

**TOWN OF MINTURN, COLORADO
ORDINANCE NO. 05 – SERIES 2019**

**AN ORDINANCE OF THE TOWN OF MINTURN,
COLORADO AMENDING CHAPTER 16, ARTICLES 25
AND 23 OF THE MINTURN MUNICIPAL CODE TO
PROVIDE FOR CONSIDERATION OF FINANCIAL,
INFRASTRUCTURE, AND ENVIRONMENTAL IMPACTS
OF PROPOSED ACTIVITIES OF STATE INTEREST, AND
FOR REIMBURSEMENT OF TOWN COSTS.**

WHEREAS, the Town of Minturn (“Town”) is a legal and political subdivision of the State of Colorado for which the Minturn Town Council (“Town Council”) is authorized to act; and

WHEREAS, Chapter 16, Article 25 of the Minturn Municipal Code (the “Code”) provides for regulation of areas and activities of state interest (“1041 Regulations”) that apply to the construction of domestic water systems, sewage treatment systems, municipal and industrial water projects, and water and sewage distribution lines; and

WHEREAS, Code §16-25-340 sets forth the review criteria for a permit issued under the Town’s 1041 regulations; and

WHEREAS, C.R.S. § 24-65.1-402 provides that local governments may enact “guidelines or regulations containing requirements which are more stringent than the requirements listed in C.R.S. §§ 24-64.1-202 and 24-65.1-204; and

WHEREAS, C.R.S. § 24-65.1-204(1)(b) provides that “[m]ajor extensions of water and sewage treatment systems shall be permitted in those areas in which the anticipated growth and development that may occur as a result of such extension can be accommodated within the financial and environmental capacity of the area to sustain such growth and development”; and

WHEREAS, the Colorado Supreme Court has determined that “local governments may adopt more stringent [1041] regulations...[that] serve the objectives contained in the guidelines....” *City & County of Denver v. Board of County Commissioners*, 782 P.2d 753, 760 (Colo. 1989); and

WHEREAS, the Town Council wishes to include additional review criteria for major extensions of water and sewage treatment systems, including financial, infrastructure, and environmental impacts of any such proposal; and

WHEREAS, Code § 16-23-10 provides for fees intended to defray the costs incurred by the Town in the processing of various land use applications; and

WHEREAS, the Town Council wishes to include new provisions intended to defray costs incurred by the Town for land use applications not provided for in the schedule of fees, and for litigation expenses; and

WHEREAS, the Town Planning Commission made a recommendation to adopt this ordinance at a regular duly noticed meeting held on June 12, 2019; and

WHEREAS, the Minturn Town Council finds and believes that it is necessary and proper to provide for additional review of projects relating to major extensions of water and sewage treatment facilities.

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

SECTION 1. The foregoing recitals are incorporated herein as if set forth in full.

SECTION 2. Article 25, Chapter 16 of the Minturn Municipal Code is hereby amended to read as follows, with additions shown in double underlined text and ~~strike through language is deleted~~. Sections of Chapter 16 which are not expressly described in this Ordinance are deemed to continue to be in full effect without change.

ARTICLE 25 – Areas and Activities of State Interest

* * *

Sec. 16-25-90. Definitions

* * *

Power plant means any of the following:

- (a) Any fossil fuel, biofuel, or similar electrical energy generating facility or addition thereto with a generating capacity of fifty (50) megawatts or more, and any appurtenant facilities.
- (b) Any solar or wind electrical energy generating facility or addition thereto with a generating capacity in excess of five hundred (500) kilowatts, and any appurtenant facilities.
- (c) Any nuclear or hydropower electrical generating facility of five hundred (500) kilowatts or more.

Project means the proposed activity for which a permit is required together with any development activity that is reasonably enabled or made possible by the proposed activity.

Public utilities mean those utilities as defined by Sections 39-4-101 and 40-1-103.

* * *

Sec. 16-25-340. - Review criteria for all applications.

All applications under these regulations shall be evaluated against the following general criteria. ~~Following some, but not all of the criteria listed below are lists of considerations. These considerations are not criteria that the project must satisfy; they serve solely as guidance. Each subsection below constitutes a "criterion". Within each subsection are further guidelines to be considered for each criterion.~~ Where such terms as "reasonable," "feasible" and "adequate" are used in the foregoing criteria, the Planning and Zoning Department Director and/or the Permit Authority shall determine in each case what is or is not reasonable, feasible, or adequate.

- (1) The health, welfare, and safety of the citizens of this Town will be protected and served.
- (2) ~~The proposed activity~~ project is in general conformance with the Comprehensive Plan and other duly adopted plans and permit criteria. The determination of conformance of the project with these plans may include but is not limited to the following considerations:
 - a. Likelihood that the project will/will not cause or contribute to urban sprawl or "leapfrog" development.
 - ab. Likelihood that the project will promote growth within existing municipalities or developed areas with the preexisting institutional capacity to maintain infrastructure and provide services to the anticipated development.
 - bc. Significant changes in the amount of impervious surfaces.
 - ed. Contiguity of development associated with the project to existing growth centers.
 - de. Changes to unique land forms.
 - ef. Changes in the amount or character of open space.
 - fg. Changes to traffic patterns, road capacity and congestion.
- (3) The project is financially feasible. The determination of financial feasibility of the project may include but is not limited to the following considerations:
 - a. The business plan submitted by the applicant.
 - b. Relevant bond issue, loan and other financing approval or certifications (ex: approved bond issue; bond counsel opinion).
- (4) The project is not subject to significant risk from natural hazards. The determination of risk from natural hazards to the project may include but is not limited to the following considerations:
 - a. Faults and fissures.
 - b. Unstable slopes including landslides, rock slides, and avalanche areas.
 - c. Expansive or evaporative soils and risk of subsidence.
 - d. Wildfire hazard areas.
 - e. Floodplains.

(5) The project will not have a significant adverse effect on the capability of local governments affected by the project to provide local infrastructure and services, or exceed the capacity of service delivery systems. The determination of the effects of the project on local government services and infrastructure may include but is not limited to the following considerations:

- a. Current and projected capacity of roads, schools, infrastructure, drainage and/or stormwater infrastructure, housing, recreational facilities, emergency services, and other services necessary to accommodate development, and the impact of the project upon the current and projected capacity.
- b. Changes caused by the project in the cost of providing education, transportation networks, water treatment and wastewater treatment, stormwater drainage, channel stabilization, recreation facilities, bridges, emergency services, or other governmental services or facilities.
- c. Need for temporary roads to access the project for construction and maintenance.
- d. Change in demand for public transportation.

* * *

(17) The project shall be constructed in areas which will result in the proper utilization of existing facilities or systems to ensure the orderly and sustainable development of infrastructure in the Town and adjacent communities, including the following considerations:

- a. Site selection and construction will not create or encourage growth and development which is incompatible with and cannot be accommodate by the local financial capacity of the area or residents to be served.
- b. Existing systems will not overburden existing systems and current and future demand for services can be met within existing and proposed capacity.
- c. The project will not create proliferation of special districts or overlapping of special districts with the boundaries of other special districts or municipalities.
- d. The project is the best alternative for the provision of services to the geographical area serviced.
- e. To the extent feasible, facilities and systems shall be consolidated with existing facilities and systems in the area.
- f. The project will not result in duplicative services or excessive capacity.
- g. The project will be administered so as to minimize disruption of utility services and preserve desirable existing community patterns.

(18) Economic impacts including, but not limited to, taxable property, licensed and permitted facilities, and recreation related to the proposed project have been identified and will be compensated for or mitigated.

- (19) The project shall emphasize the most efficient use of water, including the recycling, reuse, and conservation of water, including the following considerations:
- a. Whether the project uses readily available conservation techniques.
 - b. Whether the project recycles water to the greatest extent permissible.

Sec. 16-25-340.5. – Special review criteria for major extensions of water and sewage treatment systems.

(1) No permit shall issue for a project related to major extensions of a water or sewage treatment system unless it contains conditions tailored to mitigate the environmental, infrastructure, and financial impacts to the Town described in subsection (2) below. Conditional permits shall issue at the discretion of the Permit Authority, pursuant to section 350 of this Article.

(2) Applications for a project related to major extensions of water and sewage treatment systems shall be subject to the following mandatory special review criteria.

a. The project will not contribute to adverse impacts to the Town's financial ability to provide adequately maintained infrastructure and community services, including but not limited to:

- (i) Roads
- (ii) Sidewalks and non-motorized trails
- (iii) Parks and recreation facilities
- (iv) Emergency Services
- (v) Code Enforcement

b. The project will not contribute to adverse impacts to the Town's environmental conditions or natural resources, including but not limited to:

- (i) Sedimentation of waterways
- (ii) Ambient air quality
- (iii) Wildlife
- (iv) Energy consumption
- (v) Open space

c. The project will not contribute to adverse impacts or decrease in quality of service, without proper mitigation, to:

- (i) Roads
- (ii) Public transportation

(iii) Recreation facilities

SECTION 3. Article 23, Chapter 16 of the Minturn Municipal Code is hereby amended to read as follows, with additions shown in double underlined text and strike through language is deleted. Sections of Chapter 16 which are not expressly described in this Ordinance are deemed to continue to be in full effect without change.

Sec. 16-23-10. - ~~Purpose of provisions~~ Fees established.

- (a) For amendments to this Chapter, for conditional and temporary use permits, variances, zone changes, new construction and all matters that shall come before the Planning Commission, Design and Review Board and Town Council, in accordance with the provisions of this Chapter, the applicant shall be charged a fee to defray the costs of processing. The schedule of fees shall be established by resolution of the Town Council. Any activity not covered in the schedule of fees shall be subject to full reimbursement of the Town's actual costs.
- (b) In the event of any litigation challenging any action by the Town pursuant to this Chapter in which the Town is the prevailing party, the applicant shall be required to reimburse the Town for the actual costs of its attorneys' fees and costs. No permit shall issue until the Town's actual costs have been paid by the applicant.

INTRODUCED, READ BY TITLE, APPROVED ON THE FIRST READING AND ORDERED PUBLISHED BY TITLE ONLY AND POSTED IN FULL ON THE OFFICIAL TOWN WEBSITE THE 1st DAY OF JULY 2019. 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 17th DAY OF JULY 2019 AT 6:30p.m. AT THE MINTURN TOWN HALL 302 PINE STREET, MINTURN COLORADO 81645.

TOWN OF MINTURN, COLORADO


John Widerman IV, Mayor

ATTEST:

By: 
Jay Brunvand, Town Clerk



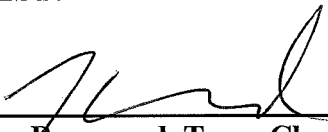
THE TOWN OF MINTURN, COLORADO, ORDAINS THIS ORDINANCE
ENACTED ON SECOND READING AND ORDERED PUBLISHED BY TITLE ONLY
AND POSTED IN FULL ON THE OFFICIAL TOWN WEB SITE THIS 17th DAY OF
JULY 2019.

TOWN OF MINTURN, COLORADO

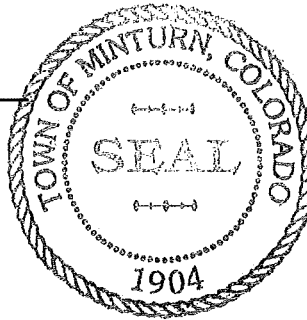


John Widerman IV, Mayor

ATTEST:

By: 

Jay Brunvand, Town Clerk



Ad #: 0000450592-01
Customer: TOWN OF MINTURN,
Your account number is: 1032852

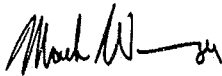
**PROOF OF PUBLICATION
VAIL DAILY
STATE OF COLORADO
COUNTY OF EAGLE**

I, Mark Wurzer, do solemnly swear that I am Publisher of the VAIL DAILY, that the same daily newspaper printed, in whole or in part and published in the County of Eagle, State of Colorado, and has a general circulation therein; that said newspaper has been published continuously and uninterrupted in said County of Eagle for a period of more than fifty-two consecutive weeks next prior to the first publication of the annexed legal notice or advertisement and that said newspaper has published the requested legal notice and advertisement as requested.

The VAIL DAILY is an accepted legal advertising medium, only for jurisdictions operating under Colorado's Home Rule provision.

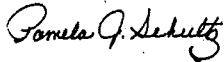
That the annexed legal notice or advertisement was published in the regular and entire issue of every number of said daily newspaper for the period of 1 insertion; and that the first publication of said notice was in the issue of said newspaper dated 7/5/2019 and that the last publication of said notice was dated 7/5/2019 in the issue of said newspaper.

In witness whereof, I have here unto set my hand this day, 7/5/2019.



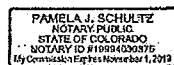
Mark Wurzer, Publisher

Subscribed and sworn to before me, a notary public in and for the County of Eagle, State of Colorado this day 7/5/2019.



Pamela J. Schultz, Notary Public

My Commission Expires: November 1, 2019



TOWN OF MINTURN, COLORADO
ORDINANCE NO. 05 - SERIES 2019
AN ORDINANCE OF THE TOWN OF MINTURN,
COLORADO, ADOPTING CHAPTER 16, ARTICLES
22 AND 23 OF THE MINTURN MUNICIPAL CODE
TO PROVIDE FOR CONSIDERATION OF FINANCIAL,
INFRASTRUCTURE, AND ENVIRONMENTAL
IMPACTS OF PROPOSED ACTIVITIES OF
STATE INTEREST, AND FOR PATRONAGE OF
TOWN COUNCILS
INTRODUCED, READ BY TITLE, APPROVED ON
THE FIRST READING AND ORDERED PUBLISHED
BY TITLE ONLY AND POSTED IN FULL ON
THE OFFICIAL CITY WEBSITE THE 15th DAY OF
JULY 2019. A PUBLIC HEARING OF THIS ORDINANCE
SHALL BE HELD AT THE REGULAR MEETING OF THE
TOWN COUNCIL OF THE TOWN OF MINTURN, COLORADO,
ON THE 17th DAY OF JULY 2019 AT 6:00 PM, AT THE MINTURN
TOWN HALL, 305 EISE STREET, MINTURN, COLORADO 81655.

TOWN OF MINTURN, COLORADO
John W. Brown, Mayor

ATTEST: By: Jay Brunvand, Town Clerk
Published in the Vail Daily July 5, 2019

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TOWN OF MINTURN, COLORADO
ORDINANCE NO. 05 - SERIES 2019

AN ORDINANCE OF THE TOWN OF MINTURN,
COLORADO AMENDING CHAPTER 16, ARTI-
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PAL CODE TO PROVIDE FOR CONSIDERA-
TION OF FINANCIAL, INFRASTRUCTURE,
AND ENVIRONMENTAL IMPACTS OF PRO-
POSED ACTIVITIES OF STATE INTEREST, AND
FOR REIMBURSEMENT OF TOWN COSTS

THE TOWN OF MINTURN, COLORADO,
ORDAINS THIS ORDINANCE ENACTED ON
SECOND READING AND ORDERED PUBLISH-
ED BY TITLE ONLY AND POSTED IN FULL ON
THE OFFICIAL TOWN WEB SITE THIS 17th
DAY OF JULY 2019.

TOWN OF MINTURN, COLORADO

John Wideman IV, Mayor

ATTEST:

By: _____
Jay Brunvand, Town Clerk

Published in the Vail Daily on July 20, 2019.
0000456820

<u>Run Date</u>	<u>Product</u>	<u>Placement</u>	<u>Rate</u>	<u>Sched Cst</u>	<u>Disc/Prem</u>	<u>Color</u>	<u>Pickup</u>	<u>Tax</u>	<u>Subtotal</u>
07/20/2019	CMN Online Regional A	LEGALS CMN	\$0.00 per Inch	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
07/20/2019	CMN Vail Daily	LEGALS CMN	\$6.24 per Inch	\$16.64	\$0.00	\$0.00	\$0.00	\$0.00	\$16.64

Karp.Neu.Hanlon^{PC}

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**Direct Mail to Glenwood Springs*

DATE: June 25, 2019
TO: Minturn Planning and Zoning Commission
FROM: Karp Neu Hanlon, P.C.
RE: Chapter 16 Code Amendments

The attached ordinance contains two code amendments to chapter 16.

First, is an amendment to the Town's code regarding Areas and Activities of State Interest, or 1041 regulations. You may remember that the commission recently recommended approval for an exemption to these regulations for minor maintenance and replacement activities for wastewater treatment facilities. In this ordinance, however, the Town will add further review criteria for all projects, and specific mandatory criteria for water and sewer projects. Generally, these criteria relate to infrastructure, service, and financial impacts that such projects might cause through population growth. These criteria would apply to a project traversing Town, even if the population growth were to occur outside of the Town boundaries. The Colorado Supreme Court has determined that the statute authorizing 1041 regulations permits local governments to adopt regulations that are more restrictive than the statute, as long as they relate to the same general objectives. We have determined that these proposed review criteria relate to the financial ability of the Town to provide infrastructure and services for new populations facilitated by water and sewer projects.

Second, is an amendment to the Town's fee provisions for land use application review. It would clarify the Town's ability to collect reimbursement fees to review activities that go beyond those activities enumerated in the fee schedule. This practice is already in use in Minturn and common in municipal planning departments, however codifying it is helpful to ensure the Town receives the fees it is due. Likewise, the amendment would provide for reimbursement to the Town for attorney's fees in any litigation arising from a decision on a land use application, when the Town is the prevailing party. Lawsuits around land use applications can become very costly to all parties. This provision should help deter frivolous appeals where a disgruntled applicant has a weak case.