFS Boneyard property. All voted in favor. (*Note: Hawkeye Flaherty & Shelley Bellm absent, excused*)

No decisions were made as a result of the Executive Session.

FUTURE AGENDA ITEMS

12. Next Meeting – July 20, 2011 (Official Meeting start time 6:30pm)

- Work Session Review: Discussion/Action – Ordinance 8 – 2011 (____ Reading) an Ordinance allowing the sale of Medical Marijuana (45min)
- Work Session Review: Discussion/Action – Ordinance 5 – 2011 (____ Reading) an Ordinance adopting the 2009 IBC as amended – Cerimele/Lanci (30min)
- Work Session Review: Discussion/Action – Ordinance 5 – 2011 (____ Reading) an Ordinance adopting the 2009 IBC as amended – Cerimele/Lanci (Meeting 15min)
- Discussion/Action – Ordinance ____ – 2011 (____ Reading) Holy Cross Franchise Agreement – White (30min)
- Discussion/Action – Ordinance ____ – 2011 (____ Reading) Minturn Townhomes encroachment request

13. Future Meeting

- Discussion/Action – Ordinance ____ – 2011 (____ Reading) Holy Cross Franchise Agreement – White (15min) (8/3/11 Meeting)
- Discussion/Action – Ordinance 5 – 2011 (____ Reading) an Ordinance adopting the 2009 IBC as amended – Cerimele/Lanci (15min) (8/3/11 Meeting)
- Discussion/Action – Ordinance 8 – 2011 (First Reading) an Ordinance allowing the sale of Medical Marijuana (TBA Meeting 45min)
- Discussion/Action – Ordinance 8 – 2011 (Second Reading) an Ordinance allowing the sale of Medical Marijuana (TBA Meeting 30min)

14. Set Future Meeting Dates

a) Council Meetings:

- July 20, 2011
- August 3, 2011
- August 17, 2011

b) Planning & Zoning Commission Meetings:

- July 13, 2011
- July 27, 2011
- August 10, 2011

c) Other Dates:

15. Adjournment

In that there was no further business the meeting stood adjourned at 8:38pm.

Mayor Hawkeye Flaherty

ATTEST:

Town Clerk, Jay Brunvand

**Town of Minturn
Council Action Item Memo**

TO: Staff Members/Council Members
FROM: Jim White/ Town Manager
DATE: July 20, 2011
SUBJECT: Status of Action Items from Town Council Meetings

Action Item	Responsible Party	Progress Report
Town entry sign – South	White	Direction from 7/6/11 Council Meeting is to proceed with options for a sign with a goal of 2011 installation
Draft Medical Marijuana Ordinance-Staff level	White	Draft being reviewed at work session level. Next review to be at 7/20/11 Council Worksession.
Battle Mountain Annexation Scholarship Fund	White	Pursue interest money from Battle Mountain scholarship fund contributions.
Minturn Scholarship Funding	White	Council is interested in providing seed money and soliciting donations for scholarship funding
Town Sidewalks	A. Martinez/White	First installations to occur on 7/11/11 on Main St and at the Town Hall. Staff and Planning Commission reviewing language to code to require sidewalks for new construction.
OSAC Funding for Boneyard purchase	White	Seek fundraising partners. Town staff met with Eagle County Staff. Staff plans to meet with OSAC on 7/11/11 with preliminary proposal.

Post Office Box 309
302 Pine Street
Minturn, CO 81645
Phone: 970-827-4272
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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: July 20, 2011

07.13.11 Planning Commission Meeting Update

The Planning Commission met on 7.13.11 to discuss the following topics:

- Design Review Board procedures
- Open space requirements
- Sidewalk installation requirements

The Commission finalized the language for the new DRB procedures. This will be presented to the Council as a code amendment at an upcoming meeting.

Sidewalks in south Minturn were also discussed at the meeting. The Commission would like to have a joint work session with the Town Council to discuss a comprehensive plan to address the issue.

251 Main Street

The mobile home at 251 Main Street was removed to accommodate the construction of a single family home. Due to unforeseen circumstances, building plans have yet to be submitted and the project has been placed on a temporary hold.

As mentioned at the July 6, 2011 Council meeting, the mobile home was relocated to the Quintana property in South Minturn with the intention of utilizing the unit for a residence. Staff has informed the Quintanas that is not permissible under the Municipal Code and International Building Code and that the mobile home must be removed from the property by August 26, 2011.

Upcoming Project

An application has been submitted for a variance to construct a detached garage at 1688 Main Street. This item is anticipated to be the subject of Town Council public hearing in August.

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
Councilmember – Earle Bidez
Councilmember – Jerry Bumgarner
Councilmember – Aggie Martinez
Councilmember – John Rosenfeld

To: Mayor Flaherty and Minturn Town Council
From: Jim White, Town Manager
Date: June 30, 2011
Re: **Manager’s Report for the July 20, 2011 Town Council Meeting**

XCEL Natural Gas Pipeline Project Continues!

The XCEL Pipeline Project from Edwards to Minturn will return to Minturn sometime in the next two weeks once the gas line section at Dowd Junction from Eagle Vail reaches the Minturn Dowd Junction area. XCEL plans to work six days, twelve hour days from 7am to 7pm. XCEL was made aware of Minturn’s Saturday weekly market and also was informed about the upcoming bike race events on July 30th and August 6th. XCEL is replacing 6” and 12” existing lines with a new 16” line. The Minturn section should take two to three weeks to complete per Jimmy Smith, project manager. Overall project completion is set for September 15, 2011. With any questions, please call XCEL at 1-877-481-6380.

Battle Mountain Update

Most of the issues discussed currently involve pending lawsuits related to responses to the EPA, quiet title action, and legal challenges to the annexation agreement. Dave Kleinkopf had requested that we restart our committee meetings. We convened the committee on Tuesday, July 12, 2011. Councilmembers Earle Bidez, and Shelley Bellm represented the Town Council. The Town Manager, and the Town Attorney also participated.

Signage

Plans for signage at the south end of Minturn are in progress. In addition, we are looking at signage for the entrance to Little Beach Park. We will be working on access agreements or easements needed for both signs.

Maloit Park Water Tank

Inspection of the Maloit Park water tank finds the need to make repairs. Public Works is securing bids for the job. The plan would be to complete restoration of both the inside and outside of the tank.

Holy Cross Franchise Agreement Extension

The Town of Minturn and Holy Cross have extended our franchise through September 21, 2011. 1st and 2nd reading of the ordinance are currently planned on July 20th and August 3, 2011.

7/14/2011

Park Update

Little Beach Park has had twelve solar lights installed along walking paths to improve visibility following the Saturday night movies. An additional porta-potty has been brought to the park. Public Works staff has been assigned to clean the park every morning beginning at 7am.

Bone Yard Parcel

On Monday evening, July 11, 2011, the Town staff made a preliminary presentation to the Eagle County Open Space Advisory Committee (OSAC) on the prospective request for funding to purchase the Bone Yard property. Toby Sprunk, new director for Eagle County's Open Lands Program, has been asked to arrange a site tour for the committee. We have also requested to be on the next agenda in August to formally request funding. We received very supportive commentary from committee members. The one predominant request was to secure funding from other partners.

On Tuesday, July 12, we met with Battle Mountain CEO, Dave Kleinkopf, and raised the issue of the Bone Yard purchase and the OSAC expressed concerns that the Town secure other funding partners.

The USFS is requesting an offer acceptance letter by July 22, 2011. In the letter, the USFS is further requesting language that outlines how the Town intends to secure funds for this transaction by September 8, 2011.

Minturn Community Garden

I will be meeting with representatives of the Minturn Community Fund to discuss possible locations and plans to begin a Minturn Community Garden. Though the growing season is relatively short here in the mountains, we will consider what types of plants to begin this endeavor. A location has not yet been selected.

Movies in the Park

Last week's movie, **School of Rock**, was postponed due to inclement weather. The plan is to show the movie instead on Saturday, July 16th at dusk.

Concert Series at Little Beach Park

The 2nd Annual Concert Series at Little Beach Park began July 7, 2011 at Little Beach Park from 6pm-8pm. Many thanks to all the volunteers who have collaborated to raise funds, secure quality music, and cover all the planning and logistics required for such events to be successful. Special thanks are extended to Terry and Jeff Armistead, Chris Alexander, Chris Cerimele, Michelle Metteer, Lisa Osborne, Chief Martinez, and to several others.

Respectfully submitted,

Jim White
Town Manager

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



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AGENDA ITEM COVER SHEET

AGENDA TITLE: Ordinance No. 11 – 2011 consideration of a Franchise Agreement with Holy Cross Energy
MEETING DATE: July 20, 2011
PRESENTER: Brunvand
<ul style="list-style-type: none">• BACKGROUND: During the past several meetings, Council has reviewed this Ordinance in detail. All concerns are reflected as have been discussed.
CORE ISSUES:
STAFF RECOMMENDATION/MOTION: Motion to approve Ordinance 11 – 2011 on First Reading an Ordinance OF THE TOWN OF MINTURN, EAGLE COUNTY, COLORADO, GRANTING A FRANCHISE TO HOLY CROSS ENERGY, ITS SUCCESSORS AND ASSIGNS, TO LOCATE, BUILD, INSTALL, CONSTRUCT, ACQUIRE, PURCHASE, EXTEND, MAINTAIN, REPAIR AND OPERATE INTO, WITHIN AND THROUGH A PORTION OF THE TOWN OF MINTURN, DEFINED AS THE SERVICE AREA, ALL NECESSARY AND CONVENIENT FACILITIES FOR THE PURCHASE, GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRICAL ENERGY, AND TO FURNISH, SELL AND DISTRIBUTE SAID ELECTRICAL ENERGY TO THE RESIDENTS OF THE SERVICE AREA FOR LIGHT, HEAT, POWER AND OTHER PURPOSES BY MEANS OF CONDUITS, CABLES, POLES AND WIRES STRUNG THEREON, OR OTHERWISE ON, OVER, UNDER, ALONG, ACROSS AND THROUGH ALL PUBLIC EASEMENTS AND ALL STREETS AND OTHER PUBLIC WAYS IN SAID SERVICE AREA, AND FIXING THE TERMS AND CONDITIONS THEREOF.

TOWN OF MINTURN, COLORADO
ORDINANCE NO. 11 – Series of 2011

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

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

ARTICLE 1
SHORT TITLE

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

ARTICLE 2
DEFINITIONS

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

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

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

ARTICLE 3

GRANT OF FRANCHISE

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

equipment or Town apparatus and facilities, including the right, privilege and authority to furnish, sell and distribute electrical energy necessary for such.

ARTICLE 4

SPECIFIC ELEMENTS OF GRANT

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

Public Easements or Streets and Other Public Ways to permit the Town to lay, make or change street grades, pavements, sewers, water mains, storm drains or other Town works, such changes shall be made by the Company at its own expense, after reasonable notice from the Town. Any necessary position change of overhead electrical facilities of the Company located within Private Easements will be paid for by the person, or private or public entity requesting such change. The Town shall consult with the Company during the design of any such Town works which may require relocation of existing overhead electrical facilities of the Company and work with the Company to ensure that any relocation necessary is minimized and that a location for the relocated Facilities is provided.

- 4.7 Compliance with Town Ordinances. The Company shall comply with all Town ordinances and regulations regarding curb and pavement cuts, excavating, digging and related construction, maintenance and operational activities. If requested by the Town, the Company shall submit copies of reports of annual and long-term planning for capital improvement projects with descriptions of required street cuts, excavation, digging and related construction activities within 30 days after issuance of request.
- 4.8 Town Review of Construction and Design. Prior to construction of any significant Facilities within the Town, as determined jointly by the Company and Town, the Company shall furnish to the Town the plans for such proposed construction. In addition, the Company shall assess and report on the impact of such proposed construction on the Town environment. Such plans and reports may be reviewed by the Town to ascertain, inter alia, (1) that all applicable laws including building and zoning codes, air and water pollution regulations are complied with, (2) that aesthetic and good planning principles have been given due consideration and (3) that adverse impact on the environment has been minimized.
- 4.9 Capital Improvement and Major Development Projects. The Company and the Town shall endeavor to inform one another of any capital improvement and major development projects anticipated within the Town that may impact the Facilities or operations of either party. The party proposing such capital improvements shall inform the other party of the nature of such improvements within a reasonable time after plans for such improvements have been substantially formulated. Each party shall cooperate in the timely exchange of all necessary information, design data, drawings and reports to properly assess and evaluate the potential impacts of said improvements and major developments.
- 4.10 Maintenance of Facilities. The Company shall install, maintain, repair, replace and upgrade its Facilities to ensure both the adequacy of and quality of, electric service to the Town and all Residents. All excavation and construction work done by or under the authority of the Company shall be done in a timely and expeditious manner which minimizes the inconvenience to the Town and all Residents. The Town shall have the right to inspect any portion of the Facilities located in the Streets or Other Public Ways. However, the Town will not require construction of the Facilities in such a manner that would not meet the National Electrical Safety Code and other governing entity requirements or standard utility engineering practices. The Company agrees to cooperate with the Town in conducting the inspection.

- 4.11 Town Not Required to Advance Funds. Upon receipt from the Town of an authorization to proceed and a promise to pay for construction, the Company shall extend its Facilities to the Town for municipal uses therein or for any municipal facility outside the Service Area and within the Company's certificated service area, without requiring the Town to advance funds prior to construction.
- 4.12 Scheduled Interruptions. The Company shall, whenever possible, give notice, either oral or written, to the Town and its affected Residents, of planned service interruptions of significant duration.
- 4.13 Cooperation with Other Utilities. When undertaking a project of undergrounding, the Town and the Company shall work with other utilities or companies to have all lines undergrounded as part of the same project. The Company shall not be required to pay the costs of any other utility or company in connection with work under this section.
- 4.14 Annual Review of Franchise. At the request of either the Town or the Company, the parties hereto shall meet to discuss any topic of concern.

ARTICLE 5

RATES, REGULATIONS, UNIFORMITY OF SERVICE AND UPGRADES

- 5.1 Furnishing Electrical Energy. The Company shall furnish electrical energy within the Service Area, and to the Residents thereof at the Company's applicable and effective rates and under the terms and conditions set forth in the Company's Electric Service Tariffs, Rules and Regulations and Consumer Service Facilities Metering and Use Guidebook adopted by and on file with the Company, as such may from time to time be amended, subject only to regulations thereof as is provided by law. The Company shall not, as to rates, charges, service, Facilities, rules, regulations or in any other respect, make or grant any preference or advantage to any Resident, provided that nothing in this grant shall be taken to prohibit the establishment from time to time of a graduated scale of charges and classified rate schedules to which any customer coming within an established classification would be entitled.
- 5.2 Facility Upgrades. The Company will, from time to time, during the term of this Franchise make such improvements, enlargements and extensions of its Facilities incorporating, when reasonable and practical, technological advances within the industry as the business of the Company and the growth of the Town justify, in accordance with its Electric Service Tariffs, Rules and Regulations, Consumer Service Facilities Metering and Use Guidebook or other customary practices in effect and on file with the Company, as such may from time to time be amended, subject only to regulations thereof as is provided by law.
- 5.3 Reliable Supply of Electricity. The Company shall take all reasonable and necessary steps to provide an adequate supply of electricity to its customers at the lowest reasonable cost consistent with long-term reliable supplies. If the supply of electricity to its customers is interrupted, the Company shall take all necessary and reasonable actions to restore such supply within the shortest practicable time.
- 5.4 Maps and Regulations. The Company shall, submit copies of its Consumer Services Facilities Metering and Use Guidebook, Electric Service Tariffs, Rules and Regulations and maps of its Facilities within the Service Area to the Town Clerk.

All changes in such information shall be submitted to the Town as the same may from time to time occur.

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

ARTICLE 6

USE OF COMPANY FACILITIES

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

engineering methods and safety regulations, and shall not interfere with or cause any conflict with the Company's Facilities, and shall not cause the Company additional installation expense or additional expense to maintain and repair its Facilities. The Town, at its expense, will pay all costs and expenses of such additional installation. The Town shall be responsible for ensuring that required vertical and horizontal separations between its facilities and that of the Company's are strictly maintained. The Town and Company shall jointly hold each other harmless from any liability or damage resulting from their respective facilities being installed in a joint trench.

ARTICLE 7

INDEMNIFICATION AND POLICE POWER

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

ARTICLE 8

FRANCHISE FEE

- 8.1 Franchise Fee. As a further consideration for this Franchise, and accepted by the Town in lieu of all occupancy and license taxes and all other special taxes, assessments, fees, or excises upon the Facilities or other property of the Company, or other levies that might be imposed, either as a franchise tax, occupation tax, occupancy tax, license tax, permit charge, or for the inspection of the Facilities or other property of the Company, and charges which would

otherwise be chargeable to the Company, or otherwise, the Company shall pay to the Town a sum equal to three percent (3%) of its quarterly Revenues collected from the sale of electricity within the Service Area for electrical energy furnished for light, heat, power and other purposes. This three percent (3%) fee shall be surcharged to the Residents within the Service Area and is in addition to any charges specified in the Company's Electric Service Tariffs, Rules and Regulations and any applicable taxes. Payment of the franchise fee does not exempt the Company from payment of property or sales taxes which are not directly related to the franchise or the occupation of the Streets and Other Public Ways. Revenues received from Town facilities will not be assessed a three percent (3%) fee under this section nor will the Town be paid the three percent (3%) fee from such revenues collected from Town facilities.

- 8.2 Payment. Payment of the Franchise Fee shall be made by the Company to the Town on or before 30 days after the end of each quarter of each calendar year for the preceding three (3) month period, but shall be adjusted for the portions of the calendar quarters at the beginning and at the end of this Franchise. All payments shall be made to the Town Clerk.
- 8.3 Revenue Audit. For the purpose of ascertaining or auditing the correct amount to be paid under the provisions of this Article, the Company shall file with the Town Clerk, or such other official as shall be designated by the Town from time to time, a statement, in such reasonable form as the Town may require, showing the total gross receipts received by the Company from the sale of electricity to Residents within the Service Area for the preceding three (3) month period. The Town Clerk or any official appointed by the Council shall have limited access to the books of said Company for the sole purpose of confirming the quarterly Revenues received from operations within the Service Area. Such access is conditioned on the agreement of the Town not to disclose the information to any third party.
- 8.4 Correction of Underpayment/Overpayment. Should either the Company or Town discover either an underpayment or overpayment of the quarterly Franchise Fee, the party making such discovery shall inform the other party within a reasonable time. If the error is substantiated as an underpayment, the Company shall make payment of the deficiency within 30 days of the date the error was substantiated. If the error is substantiated as an overpayment, a credit equal to the overpayment will be applied to the next quarterly Franchise payment due the Town. If any dispute arises regarding underpayment/overpayment, Company and Town agree to submit the dispute to binding arbitration, with each party to bear their own costs.
- 8.5 Occupancy Tax Alternative. In the event said Franchise Fee levied herein should be declared invalid and or shall be set aside by a Court of competent jurisdiction, then, and in such event, and in lieu thereof, the Town may thereafter levy an occupancy tax upon the Company, not to exceed in any calendar year three percent (3%) of the Revenues collected from the sale of electricity within the Service Area for electrical energy furnished for light, heat, power, and other purposes for that calendar year. Such occupancy tax shall be adjusted for any Franchise Fees previously paid to the Town in such calendar year. In the event the Town shall enact such an occupancy tax, in lieu of the Franchise Fee, all of the remaining terms, conditions and provisions of this Ordinance shall remain in

full force and effect for the period stated herein. Such occupancy tax ordinance or enactment shall be designed to meet all legal requirements to ensure that it is not construed as an income tax.

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

ARTICLE 9

REPORTING AND CHANGE IN FRANCHISE FEE

- 9.1 Reports. The Company shall submit reasonable and necessary reports containing, or based upon, information readily obtainable from the Company's books and records as the Town may request with respect to the operations of the Company under this Franchise, and shall, if requested, provide the Town with a list of real property within the Town which is owned by the Company.
- 9.2 Change of Franchise Fee. The Company shall, upon request from the Town, notify the Council of any changes in the Franchise Fee percentage made with other municipalities served by the Company under a franchise within the State of Colorado. If the Council decides the Franchise Fee percentage hereunder shall be changed, it shall provide for such change by Ordinance. However, any change in the Franchise Fee percentage shall then be surcharged by the Company to the Residents of the Town.
- 9.3 Change of Franchise Fee – Town Initiated. The Town expressly reserves the right to notify the Company of its desire to revise the Franchise Fee to a different percentage of revenue prior to October 1 of the even numbered years during the term of this franchise, which revised Franchise Fee shall become effective on the next succeeding January 1, following notification. Provided, however, that the maximum amount of the Franchise Fee shall be five percent (5%) of the gross Revenues collected within the Service Area. Notification to the consumer shall be given by the Town no less than thirty (30) days prior to January 1, the effective

date of the scheduled increase. All expenses associated with notification shall be paid entirely by the Town.

ARTICLE 10
ADMINISTRATION

- 10.1 Duration of Franchise. This Ordinance shall be in full force and effect from and after its passage as by law required and the conditions, terms, and provisions herein shall remain in full force and effect for a period of 20 years from and after such enactment.
- 10.2 Temporary Extension of Franchise. Prior to the expiration of this Franchise, should the parties desire to renew the terms and conditions of this Franchise or execute a new Franchise, but have not yet done so, the parties may temporarily extend the terms and conditions of this Franchise by written agreement for a period of not longer than 180 days from such date of expiration. During such extension, all provisions of the Franchise shall continue in effect as if the Franchise had not expired.
- 10.3 Amendments. At any time during the term of this Franchise, the Town through its Council, or the Company, may propose amendments to this Franchise by giving 30 days written notice to the other party of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, shall within a reasonable time, negotiate in good faith in an effort to agree upon a mutually satisfactory amendment(s). No amendment(s) to this Franchise shall be effective until mutually agreed upon by the Town and the Company and until all public notice requirements pursuant to Colorado statutes, and ordinance requirements of the Town, have been met. This section shall not apply to Franchise Fee changes under Article 9.
- 10.4 Revocation of Privileges by Condemnation. In the event, at any time during the term of this Franchise, the Town shall condemn any of the Facilities of the Company within the Service Area, and thereby revoke all or any part of the privilege and authority herein granted to the Company to serve the Residents of the Service Area, then and in such event the Town shall pay to the Company just compensation as provided by the laws of the State of Colorado for such rights and Facilities by reason of such condemnation.
- 10.5 Compliance Impaired. Both the Company and the Town recognize there may be circumstances whereby compliance with the provisions of this Franchise is impossible or is delayed because of circumstances beyond the Company's or Town's control. In those instances, the Company or Town shall use its best efforts to comply in a timely manner and to the extent possible.
- 10.6 Company's Failure to Perform. It is agreed that in case of the failure of the Company to perform and carry out any of the conditions, terms and provisions herein set forth in any substantial particular, wherein such failure is within the Company's control and with respect to which redress is not otherwise herein provided, the Town, acting through its Council, may, after hearing, determine such substantial failure; and, thereupon, after notice given the Company of such failure, the Company may have a reasonable time, not less than 90 days, unless otherwise agreed by parties, in which to remedy the conditions respecting which such notice shall have been given. After the expiration of such time and the

- failure to correct such conditions, the Council shall determine whether any or all rights and privileges granted the Company under this ordinance shall be forfeited and may declare this Franchise null and void.
- 10.7 Ownership of Facilities. All Facilities used or placed by the Company either within or outside the Service Area shall be and remain the property of the Company.
- 10.8 Transfer of Rights. The Company shall not transfer or assign any rights under this Franchise to a third party, excepting only corporate reorganizations of the Company not including a third party, unless the Town shall approve in writing such transfer or assignment. Approval of the transfer or assignment shall not be unreasonably withheld.
- 10.9 Removal of Facilities. Upon the expiration of this Franchise, if thereafter the Company Facilities shall not be used for electric, telephone, or cable TV purposes for a period of 12 successive months, the Town shall have the option of having the Company remove such Facilities or claim such Facilities as its own. If the Town elects to have the Company remove the Facilities, it shall give written notice to the Company directing it to remove such Facilities, and the Company shall remove the same no later than 90 days after the date of such notice, unless the Company and the Town agree to a longer period within which removal shall occur. Any Facilities, either underground or overhead, remaining after such time that are not expressly claimed by the Town shall be deemed to have been abandoned. Any cost incurred by the Town in removing abandoned Facilities, and any liability associated with Facilities abandoned by the Company shall be the liability of the Company. For any Facilities claimed by the Town, any liability associated with such Facilities shall become the liability of the Town.
- 10.10 Non-renewal of Franchise (Alternative Electric Service). If this Franchise is not renewed, or if it is declared null and void, or the Company terminates any service provided for herein for any reason, and the Town has not provided for alternative electric service to the Residents of the Service Area, the Company shall not remove its Facilities and shall be obligated to continue electric service to the Residents until alternative electric service is provided. The Company will not withhold any temporary services necessary to protect the public.

ARTICLE 11

COMMUNITY ENHANCEMENT FUND

- 11.1 Purpose. The Company is committed to programs designed to make a difference in people's lives and the communities in which they reside. The Company will voluntarily make monetary resources available to the Town for such programs and/or activities. Programs for which such funds shall be spent shall be limited to (1) beautification projects, (2) energy conservation projects, (3) equipment and technology upgrades for schools, (4) scholarship funds, (5) acquisition of open space and/or park land and development thereof, (6) sponsorship of special community events and (7) undergrounding of overhead electric and other utility lines. Funds made available under this Article may be spent for other purposes only with the express written consent of the Company.
- 11.2 Payments to the Fund. The Company shall make annual payments to the fund equal to one percent (1%) of its prior year's Revenues, prorated for the portions of the months at the beginning and end of the term of this Franchise, collected

- from the sale of electricity within the Service Area, or \$2,000, whichever amount is greater. Said payments shall be made into the fund no later than February 15th of the year subsequent to the year in which the gross revenues are received by the Company.
- 11.3 The Fund. The fund established by the Company shall be maintained in a bank account in the name of the Town, but shall be maintained separately from all other funds and accounts held by the Town.
- 11.4 Payments from the Fund. All payments from the fund shall be for projects described in Section 11.1 hereof. Prior to any such expenditure, authorization to withdraw from the fund shall be given by resolution or ordinance duly enacted by the Council, and such resolution or ordinance shall clearly describe the nature and purpose of the project for which the expenditure is made. Prior to any expenditure, the Town shall notify the Company of its intended use of the funds. Unless the Company objects, in writing, prior to such expenditure, the Company shall have waived its right to object in the future if the funds are expended for the use identified in the notice.
- 11.5 Audits. The Town may audit the Company's books for the limited purpose of determining the Revenues being collected within the Town at any reasonable time and with reasonable prior notice. The Company may audit the fund account, expenditures from the fund and resolutions and ordinances authorizing such expenditures at any reasonable time and with reasonable prior notice.
- 11.6 Forfeiture of Enhancement Funds. The Company shall have the express right to temporarily suspend or terminate in full its annual contributions to the Enhancement Fund if it is determined that funds allocated and paid to the Town are being, or have been, misappropriated, administered with bias or discrimination or for other inappropriate actions.
- 11.7 Advancement of Fund. The Company shall consider advances of funds, subject to the provisions of this section, for all projects that specifically involve undergrounding of overhead lines or projects acceptable to the Company which are related to the Company's existing Facilities. The Town shall make all reasonable attempts to plan and budget use of the Fund without advancement of future Funds. However, if the Town requests and the Company and the Town agree that it is in the mutual interest of both, the Company shall anticipate Fund amounts to be available for up to three (3) years in advance. Both parties shall enter into a special agreement concerning the advanced Funds. Any amounts advanced shall be credited against amounts to be expended in succeeding years until such advances are eliminated.
- 11.8 TABOR Compliance Issue. The Community Enhancement Fund described in this Article is a program that has been initiated solely by the Company. This Town has not made the program a requirement for granting of a franchise to the Company. Funding for this program is not a cost of doing business, but is a voluntary contribution by the Company and is intended to be and shall be considered to be a gift or grant within the meaning of Article X, Section 20, of the Constitution of the State of Colorado for purposes of determining compliance by the Town with such constitutional provisions.

ARTICLE 12

UNDERGROUNDING

- 12.1 At Consumer's Request. If a customer(s) within the Town should request that new Facilities be installed underground or for the conversion of existing overhead electrical facilities of the Company to underground facilities or if Town ordinances or resolutions require a customer(s) to install Company facilities underground, the Company shall proceed in accordance with its Electric Service Tariffs, Rules and Regulations or other customary practices, as each may from time to time be amended.
- 12.2 Town Requested Undergrounding. Except for the Company's contributions to the Community Enhancement Fund, which may be used by the Town to pay for the undergrounding of the Company's overhead electric facilities, any request, requirement imposed by resolution or ordinance, or other communication from the Town to the Company, asking, or requiring the Company to underground its new electrical facilities or its existing overhead electric facilities, or move, remove, or replace its existing underground electrical facilities, shall be responded to in accordance with the provisions of the Company's Electric Service Tariffs, Rules and Regulations or other customary practices, as such may from time to time be amended.
- 12.3 Relocation of Underground Facilities. No provision contained in this Article shall be construed to obligate the Company to pay for the removal and relocation of its underground electric facilities where such is at the request or demand of a person, or a public or private entity under circumstances which require the party requesting or demanding such to pay for the relocation under other provisions hereof or under the provisions of the Company's Electric Service Tariffs, Rules and Regulations or other customary practice in use by the Company, as such may be from time to time amended.
- 12.4 Governmental Mandates. This Franchise or the Town's Municipal Code, as either may be amended from time to time, shall not prohibit or limit the Company's right to enforce its collection of any cost increase caused by governmental mandate in accordance with the provisions of the Company's Electric Service Tariffs, Rules and Regulations, or other customary practices of the Company, as such may be from time to time amended.

ARTICLE 13

MISCELLANEOUS

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

provide assurance to the Town of franchise fee collection for each component charged for the sale and delivery of energy products within the Service Area.

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

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

Town:

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

Company:

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

13.4 Severability. Should any one or more provisions of this Franchise be determined to be illegal or unenforceable, all other provisions nevertheless shall remain effective; provided, however, the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft provisions that will achieve the original intent of stricken provisions.

13.5 Entire Agreement. This Franchise constitutes the entire agreement of the parties. There have been no representations made other than those contained in this Franchise.

ARTICLE 14

APPROVAL

14.1 Town Approval. This grant of Franchise shall not become effective until approved by the Town in accordance with its ordinances and the statutes of the State of Colorado.

14.2 Company Approval. The Company shall file with the Town Clerk its written acceptance of this Franchise and of all its terms and provisions within 15 business days after the final adoption of this Franchise by the Town. The acceptance shall be in the form and content approved by the Town Attorney. If the Company shall fail to timely file its written acceptance as herein provided, this Franchise shall become null and void.

INTRODUCED, TITLE READ IN FULL, APPROVED ON FIRST READING AND ORDERED PUBLISHED IN FULL THE 20th DAY OF JULY, 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 3rd DAY OF AUGUST, 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 3rd DAY OF AUGUST, 2011.

Mayor

Attest:

Town Clerk

APPROVED AS TO FORM:

Town Attorney

Publication Dates:

HOLY CROSS ENERGY

Del Worley, Chief Executive Officer

Date

Town of Minturn

302 PINE STREET
P. O. Box 309, MINTURN, CO 81645
(970) 827-5645 FAX (970) 827-5545
CHRIS CERIMELE- TOWN PLANNER
PLANNER1@MINTURN.ORG



Town Council

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

TOWN OF MINTURN PLANNING DEPARTMENT
Town Council Staff Report
Subject: ORD 10 - 2011; An Ordinance granting and approving an encroachment agreement between the Minturn Towne Homes Home Owners' Association and the Town of Minturn.
Chris Cerimele, Town Planner
HEARING DATE: July 20, 2011
Staff Recommendation: Approval

APPLICANT:

Minturn Towne Homes Owners' Association

LOCATION

Minturn Towne Homes – Taylor Street Area

AGENDA ITEM BRIEF

The Minturn Towne Homes Owners' Association is requesting a revocable license agreement from the Town that will allow them to construct a drainage channel, earth berm and storm sewer inlet along a section of Town-owned land known as Grant Avenue.

BACKGROUND

The Minturn Towne Homes Owners' Association approached the Town this past spring to request permission to install a drainage system on Town-owned land. The purpose of the proposed system is to alleviate drainage issues that were occurring on the property. The proposed system will channel run-off into a new storm water inlet that will be connected to the existing storm sewer system. Staff informed the HOA that this request would require the Town to grant the HOA a revocable license agreement and that such an agreement would require the approval of the Town Council.

The general area where the proposed facilities would be constructed is shown on the pictures below. Details of the drainage system are shown on the attached grading and drainage plan.



The project entails the excavation of 52 cubic yards of earth from the Grant Avenue right-of-way to create a drainage channel. Additionally, 577 cubic yards of dirt will be brought into the site to be used to create an earthen berm between the drainage channel and buildings H, I and J of the Minturn Towne Homes. A drainage inlet and pipe will be installed to direct the water into the existing drainage system on the property.

Town staff requested a drainage report from the project engineer stating that the existing storm sewer system could handle the increased flows. The HOA provided the requested report from Marcin Engineering that concluded the existing storm sewer system could definitively handle the increased flows. Steve Humann of TST Engineering -the Town's contract engineer - reviewed the drainage report from Marcin Engineering and agreed with their conclusion (see attached report).

LICENSE AGREEMENT:

The license agreement authorizes the use of the Town right-of-way until such a time as the Town determines at a public hearing that the area of encroachment is necessary for use as a recreational trail or other municipal purpose. The agreement releases and discharges the Town from any and all liability arising from the construction of the proposed drainage system.

RECOMMENDATION:

Staff recommends approval of Ord. 10 – 2011 on first reading.

DRAFT MOTION; ORD. 10 - 2011:

I move to approve Ord. 10 – 2011 on first reading

OR

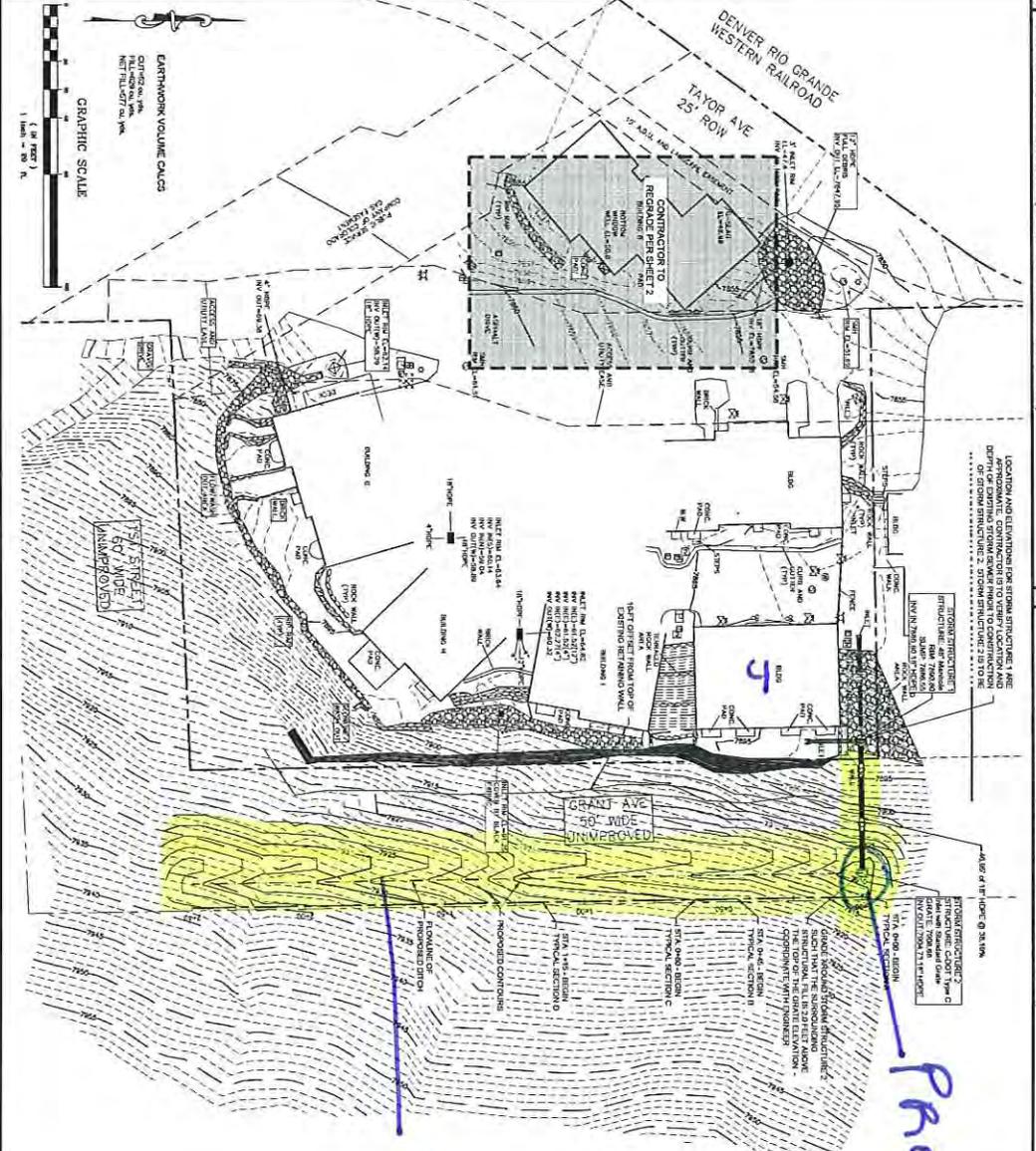
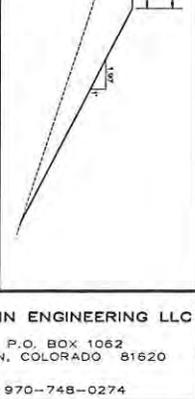
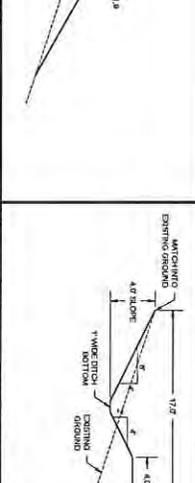
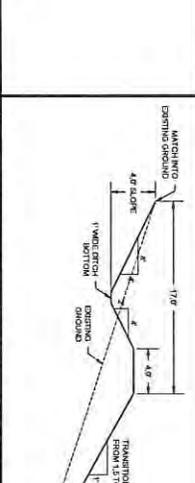
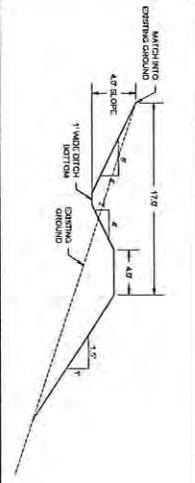
Deny Ord. 10 - 2011
Provide alternative direction to staff

Respectfully Submitted

Chris Cerimele, Town Planner

Attachments:

Grading and Drainage Plan – Marcin Engineering
Email from – TST Consulting Engineers
Ordinance 10 - 2011



Proposed Sewer in UET

Proposed Channel and Berm

GENERAL NOTES:

1. All work shall comply with all applicable codes and ordinances.
2. The contractor shall be responsible for obtaining all necessary permits.
3. The contractor shall be responsible for obtaining all necessary permits.
4. The contractor shall be responsible for obtaining all necessary permits.
5. The contractor shall be responsible for obtaining all necessary permits.
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12. The contractor shall be responsible for obtaining all necessary permits.
13. The contractor shall be responsible for obtaining all necessary permits.
14. The contractor shall be responsible for obtaining all necessary permits.
15. The contractor shall be responsible for obtaining all necessary permits.

NO.	DATE	REVISIONS

Chris Cerimele

From: Steve Humann [shumann@tstinc.com]
Sent: Tuesday, June 21, 2011 3:14 PM
To: Chris Cerimele
Cc: Jim White; Don Taranto
Subject: RE: Minturn Townhomes: Drainage Letter

Chris,

We have reviewed the engineering analysis provided by Marcin Engineering LLC for the proposed drainage improvements to the Minturn Townhomes as discussed in a letter dated May 19, 2011 from Marcin Engineering to Bold Real Estate Solutions. The information and analysis appear to be accurate and there appears to be no additional flow exiting the development site with the proposed condition.

Our primary concern, as discussed when we met on site, was the capacity of the existing pipe and inlet infrastructure. Marcin has stated in the letter that the increase of flow through the pipe in a 100 year storm flow condition will not exceed the capacity of the system and will not surcharge out of the inlets causing flooding conditions at the inlets. Based on our review, their calculations and conclusions appear to be correct.

As far as the Town's concern regarding the outflow from the development sheeting across Taylor Ave. in the absence of a culvert, the proposed improvements do not make that condition worse in that all the drainage in question ended up in that same spot anyway. This is an unfortunate situation that should have been looked at during the initial development approval.

Please let me know if I can be of any additional help in this matter.

Steve F. Humann, P.E.
TST, Inc. Consulting Engineers
760 Whalers Way, Bldg. C, Suite 200
Fort Collins, CO 80525
970-226-0557
shumann@tstinc.com

**TOWN OF MINTURN, COLORADO
ORDINANCE NO. 10, SERIES 2011**

AN ORDINANCE AUTHORIZING THE MAYOR TO SIGN A REVOCABLE LICENSE AGREEMENT WITH MINTURN TOWNE HOMES OWNERS' ASSOCIATION TO PERMIT ENCROACHMENT ONTO TOWN RIGHT OF WAY PROPERTY OF THE TOWN OF MINTURN, COLORADO, AS IT PERTAINS TO GRANT AVENUE, BLOCK A, TAYLOR ADDITION TO THE TOWN OF MINTURN, EAGLE COUNTY, COLORADO

WHEREAS, Town of Minturn, Colorado (Grantor) owns for use and benefit of the citizens of the Town of Minturn, Colorado and the general public, a 50-foot wide platted right of way in the Taylor Addition to the Town of Minturn, Eagle County, Colorado, upon a portion of which the Minturn Towne Homes Owners' Association wishes to construct a drainage channel, berm and inlet along Grant Avenue, Block A – Taylor Addition to the Town of Minturn on the aforementioned platted right of way as shown in Attachment A; and

WHEREAS, Minturn Towne Homes Owners' Association, (Grantee) wish authority to use the area of the aforementioned platted right of way to construct the aforementioned drainage channel, berm and inlet. Grantor is agreeable to the use of such property under the terms and conditions as set forth below, more particularly described in the license agreement attached as Attachment B, situated in the Town of Minturn, Colorado; and

WHEREAS, after notice provided by law, a public hearing was held before the Minturn Town Council, at which time the applicant and the public were given an opportunity to express their opinions regarding the proposed amendment; and

WHEREAS, based on the evidence, testimony and exhibits and recommendations of the Town Council of the Town of Minturn, Colorado, finds as follows:

1. The proper publication was provided as required by law for the Town Council of the Town of Minturn, Colorado.
2. The hearings before the Town Council were both extensive and complete and all pertinent facts, matters and issues were submitted at those hearings.

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

INTRODUCED, read by title, approved on the first reading and ordered published in full the ____ day of _____, 2011. The ____ day of _____, 2011, at 7:00 p.m. at the Minturn Town Hall, Minturn, Colorado 81645 is set for public hearing hereon.

TOWN OF MINTURN

By: _____
Mayor

ATTEST:

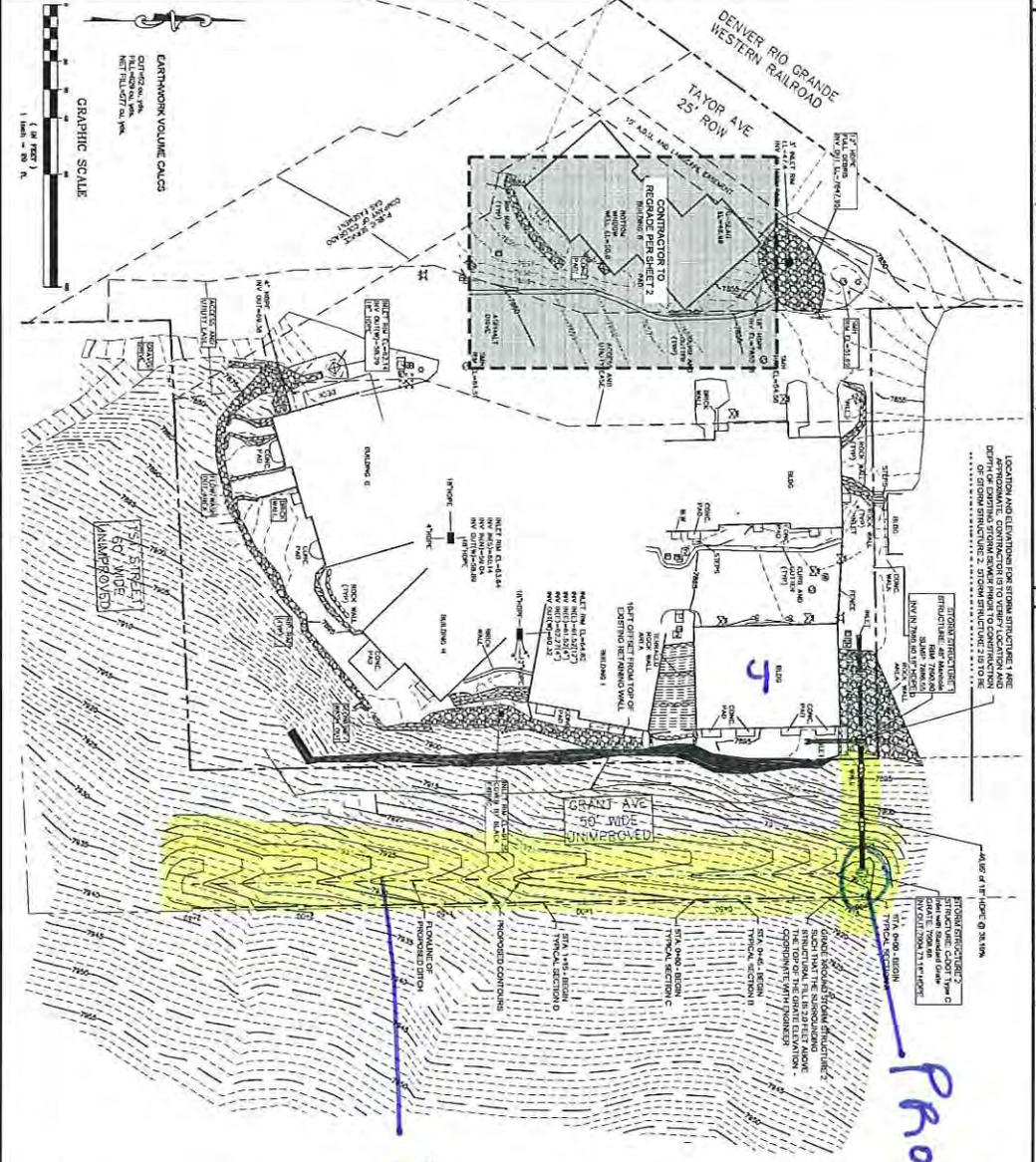
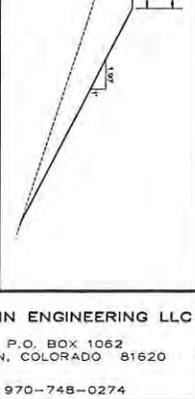
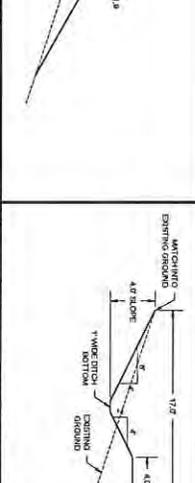
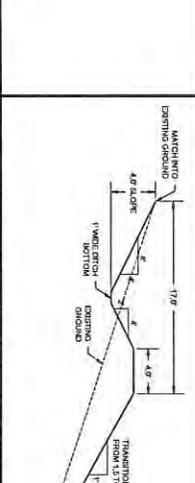
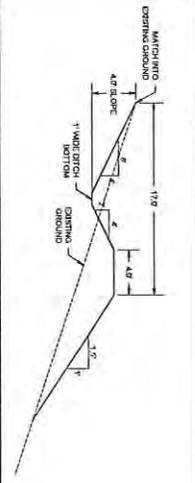
Town Clerk

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

Mayor

ATTEST:

Town Clerk



Proposed Sewer in Cut

Proposed Channel and Berm

GENERAL NOTES:

1. All work shall comply with all applicable codes and ordinances.
2. The contractor shall be responsible for obtaining all necessary permits.
3. The contractor shall be responsible for obtaining all necessary permits.
4. The contractor shall be responsible for obtaining all necessary permits.
5. The contractor shall be responsible for obtaining all necessary permits.
6. The contractor shall be responsible for obtaining all necessary permits.
7. The contractor shall be responsible for obtaining all necessary permits.
8. The contractor shall be responsible for obtaining all necessary permits.
9. The contractor shall be responsible for obtaining all necessary permits.
10. The contractor shall be responsible for obtaining all necessary permits.
11. The contractor shall be responsible for obtaining all necessary permits.
12. The contractor shall be responsible for obtaining all necessary permits.
13. The contractor shall be responsible for obtaining all necessary permits.
14. The contractor shall be responsible for obtaining all necessary permits.
15. The contractor shall be responsible for obtaining all necessary permits.

NO.	DATE	REVISIONS

LICENSE AGREEMENT

This Agreement, entered into this 20th day of July, 2011, by and between the Town of Minturn, a Colorado municipal corporation (hereinafter "Grantor") and Minturn Towne Homes Owners' Association, (hereinafter "Grantee").

RECITALS

Whereas, Grantor owns, for use and benefit of the citizens of the Town of Minturn, Colorado and the general public, a 50-foot wide, unimproved, platted public road ("public right of way") in Block A, Taylor Addition to the Town of Minturn, Eagle County, Colorado, and

Whereas, Grantee wishes authority to use the area depicted on the map attached as Exhibit A to construct a drainage berm and channel for the purpose of diverting run-off water from the adjacent hillside into the existing drainage system located on the Grantee's property and Grantor is agreeable to the use of such property under the terms and conditions as set forth below.

Now, therefore, for and in consideration of the performing of the covenants and agreements by the Parties to this Agreement, the Grantor does hereby permit the Grantee to use the property depicted on the map attached as Exhibit A for the purpose of installing a drainage channel and inlet for the purpose of diverting run-off water from the adjacent hillside into the existing drainage system as set forth in this License Agreement:

This license shall extend from the date of this License Agreement until such a time as the Grantor determines at a public hearing that the area of encroachment is necessary for use as a recreational trail or other municipal purpose. The following stipulations are expressly agreed by and between the Grantor and Grantees.

1. Use of Site. The site be used for the construction of a drainage channel and inlet and for no other purpose whatsoever.
2. Term. As indicated above.
3. Condition of Site. During the term of this License Agreement, Grantees shall keep the premises licensed under this Agreement in good condition. Grantees agree to undertake no activity which could be hazardous or in any way detrimental to the community, or permit further encroachment of the structure into the public right of way.
4. Release From Liability. Grantee hereby releases and discharges the Grantor from any and all liability arising from this Agreement, to-wit; from damage to its property, whether in custody of the Grantee or its agents or representatives, or in the control or custody of the employees or representatives of the Grantor, or whether in the control or custody of third parties or while upon premises owned or under the control of the Grantor or Grantee.
5. Indemnification. Grantee hereby agrees that it shall indemnify, defend and hold harmless Grantor and its successors and assigns from, against, and with respect to any claim, liability, obligation, loss, damage, assessment, judgment, cost or

expense (including, without limitation, reasonable attorneys' fees and expenses and costs and expenses reasonably incurred in investigating, preparing or defending against any litigation or claim, action, suit, proceeding or demand, of any kind or character), of or in any manner relating or attributable to any claims of damages arising from Grantee's activities associated with this License Agreement.

6. Assignment and Subletting. This License Agreement may not be transferred or assigned during the term of this License Agreement without the prior written consent to assignment of this License Agreement by Grantor, nor shall Grantee permit any other person or entity to share its occupancy hereunder without the prior written permission of the Grantor.
7. Notices. All notices and communications required herein shall be in writing and shall be sent by certified mail to the following addresses:

Grantor:
Town Manager
Town of Minturn
PO Box 309
Minturn, CO 81645

Grantee:

Minturn Towne Homes Owners Association
PO Box 5800
Avon, CO 81620

Notices shall be deemed properly given when mailed by certified mail in a sealed envelope, postage prepaid, addressed to the above addresses. Any such notice or demand shall be deemed to have been given or made at the time it is deposited in the United States Post Office. Any party may change its address of record by giving written notice of the change to the other party.

8. Waiver. Failure or delay on the part of Grantee or the Grantor to exercise any right, power or privilege hereunder shall not operate as a waiver thereof.
9. Prior Negotiations. This License Agreement constitutes the entire agreement of the parties hereto and shall supersede all prior offers, negotiations and agreements.
10. Amendments. No revision of this License Agreement shall be valid unless made in writing and signed by an authorized officer of Grantor and by Grantee.
11. Applicable Law. This License Agreement is entered into at Minturn, Eagle County, Colorado, and it is agreed that the proper jurisdictions and venue of any action pertaining to the interpretation or enforcement of this License Agreement shall be in the County or District Court of Eagle County, Colorado. This License Agreement shall be interpreted under the laws of the State of Colorado.

12. Binding Agreement. It is understood and agreed that this Agreement shall be binding upon the assigns and successors in interest of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have set the hands of their respective authorized officers.

TOWN OF MINTURN,
a Colorado Municipal Corporation,
Grantor

ATTEST:

Town Clerk

Mayor

MINTURN TOWN HOMES OWNERS' ASSOCIATION,

Inc.,

Grantee

By: _____

Its: _____

ATTEST:

Secretary

STATE OF COLORADO)

Ordinance 10 – Series 2011 (ATTACHMENT B)

) ss.

COUNTY OF EAGLE)

The foregoing instrument was acknowledged before me, the undersigned Notary Public, by Gordon “Hawkeye” Flaherty, as Mayor of the Town of Minturn and Jay Brunvand, as Town Clerk of the Town of Minturn, this _____ day of _____, 2011.

My commission expires _____

Witness my hand and seal.

NOTARY PUBLIC

STATE OF COLORADO)

) ss.

COUNTY OF EAGLE)

The foregoing instrument was acknowledged before undersigned Notary Public, by _____, this _____ day of _____, 2011.

My commission expires _____

Witness my hand and seal.

NOTARY PUBLIC



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

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

MEMORANDUM

TO: Minturn Town Council
FROM: Jay Brunvand, Treasurer/Clerk
CC:
DATE: Thursday, July 14, 2011
RE: Executive Session

At the Council meeting, Council will need to convene in Executive Session with the Town Manager and Attorneys to discuss the USFS Boneyard and issues regarding Battle Mountain Resort. The following motion is recommended:

“Recommended motion: “I move to convene in Executive Pursuant to CRS 24-6-402(4)(a) for the purposes to consult with the Town's Attorney(s) and receive direction regarding the negotiations of the USFS Boneyard property 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, water right issues, and EPA update.”

The Mayor will announce for the record if any decision is to be made as a result of the Executive Session once the Regular Session meeting reconvenes.

Please contact me in the event you have any questions.

Thank You, Jay