



## **AGENDA**

The agenda is subject to change, including the addition of items 24 hours in advance or the deletion of items at any time. The order and times of agenda items listed are approximate and intended as a guideline for the Town Council.

### **MEETING OF THE MINTURN TOWN COUNCIL**

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

**Wednesday September 16, 2020**

**Meeting to be held via Zoom Conferencing and call-in.  
Public welcome to join meeting using the following methods:**

**Join the online webinar <https://us02web.zoom.us/j/84623343811>**

**Or Telephone: +1 301 715 8592 or +1 651 372 8299**

**Webinar ID: 846 2334 3811**

**Regular Session – 5:30pm**

**MAYOR – John Widerman  
MAYOR PRO TEM – Earle Bidez**

#### **COUNCIL MEMBERS:**

Terry Armistead  
George Brodin  
Brian Eggleton  
Eric Gotthelf  
Gusty Kanakis

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 5:00 p.m., Monday through Friday, excluding holidays.

**Regular Session – 5:30pm**

#### **1. Call to Order**

- Roll Call
- Pledge of Allegiance

#### **2. Public comments on items which are ON the consent agenda or are otherwise NOT on the agenda as a public hearing or action item. (5-minute time limit per person)**

### 3. Approval of Consent Agenda (5Min)

*A Consent Agenda is contained in this meeting agenda. The consent agenda is designed to assist making the meeting more efficient. Items left on the Consent Agenda may not be discussed when the Consent Agenda comes before the Council. If any Council member wishes to discuss a Consent Agenda item please tell me now and I will remove the item from the Consent Agenda and place it in an appropriate place on the meeting agenda so it can be discussed when that item is taken up by the Board. Do any Council members request removal of a Consent Agenda item?*

- September 2, 2020 Meeting Minutes Pg 4
- Resolution 25 – Series 2020 A Resolution in support of the Colorado River District’s State Ballot issue 7A Pg 18

### 4. Approval of Agenda

- Items to be Pulled or Added
- Declaration of Conflicts of Interest

### 5. Special Presentations

- Council Comments/Committee Reports
  - Water Update – Brodin Pg 21

## COUNCIL DISCUSSION/DIRECTION

6. **Discussion/Direction:** Minturn Fitness Center Review (30 min) – Metteer Pg 23

## PUBLIC HEARINGS AND/OR ACTION ITEMS

7. **Public Hearing/Action Item:** Resolution 24 – Series 2020 Consideration of CUP 01-2020 for Burk Harrington Construction and Darin Tacholke (20 min) – Hunn Pg 25
8. **Public Hearing/Action Item:** Ordinance 10 – Series 2020 (First Reading) Consideration of an Ordinance for the regulation of outdoor food vendors – Metteer Pg 54
9. **Public Hearing/Action Item:** Ordinance 11 – Series 2020 (First Reading) Consideration of an Ordinance amending the Town’s nuisance code to align with wildlife protection measures – Metteer Pg 57

## COUNCIL INFORMATION / UPDATES

### 10. Staff Updates (5 Min)

- Manager’s Report Pg 60
  - Sales Tax Update – Brunvand Pg 62
- Future Agenda Items Pg 64

## MISCELLANEOUS ITEMS

### 11. Future Meeting Dates

- a) Council Meetings:
- September 16, 2020
  - October 7, 2020
  - October 21, 2020

### 12. Other Dates:

## EXECUTIVE SESSION

- 13. Executive Session:** An Executive Session for the purpose of conferencing with the Town Attorney for the purpose of receiving legal advice on a specific legal question under CRS Section 24-6-402(4)(b) – Code Enforcement Issues – Sawyer

### 14. Adjournment



## OFFICIAL MINUTES

The agenda is subject to change, including the addition of items 24 hours in advance or the deletion of items at any time. The order and times of agenda items listed are approximate and intended as a guideline for the Town Council.

### MEETING OF THE MINTURN TOWN COUNCIL

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

**Wednesday September 2, 2020**

**Meeting to be held via Zoom Conferencing and call-in.  
Public welcome to join meeting using the following methods:**

**Join the online webinar <https://us02web.zoom.us/j/87602974473>  
Or Telephone: 1 651 372 8299 or 1 301 715 8592  
Webinar ID: 876 0297 4473**

**Regular Session – 5:30pm**

**MAYOR – John Widerman  
MAYOR PRO TEM – Earle Bidez**

#### COUNCIL MEMBERS:

Terry Armistead  
George Brodin  
Brian Eggleton  
Eric Gotthelf  
Gusty Kanakis

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 970/827-5645 302 Pine St. Minturn, CO 81645.

**Regular Session – 5:30pm**

#### 1. Call to Order

- Roll Call

The meeting was called to order by Mayor John W. at 5:33pm using the ZOOM on-line meeting format due to the COVID-19 pandemic concerns.

Those present include: Mayor John Widerman, Mayor Pro Tem Earle Bidez and Town Council

members George Brodin, Terry Armistead, Eric Gotthelf, and Gusty Kanakis. Note: Brian Eggleton was excused absent.

Staff present: Town Manager Michelle Metteer, Town Attorney Michael Sawyer, Town Planner Scot Hunn, and Town Treasurer/Town Clerk Jay Brunvand.

- Pledge of Allegiance

**2. Public comments on items which are ON the consent agenda or are otherwise NOT on the agenda as a public hearing or action item. (5-minute time limit per person)**

Ms. Shelley Bellm, 470 Pine St, commented that it is not safe to ride in and out of town on your bike. She asked for the town to work with CDOT to obtain Share The Road signs that can be installed. John W. will follow up on this with CDOT.

**3. Approval of Consent Agenda (5Min)**

*A Consent Agenda is contained in this meeting agenda. The consent agenda is designed to assist making the meeting more efficient. Items left on the Consent Agenda may not be discussed when the Consent Agenda comes before the Council. If any Council member wishes to discuss a Consent Agenda item please tell me now and I will remove the item from the Consent Agenda and place it in an appropriate place on the meeting agenda so it can be discussed when that item is taken up by the Board. Do any Council members request removal of a Consent Agenda item?*

- August 19, 2020 Meeting Minutes
- USPS Lease Agreement

Motion by Terry A., second by George B., to approve the Consent Agenda of August 5, 2020 as presented. Motion passed 6-0. Note: Brian Eggleton was excused absent.

**4. Approval of Agenda**

- Items to be Pulled or Added

Motion by Gusty K., second by Eric G., to approve the agenda as presented. Motion passed 6-0. Note: Brian Eggleton was excused absent.

- Declaration of Conflicts of Interest

**5. Special Presentations**

- Council Comments/Committee Reports
  - Water Update – Brodin

Everyday items: Thank goodness the fires near us are being contained and the smoke is lessening. We are thankful for the rain we have been receiving now and then. Special Thanks to all involved with the firefighting, control, and containment efforts!

I.) Operational and infrastructure update

- a. System Water Loss: This is monitored and computed monthly and loss percentage is reducing.
- b. Water Meter Replacement: Water Meter Replacement has slowed down, pending receiving a “master reader,” to wirelessly read all the new meters.
- c. Water Leak Detection System  
The Leak Detection System continues on an ongoing basis.
- d. Road and Tank farm site improvements: The road and platform for a possible new water tank are underway. Improvements were required to get a larger drill rig on site due to the large boulder encountered. Soil testing should still occur this fall.
- e. Well 4 pipeline maintenance extension: The excavator used for road and platform improvement will be used to install the Well 4 extension. All materials and tools necessary to this project have been ordered as well. The pipeline should be completed this fall.
- f. MW 3 Monitoring Well 3: Water quality testing on MW 3 is ongoing and will influence WTP size and complexity.
- g. Security Fence Installation on Cross Creek is on-going

II. USFS Permitting of Bolts Ditch Head gate is in Process

III. Water Tank Leak Repair

IV. Still Possible this Construction Season:

- a. Existing Water Tank Leak Repair.
- b. Water Plant Security Fence Completion.
- c. Well 4 Pipeline Maintenance Extension.
- d. Water Tank Farm Platform Ground Work for soil testing.
- e. Road Improvement to Water Tank Farm.

II. Completed Items

- a. Location and water testing started MW 3.
- b. Raw water line installed and operational.
- c. Leak Detection Installed and operational.
- d. SUE survey: Sub-Utility Engineering completed, Cross Creek Road.
- e. Cultural survey: Cross Creek Road.
- f. Water Meters selected and being installed.
- g. Possible site for new water tank identified.

Gusty K. updated on a prospective filter system and a potential compartmentalized tank; one tank with two compartments rather than two tanks. Gusty K. also updated on the NWCCOG meeting where they reviewed potential grants available for the water system upgrades.

Terry A. announced the Minturn Bike Park is open and busy. A Grand Opening is September 11. She noted bikers are riding on the road and look for them and encouraged consideration of a bike lane. She stated the concert series did not materialize this year. She is planning a multi-location concert to avoid overcrowding for the citizens.

She requested consideration that funds not used for the concert be applied to the bike park to assist with signage, and other needed items.

Earle B. reminded everyone to complete the national census. This affects funding and legislative representation so it is really important. Visit [my2020census.gov](http://my2020census.gov) for details and to complete the form. Thanked the fire fighters at Grizzly Creek and all the fires in the area for their service.

John W. reminded of the Minturn Matters to be held Tuesday Sept 22. This event will include an update from Battle Mtn Resort officials.

Michelle M. updated on the Climate Action Collaborative. At that meeting she updated on the code amendments we are considering.

Terry A. noted the Fishing is Fun grant is being implemented to install river access points. The first volunteer night is tomorrow night at the Bone Yard at 5:00pm. There are 4 access points that will be built within town.

## **6. Liquor Authority**

- Liquor License – Hotel and Restaurant License application: The Daily Grind Coffee Co, Inc, DBA Vail Mountain Coffee & Tea, Craig Arseneau, President/Manager 23698 Hwy 24 (30 min) – Brunvand

Jay B. outlined the request and stated staff was requesting approval.

Mr. Craig Arseneau presented his comments and answered any questions. He outlined the business plan and felt adding the liquor license will reach a larger audience stating this will be an enhancement to the coffee house. They want to focus on special events and private parties with the license, which will add to their business model.

Discussion ensued as to what the restaurant will provide and how it will differ from the existing Coffee House experience as well as preliminary hours of operation.

Earle B. stated the MMBP Board was in full support of this application.

Public Hearing Opened  
No Public Comment  
Public Hearing closed

Motion by Terry A., second by Earle B., to approve the proposed Hotel and Restaurant License application: The Daily Grind Coffee Co, Inc, DBA Vail Mountain Coffee & Tea, Craig Arseneau, President/Manager 23698 Hwy 24 as presented with the following findings and conditions. Motion passed 6-0. Note Brian Eggleton was excused absent.

- The Notice of Public Hearing on this matter was posted on the premises by the Town Treasurer on July 24, 2020 at least 30 days prior to the hearing, and the publication

for the hearing was published in a newspaper of general circulation on August 16, 2020 at least 10 days prior to the Public Hearing.

- That the selling liquor in the manner currently proposed in the application is not in violation of the Minturn Municipal Code.
- That pursuant to C.R.S. 12-47-313(1)(d) – Restrictions for applications for new license: the physical location where the applicant proposes to exercise the privilege of selling liquor is not within 500 feet from any public or parochial school or principal campus of any college, university, or seminary.
- That Minturn Police Dept/ECSO has conducted a background investigation on the listed owner(s). This investigation was not able to identify any conditions or information, which in and of itself would forbid the approval of the applicant's license. However, the following considerations will be attached to the approval:
  - It is recommended at a minimum the licensee/manager, and a server be server trained by an authority such as T.I.P.S and that a certified server be on duty at all times while alcoholic beverages are served.
  - the Liquor Authority emphasize the requirement of operating an orderly establishment.

**7. Public comment on items which are NOT on the agenda as a public hearing or action item. (5-minute time limit per person)**

**COUNCIL DISCUSSION/DIRECTION**

**8. Discussion/Direction: Minturn Fitness Center Review (30 min) – Metteer**

*Note: in the below discussion The Board refers to the MFC Board of which George B., Terry A., and Michelle M. are voting members. The Council refers to the Minturn Town Council.*

Michelle M. updated. The Town with the backing of Battle Mountain has contributed \$1.25M matching the SSCV to build the development. Since COVID they have been closed, open only for private sessions, it is not open to the public otherwise. Minturn representatives will be attending the next quarterly scheduled Minturn Fitness Center (MFC) Board meeting on September 23, 2020. Prior to this meeting, Minturn's Fitness Center board members; Terry Armistead, George Brodin and Michelle Metteer, seek direction from the Minturn Council at-large regarding the direction of the Center as it pertains to:

- Minturn's commitment level to the public benefit of the Fitness Center
- Minturn's commitment level to the 501c7 partnership with Ski and Snowboard Club Vail (SSCV)

In 2012 the Minturn Town Council approved Resolution 05 – Series 2012. This Resolution authorized the amendment of the Battle Mountain Development agreement regarding escrow funds and funding, and subsequently made funds available to the Town as outlined within Section 6 *Permitted Uses of Town's*



Earle B. was concerned why we are in this position. This began as a very good cooperative and that is no longer the case. The original agreement required the town to contribute only \$1m, this was not sufficient and the town agreed to fund an additional \$250k, now they are back trying to rework the business plan. This plan was developed by the fitness center and Ski and Snowboard Club Vail (SSCV) and the bylaws have not been followed, Minturn has not been treated as an equal partner. Currently we have requested information on how many Minturn citizens are members and to receive the monthly financials, this information has not been provided even after multiple requests.

Gusty K. was a member of the facility for 2years and the quality fell over that period. With the change in hours last year they dropped their membership. The facility had no interest in trying to maintain his membership. It is common conversation that the Vail Ski and Snowboard Academy students take over the center to the demise of other members. This was not fair.

Terry A. stated she has been a member since the opening, she enjoys her membership but does see the issues expressed. It is not geared to the general public it is geared to the elite athlete. All changes enacted recently were not made by the MFC Board as required in the by-laws. She felt if the SSCV is not satisfied with the by-laws then that needs to be addressed by the Board.

Eric G. stated he liked some sort of after-hours access. He is not a member because it does not fit with their schedule. He felt the MFC needs to step up their marketing and membership.

George B. felt the town was not part of the ongoing programing and does not know why we are excluded. He felt the SSCV was not paying as they stated they would. This is not the program we anticipated or agreed too.

Earle B. clarified the by-laws state the citizen would have a reasonable price and access to the facility. He stated we have had to demand board meetings as those were not being held regularly. The town citizens would have a fee but it would be incumbent on the facility and SSCV to provide the ongoing funding.

John W. inquired do we snowplow for them? He stated he was a board member when he first got on the Town Council and was the Secretary, then no meetings were held and there was no information provided to the Town Council.

**Public Comment:**

Ms. Nella Trail, 30 Mann Ave, expressed her significant frustration and dissatisfaction in programing, hours, and service. She reviewed the by-laws and noted where they are being ignored. They had a family membership and used it. During that time, classes decreased, hours decreased, except for the students. There is no segregation between open gym/adult time and student times. Due to issues faced she dropped their membership. She asked if anything can be done to include the town's concerns. She felt there was a place at the facility for community volunteers but that is not the desire of the facility.

Ms. Shelley Bellm, 470 Pine St, agreed with all of the points of Ms. Trail. She stated her family

had a membership and experienced the same concerns and she stated she has only had negative interactions with the facility. Stating her daughter is a gymnast that has competed nationally and is excluded from the facility because she is not a SSCV athlete. The facility has never held Minturn's interest as a priority.

Mr. Tom Priest, 121 Lions Lane, agreed with the comments previously expressed. He would like to have open access afterhours. He stated the training staff is pretty much gone so their programs are even more reduced. He felt the students do not pay in relation to how much they use the facility each week. He stated the budget is being balanced on the backs of those that have the least access. Reconfirmed that he would like to know how many athletes, how much income/expense by month, cost of options, he felt the front community room could be repurposed for better use.

Ms. Jan Aiello, 30 Mann Ave, agreed with those who spoke prior. This was supposed to be a recreation center and this is not that. She felt the students should be there during their school time. They should balance the hours for students and citizens. She reiterated that what we signed up for is not what we got and now they want more and supply less.

Ms. Linda Osterberg, 1720 Main St, has been a member since the beginning. Agreed with those who spoke previously, they do not have programming for the average citizen, it is designed for the elite athlete. She is a current member but has not been informed by the facility of recent changes.

Ms. Lynn Teach, 253 Pine St, she was a member in the beginning but the hours and programming have never worked for her. She agreed with those that spoke prior, she felt the staff was rude and mean, she felt she was not treated the same as younger members.

Council comments:

Earle B. reestablish board meeting schedule, a full financial report, a balance of citizens and student programming, the key fob idea is great but we need to work on equity during regular hours.

Gusty K. agreed with Earle B., hours of operations and dissemination of information needs to be addressed by the Board.

Eric G. agreed and felt key fobs a good idea.

Terry A. felt this is an amazing amenity for the town. Council needs to look for solutions and how we can work together. Members want to get in right now but are told COVID excludes that. It was stated by the SSCV Director that "once a vaccine is implemented..." this is not reasonable. They need to figure out how to make this work in the short term. For long term we need to consider how this can be structured to work for citizens and SSCV equitably. She expressed the need to find a path through the issues. She expressed dissatisfaction with the way the SSCV Director did not reply to her message as an MFC Board Member but discussed the issue with the Mayor instead. She read a letter from Jenna Skinner, 922 Main St. The letter stated how amazing the facility is but expressed many of the same concerns expressed prior regarding access and programming.

George B. summarized: reestablish the Board and the Board responsibility, hours of operations, other gyms and centers are open so this facility should be open, hygiene protocol needs to be instituted, consistent, complete, and transparent financial documentation, the deal was we would assist building and they would pay for operations and we would be equal partners,

John W. expressed the time, effort, and money put in to this and we need to work to resolve the issues. He asked for a list of tasks and a realistic timeline on resolving the issues.

Michael S. expressed the agreements include more than the bylaws. There is an agreement for financing and how the division will be made between students and citizens. SSCV does not have the authority to make changes without the Board's authorization but yet they are. The SSCV agreed to cover the costs of the programs in exchange for the town's money to build the facility. If this is not the case they need to come into compliance, she asked the Council to authorize court to adjudication if necessary, to rule at a minimum if it is not open to the town it should be closed to ALL members including SSCV. He recommended the Board meetings be held in public.

Michelle M. expressed that Minturn has worked ethically in an effort to be a good partner with SSCV and would like permission from the Council to move forward with legal action as well as other direction given.

Discussion ensued as to legal action and how we can overcome the concerns expressed.

Direction given: Resolution of the issues expressed with a timeline

- When can the facility be open?
- Open and classes for all or closed to all (closed to SSCV)
- Legal authorization

Terry A. stated John Hill, the SSCV Director was invited to the meeting and would not attend. Several of their staff members are on and it should be discouraging to them to see this transpire. The Council representatives on the Board, George B. and Terry A., will report back to the Council at the next meeting.

**9. Discussion/Direction: Short Term Rental update and review (30 min) – Metteer**

Michelle M. outlined the discussion item. She noted a review the Short-Term Rental program as outlined in Ordinance 04 – Series 2017 and evaluate the program for any modifications or changes to better meet the ongoing needs of Minturn residents, property owners and visitors is requested. With the creation of Vacation Rentals by Owner in 1995 and Air B&B in 2008, Short-Term rentals of residential properties came into popularity. For towns like Minturn with minimal lodging accommodations, this new offering filled a gap in the tourism market but also created strains in residential areas not accustomed to commercial activity and thus regulations have been trying to catch up ever since. Minturn approved Ordinance 04 – Series 2017 for the allowance of short-term rentals with the understanding that these regulations would need to be periodically reviewed and adjusted to remain in the spirit of Minturn's goals of being a working-class mountain town community. This discussion is a periodic review of the short-term rental

program.

Minturn has averaged around 25 short-term rental properties a year since the inception of the program. 2020 has been the exception to this average. Due to COVID-19 the Town currently has under 10 approved short-term rental properties. Historically license compliance and inspections have been the most time consuming for staff, but that being said, there have been few red flags with the program in general.

Two items of note are:

- Residents who have expressed frustration with a commercial operation in a residential area.
  - Examples are:
    - o Visitors using the wrong trash bins
    - o Visitors having multiple vehicles and taking much-needed residential on-street parking
    - o Visitors being inconsiderate of neighbors who have to work the next morning
    - o Not providing on-site parking after the inspection has been conducted
    - o Not complying with sidewalk snow removal policies
- Property buyers wanting to purchase a home but need the short-term rental income to cover the mortgage gap and cannot financially cover the two-year ownership requirement before short-term renting.

Most of the ongoing issues expressed by neighbors of short-term rental properties can be addressed on an as-needed basis and do not warrant a significant adjustment to the program at this time. For prospective property buyers needing to fill a financial gap with the short-term rental program, an adjustment to the two-year ownership requirement may be beneficial, especially to first-time buyers. The spirit of the two-year ownership requirement is to keep locals in Minturn and cut down on housing purchases for the sole purpose of commercial gain. To that end, Minturn could adjust the two-year requirement to allow for a new property owner, who lives on-site, to immediately (not wait two years) short-term rent a room(s) in their home through Air B&B, which is a platform utilized by home owners who short-term rent while simultaneously living in the house. This would keep the local(s) on-site and help fill a financial gap.

Council Comments:

Earle B. felt the regulations may be too strict for a single residence but if the owner has multiple units then they might not be. If the owner lives in the unit and rents a portion short term then that is different than a nonresident investment or multiple unit investment.

Gusty K. felt with the owner living in the unit then where will the rental customers park. He felt they should be living in the unit they purchase and feels the two-year requirement is positive.

Terry A. agreed with Gusty K. on the two-year requirement. We want to encourage fulltime residents.

George B. agreed and was not in favor of loosening the regulations and felt it was working.

Eric G. agreed with the parking issue. He feels the homeowner living in the unit at purchase should be allowed to short term rent in order to better make ends meet.

Earle B. noted we should amend to clarify the manager must live up to 50miles by road, not as the crow flies.

Public Comment:

Mr. David Clapp, 392 Taylor St, felt the 2year rule keeps prices down, he felt long term was better than short term rental.

Ms. Lynn Teach, 252 Pine St, stated the limitation on 50 STR's was to reduce speculation. She felt a long-term rental would help the housing crunch. She felt the STR brings in enough money that it is a huge profit for the owner. She is in favor of keeping the 2yr short term but felt it unnecessary for long term rental if the owner lives in the house.

John W. stated the general consensus was to maintain the existing legislation.

Terry A. asked regarding the problems. For those that follow the rules do we have guidelines or is there a requirement for the owner to submit a plan regarding the shoveling, trash cans, etc? Is there a fee we could assess when one disregards the town regulations? Michelle M. stated they do need to submit a plan for on-site parking and sidewalk snow removal.

Direction was to make no changes at this time to the 2yr but to confirm the 50 road miles not radius.

**10. Discussion/Direction:** Review MMC Sec. 7-3-120 Garbage Containers & Junk (required to be obscured from view) (30 min) – Metteer

Michelle M. presented that Town staff has received a complaint regarding the needed enforcement of MMC Sec. 7-3-120.

Sec. 7-3-120. - Garbage containers and junk. The storing or keeping by any person within the Town of any old articles or materials which may be classified as junk, adjacent to or in close proximity to any public building, public park or grounds, business buildings or residences, without first providing fully enclosed buildings for storage of the same, shall be deemed a public nuisance. It is specifically provided that trash, garbage and refuse and trash, garbage and refuse containers, barrels and cans must be obscured from view and not accessible to scavenging animals.

Unobscured storage of garbage and recycling containers is prevalent throughout town. This section of the MMC has not traditionally been enforced and Council should consider either its enforcement or removal from the code. She noted this will impact the majority of town as most residents and businesses are either in violation or located next to someone in violation.

John W. felt this was a difficult code to enforce and that it should be removed. It was felt securing from animals should be addressed but not obscured from view. All agreed.

Direction was for Staff to amend the code as directed and bring the Ordinance to Council for approval in the near future.

## PUBLIC HEARINGS AND/OR ACTION ITEMS

**11. Public Hearing/Action Item:** Resolution 24 – Series 2020 Consideration of Conditional Use Permit 01-2020 for Burk Harrington Construction and Darin Tacholke (20 min) – Hunn

Scot H. updated the Council on the proposal stating this is a Conditional Use Permit (CUP) for storage on the Railroad property. The Applicants, Burke Harrington Construction and Darin Tacholke, request review of a new Conditional Use Permit for leased portions of the Union Pacific Railroad (UP) property to allow for contractor and personal storage, as well as parking generally located approximately .2 miles north of the Turntable Restaurant, east of the Meadow Mountain Business Park and the Eagle River, and just west of the Union Pacific rail line

Scot H. outlined some of the complaints we had received over the past year or so from neighbors on adjacent properties (Taylor St) in the area utilizing the same type CUP

Mr. Burk Harrington, applicant, stated it would be construction and personal storage, it will be fenced and storage will be in the yard and inside the building. He stated he understood the CUP conditions and the concerns that have been expressed by neighbors

### Council Comments:

John W. recalled it was a very controversial discussion several years ago where Darin Tacholke, a co-applicant, was very vocal on this use not being allowed and that we received very little benefit compared to the staff time to enforce the CUPs in the area.

George B. felt the personal storage was a concern several years ago and it is a concern now.

Terry A. remembered the previous discussion and negative comments from property owners regarding personal storage and the difficulty of enforcement. She asked regarding hours, 7am-7pm seven days a week. She stated this was an industrial area but that we be cognizant of the adjacent neighbors and their concerns.

Mr. Harrington stated the personal items would go inside the building, they would not be stored out in the lot and no recreational vehicles will be stored outside too.

Earle B. stated the rail yard looks a lot better than it used to. Through the complaints from the Taylor St residents' rules were placed. He asked about towing storage, would this be towed vehicle storage? Mr. Harrington stated Mr. Tacholke is not intending to store West Shell Vail

towed vehicles. He asked for clarification on what will stored be inside and outside; some jobsite trailers, building supplies and equipment, and even masonry equipment would be outside.

Eric G. asked about the materials used to shield the lot. The fence will be green screened. What work on the appearance of the building might be made; Mr. Harrington is interested in painting and upgrades but that would be down the road. They recognize it is a railyard and they want to keep it presentable.

John W. stated this area has been a huge burden for staff to police. He asked if this would be a long-term use for his construction needs; yes, it will be for as long as UPRR will lease it to him. Storage at this end of the county is a need and a need for his company.

#### Public Hearing Opened

Mr. David Clapp, 392 Taylor St, is confused why the rail yard allows storage even though it is not allowed anywhere in town. He felt this use has a huge negative effect on the Taylor St residents. He felt the rail yard is a mess and this will add to the problem. He felt the property requirements and restrictions were too vague and only benefit the leaseholder at the degradation of the adjacent neighborhood. He stated that the applicants themselves spoke in opposition to someone else's CUP application written the exact same way and they are now trying to obtain.

#### Public hearing closed

John W. asked for Council discussion as he was very challenged with CUP's in this area in general. The applicants themselves have spoken against this use of the property. The more we approve these CUPs the harder it will be to change course in the future.

Terry A. felt the Council needed to tackle this issue now. She stated this is a huge draw on staff time to monitor these but she felt it difficult to deny this when they have approved others just like it.

In reply to a Council comment, Scot H. stated the recommendation to Table at the Planning Commission was from Staff. Between the time the Staff Report was issued and the meeting, they had changed their position and recommended approval at the Planning Commission meeting.

Gusty K. asked if we require CUPs for the other spaces; yes, they are reviewed every three years unless they receive three warnings. They are reviewed by staff annually.

Earle B. felt it is not good for the neighborhood, it is not good for the town as it costs staff, the railroad is a poor neighbor and they have created this nuisance for the town that does need to be reviewed. He felt we need a plan for the area that will require railroad use only, not these piecemeal approvals that don't help anyone but UPRR and the lease holder.

George B. expressed concerns of trying to enforce one agreement between two companies. He was concerned that Mr. Harrington had begun to modify the property prior to receiving CUP approval; Mr. Harrington thought his existing CUP would extend to this property as well.

John W. feels we need to tackle this in the near future. He would like to see this continued until he can get a better grasp of the situation and the issues.

Earle B. agreed with the continue option.

Michael S. stated to continue it too far would put Mr. Harrington in the winter weather when he needs to do outside work. He reviewed how and why a CUP could be denied and what to consider when approving. He said additional conditions can be set to cause the CUP to conform with the intended purposes.

Terry A. felt continuing would be appropriate. She said a concern is if this is a working yard or storage? She had concerns with 7am-7pm 7days a week.

Eric G. added his support to continue.

Gusty K. added his support to continue.

Direction to staff was to: address the stated concerns by the next meeting and to bring back the comments expressed by the neighbors from previous CUP approvals in the rail yard. Michelle M. said they will look to bring it back at the next meeting. In the meantime, Staff will clarify the conditions with the application to clean up the expectations that are in the conditions. The intent is to have staff annually review this and how that would work. Earle B. said we need to list the concerns expressed with similar approvals and ensure they are presented as conditions in the Resolution and that existing conditions are clearly stated and enforceable.

Motion George B., second by Earle B., to Continue to the September 16 Council Meeting Resolution 24 – Series 2020 Consideration of CUP 01-2020 for Burk Harrington Construction and Darin Tacholke with the listed findings as presented. Motion passed 6-0. Note: Brian Eggleton was excused absent.

**Findings:**

- *That the proposed location of the use is in accordance with the purposes of this Chapter, the Community Plan and the purposes of the zone in which the site is located.*
- *That the proposed location of the use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.*
- *That the proposed use will comply with each of the applicable provisions of this Chapter.”*

**COUNCIL INFORMATION / UPDATES**

**12. Staff Updates (5 Min)**

- Manager’s Report



Michelle M. noted the budget memo included in the packet which identified existing unfunded items in the FY2021 budget and the Fishing Is Fun Volunteer night.

- Future Agenda Items
  - Sustainable Building Codes
  - Little Beach Park Master Plan
  - Move remaining funds from the concert series to the Minturn Bike Park
  - Move the Parking Discussion to October 22 meeting
  - Executive Session on Code Compliance on 9/16
  - Reviewing if Facebook Live is a viable streaming option. This may come to Council as a social media Resolution.

Earle B. asked when we might get back in the Council Chambers? Michelle M. updated on the progress and is hopeful that by the October 7. This will be an online/in-person meeting.

## MISCELLANEOUS ITEMS

### 13. Future Meeting Dates

- a) Council Meetings:
  - September 16, 2020
  - October 7, 2020
  - October 21, 2020

### 14. Other Dates:

### 15. Adjournment

Motion by Earle B., second by Terry A., to adjourn the meeting at 9:57pm. Motion passed 6-0.  
Note: Brian Eggleton was excused absent.

---

John Widerman, Mayor

ATTEST:

---

Jay Brunvand, Town Clerk



To: Mayor and Council  
From: Jay Brunvand  
Date: May 20, 2020  
Agenda Item: Resolution 25 – Series 2020

---

**REQUEST:**

The Colorado River District has contacted the Town requesting support of their ballot issue on the November General Election.

**INTRODUCTION:**

The Colorado River Conservation District, aka Colorado River District, has asked the Town of Minturn to support their ballot issue 7A to increase their mill levy property tax by .248 mills for a total of .5 mills. This tax will only pertain to property within the District 15.

**ANALYSIS:**

N/A

**COMMUNITY INPUT:**

N/A

**BUDGET / STAFF IMPACT:**

N/A

**STRATEGIC PLAN ALIGNMENT:**

In accordance with Strategy #1 to practice fair, transparent, and communicative local government.

**RECOMMENDED ACTION OR PROPOSED MOTION:**

Consideration of Approval

**ATTACHMENTS:** Resolution 25 – Series 2020

**TOWN OF MINTURN, COLORADO  
RESOLUTION NO. 25 – SERIES 2020**

**A RESOLUTION SUPPORTING THE COLORADO RIVER DISTRICT'S  
STATE BALLOT ISSUE 7A FOR DISTRICT 15 WRITTEN TO ALLOW  
THE DISTRICT TO CONTINUE TO BE A STRONG AND EFFECTIVE  
ADVOCATE TO WATER USERS ON THE WESTERN SLOPE OF  
COLORADO**

**Whereas**, the Colorado River Water Conservancy District is a public entity with a mission to lead protection, conservation, use and development of the water resources of the Colorado River Basin for the welfare its residents and to safeguard for Colorado all the waters of the Colorado River to which the State of Colorado is entitled; and

**Whereas**, the Town of Minturn works closely with the Colorado River District on both intrastate and interstate water matters of interest; and

**Whereas**, it is critical to the people of Western Colorado that the Colorado River District continue to be a strong and effective voice on water matters affecting Western Colorado water users, and

**Whereas**, the Colorado River District's revenues are declining due to reduced energy production and prices, impacts of the Gallagher Amendment and the revenue limitations in the Taxpayers Bill of Rights, and

**Whereas**, the Board of Directors of the Colorado River District has certified and directed that the following ballot question (7A) be placed in the November, 2020 election across the District's 15 counties:

- *Shall Colorado River Water Conservation District, also known as the Colorado River District, taxes be increased by an amount up to \$4,969,041 in 2021 (which increases amounts to approximately \$1.90 in 2021 for every \$100,000 in residential property value), and such amounts as are generated annually thereafter from an additional property tax levy of .248 mills (for a total mill levy of 0.5 mills) to enable the Colorado River District to protect and safeguard Western Colorado by:*
  - *Fighting to keep water on the Western Slope;*
  - *Protecting adequate water supplies for West Slope Farmers and Ranchers;*
  - *Protecting sustainable drinking water supplies for West Slope communities;*  
*and*
  - *Protecting fish, wildlife, and recreation by maintaining river levels and water quantity;*

*Provided that the District will not utilize these additional funds for the purpose of paying to fallow irrigated agriculture; with such expenditures reported to the public in*

*an annually published independent financial audit; and shall all revenues received by the District in 2021 and each subsequent year be collected retained and spent notwithstanding any limits provided by law?*

Whereas, we believe that the revenues that will be raised if the above ballot question is approved by the voters are critical to the Colorado River District being able to continue its mission and be a strong and effective advocate on issues and importance to water users on the Western Slope of Colorado.

**NOW, THEREFORE, BE IT RESOLVED THAT** the Town of Minturn Town Council strongly supports the Colorado River District's ballot question set forth above.

**INTRODUCED, READ, APPROVED, ADOPTED AND RESOLVED THIS 16<sup>TH</sup> DAY OF SEPTEMBER, 2020.**

TOWN OF MINTURN

By: \_\_\_\_\_

John Widerman, Mayor

ATTEST:

\_\_\_\_\_  
Jay Brunvand, Town Clerk

## Water Report 16 September 2020

### I.) Operational and infrastructure update

There are several things going on concurrently with Minturn Water

#### System Water Loss

Water loss for August came in at 5.7%

#### Water Meter Replacement

Water Meter Replacement is on back order. ERWSD is working on a laptop program that might be able to read the meters. This would put the installation back on track. Most meters in Town can be accessed in the winter, so we are not restricted by winter once we get the reader solved.

#### Water Leak Detection System

The Leak Detection System continues to gather data. No recent leaks have been discovered.

#### Road and Tank farm site improvements

The road and platform for a possible new water tank are complete. Soil testing should start on Monday the 14<sup>th</sup>.

#### Well 4 pipeline maintenance extension

Work on Well 4 pipeline started Thursday, 10 September. Progress will be updated as things get completed.

#### MW 3 Monitoring Well 3

Water quality testing on MW 3 is ongoing and will influence WTP size and complexity.

### **Still Possible this Construction Season:**

Existing Water Tank Leak Repair.

Water Plant Security Fence Completion.

Well 4 Pipeline Maintenance Extension.

Soil testing for Water Tank Site.

### **Completed Items**

Location and water testing started MW 3.

Raw water line.

Leak Detection Installed and operational.

SUE survey: sub underground survey. Cross Creek Road.

Cultural survey: Cross Creek Road.

Water Meters selected and being installed.

Possible site for new water tank identified.

Initial road and site work for Tank Soil Testing.

Road Improvement to Water Tank Farm.

Water Tank Farm Platform Ground Work for soil testing.

### **Next Steps**

On-going Grant Applications for Tank Design

Grant Applications for Tank Construction

Data Interpretation from MW 3 to determine treatment necessary

New Water Plant Design and System.

The Town has been fiscally prudent by performing much of the water system work, "in house." This includes leak detection, road and platform creation, pipeline extension, security fence, water meter installation, installation of the raw water line to the bike park, grant searches, etc.

This has been a team effort, with the majority of the hands on physical work being performed by Public Works. Thanks Everyone!!!

George Brodin / Gusty Kanakas  
Water Committee

Once we arrive at the specific, "PROJECT," point, like Water Tank Construction, the standard RFQ and RFP processes the Town follows will kick in. Meanwhile, every effort to control costs is being explored and taken when and where it is warranted.



To: Mayor and Town Council  
From: MFC Board Members  
Terry Armistead, Council member, MFC Board President  
George Brodin, Council member  
Michelle Metteer, Town Manager, MFC Board Secretary  
Date: September 16, 2020  
Agenda Item: Minturn Fitness Center Update

---

**REQUEST:**

No requests are being made at this time. The MFC Minturn board representatives will provide an update of ongoing progress at the fitness center.

**INTRODUCTION:**

See Minturn Fitness Center Review Agenda Cover Sheet for additional background (insert link)

Since the Minturn Fitness Center Review discussion during the Minturn Town Council meeting of September 2, 2020, several factors expedited the timeline of events. To summarize, the Minturn Fitness Center is again offering public open gym. The initial schedule has been set until October 1<sup>st</sup> and can be found at [www.minturnfitnesscenter.com](http://www.minturnfitnesscenter.com). Gym users can reserve two-hour open time slots and are able to choose between afternoon, evening or weekend options. The team is also working on adding some morning open gym options but that time slot is requiring the moving around of several logistical factors. Each time slot can accommodate a maximum of 15 people at a time and the drop-in rate is \$10. For those interested, after October 1<sup>st</sup> annual membership holders will have the ability to reactivate their memberships.

The board determined a review of the tentative open gym schedule will take place during the September 23, 2020 MFC board meeting. In addition to the open gym opportunities, Ski and Snowboard Club Vail will be looking to implement spin and ski conditioning classes beginning in November. Once November hits, the student athletes will be conducting a majority of their training on the hill and gym hours to the public will be increased. This is expected to be a seasonal change of hours but the goal will be to provide the public and the student-athletes the same amount of total gym hours over the course of a year.

Additionally, at the MFC board meeting on Sept 23 the topics of finances, hours of operations, programming, MFC board member responsibilities and review of the by-laws will take place.

**ANALYSIS:**

Financials only tell part of the story. It will be the lead measures causing the shortfall in financials that must be scrutinized to see success on the back end. Expected topics of discussion include staffing, volunteer opportunities, trade/in-kind opportunities, equipment, maximization of facility use and many other topics.

**COMMUNITY INPUT:**

Ongoing and significant

**BUDGET / STAFF IMPACT:**

Not yet determined

**STRATEGIC PLAN ALIGNMENT:**

The Minturn Fitness Center is aligned with Minturn's Strategic Plan in the following ways:

**ADVANCE DECISIONS/PROJECTS/INITIATIVES THAT EXPAND FUTURE OPPORTUNITY AND VIABILITY FOR MINTURN**

**TRUE NORTH STATEMENT**

**LEVERAGE MINTURN'S ASSETS TO BENEFIT AND MAINTAIN OUR FUNKY, PROUD, UNIQUELY CLASSIC MOUNTAIN TOWN WHERE PEOPLE GROW ROOTS THROUGH CREATING OPPORTUNITIES AND COMMUNITY ENGAGEMENT.\***

**\*KEEPING IN MIND, WE ARE MINTURN**

**RECOMMENDED ACTION OR PROPOSED MOTION:**

- Update only

**ATTACHMENTS:**

- none



**TOWN OF MINTURN, COLORADO  
RESOLUTION NO. 24 – SERIES 2020**

**A RESOLUTION APPROVING CONDITIONAL USE APPLICATION CU 01 – 2020  
FOR BURKE HARRINGTON CONSTRUCTION AND DARIN TUCHOLKE, UPRR  
RAILROAD AVE, TOWN OF MINTURN**

**WHEREAS**, The Burke Harrington Construction and Darin Tucholke have submitted a land use application for a Conditional Use Permit to allow for contractor and personal storage; and

**WHEREAS**, The Town of Minturn Town Council is commissioned with certain powers and duties contained in the Minturn Municipal Code Sec. 16.21.30; and

**WHEREAS**, public notice was given pursuant to Minturn Municipal Code Sec. 16.21.610; and

**WHEREAS**, on August 26, 2020 the Planning Commission held a public hearing on the application pursuant to Minturn Municipal Code Section 16.21.620 and approved the application as presented with conditions; and

**WHEREAS**, on September 2, 2020 the Town Council held a public hearing on the application pursuant to Minturn Municipal Code Section 16.21.620; and

**WHEREAS**, The Town Council may approve the application as submitted or may approve the application subject to such modifications or conditions as it deems necessary to accomplish the purpose of this Article, or the Town Council may deny the application including the following findings:

- 1) Upon receipt of a completed and proper application, the Planning Director shall set a public hearing for the Planning Commission and give public notice as required by this Chapter.
- 2) Criteria; findings. Before acting on a conditional use permit application, the Planning Commission and Town Council shall consider the following factors with respect to the proposed use:
  - a. The relationship and impact of the use on the community development objectives of the Town.
  - b. The effect of the use on distribution of population, transportation, utilities, schools, parks and recreational facilities and other public facilities and public facility needs.
  - c. The effect upon traffic, with particular reference to congestion, automotive and pedestrian safety, traffic flow and control, access, maneuverability and snow removal.

d. The effect upon the character of the area in which the proposed use is to be located, including the scale and bulk of the proposed use in relation to surrounding uses, the amount of noise, lighting and glare, dust and compatibility of the use with the Character Area it is in and surrounding areas.

e. Necessary findings. The Planning Commission and Town Council shall make the following findings before making a recommendation or decision that a conditional use permit be granted:

1. That the proposed location of the use is in accordance with the purposes of this Chapter, the Community Plan and the purposes of the zone in which the site is located.
2. That the proposed location of the use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.
3. That the proposed use will comply with each of the applicable provisions of this Chapter.

**NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MINTURN, COLORADO HEREBY AND HEREWITH:**

Section 1. that the application for a Conditional Use Permit for File No. CU 01 – 2020 be approved subject to the following conditions:

1. All material representations made by the Applicant as part of the application and during public hearings on the matter shall become conditions of approval and enforceable by the Town.
2. Only business-related items related to the expressed business activities approved with this CUP shall be located on leased property. No vehicle shall exceed 40' 2" in length. This restriction does not apply to storage containers that may be used for storage of materials and equipment associated with or incidental to the business operations approved under this CUP. Such container(s) must be maintained in an orderly manner; must be contained and screened to the greatest extent possible with fencing and green mesh screening materials; and, shall not be stacked.
3. No recreational vehicles or ATVs of any kind are permitted within lease areas. Such restriction includes but is not limited to boats, snowmobiles, ATVs, RV's, campers, pop-ups campers, conversion vans, as well as trailers, and/or vehicles unrelated to the permitted business activities.
4. No inoperable or unlicensed vehicles are to be kept on the property for longer than five (5) days (pursuant to Section 7-2-70 Minturn Municipal Code).

5. Leased lots associated with the CUP are to be maintained in a clean and orderly condition, permitting no deposit or accumulation of refuse or materials other than those ordinarily attendant upon the use for which such premises are legally intended (pursuant to Section 7- 4- 50 Minturn Municipal Code).
6. CUP holders are to maintain and conduct business within the lease areas associated with the approved and valid CUP only.
7. Each CUP will be subject to annual review by the Town staff with regard to compliance with the terms of use and conditions of approval associated with the CUP. The Town staff shall provide a report to the Town Council following such annual review. The report shall, in a general manner, provide updates on the following:
  - a. Any violations or other incidences requiring staff response and Town resources out of the ordinary course of Town business and services.
  - b. Compliance with the overall terms of use permitted by the CUP as well as observations regarding the condition of the lease/CUP area.
  - c. Any changes in i) Lessee/Sub-Lessee; and, ii) uses within CUP area.
  - d. Any recommendation to Council to amend, suspend or revoke the CUP.
8. Lessees are required to meet with the Town Council every three (3) years for CUP review. The review shall include but not be limited to inspections by Town staff and the following reporting:
  - a. Report from Code Compliance Office
  - b. Report from Planning Director
9. Hours of operation: 6 days per week (M-Sat); 7:00 a.m. to 7:00 p.m., unless otherwise approved by the Town Council as part of the CUP approval and terms of use on a case by case basis.
10. All uses and occupancy associated with activities approved for each individual CUP shall adhere at all times with the noise and vibration standards of the Town (pursuant to Section 16-18-30, Minturn Municipal Code).
11. All leased areas associated with the CUP must be fenced and screened (green mesh screening materials) along the perimeter of leased property.
12. Supplies, parking, vehicles, and equipment associated with the approved CUP and business activities therein shall be located only within fenced and screened areas.
13. Proper fuel containment (to be inspected by Eagle River Fire Protection District for small volumes (less than 100 gallons) shall be required in OSHA approved containers.
14. All parking must be located within the fenced yard and/or building(s) associated with the approved CUP.

15. Any chemical storage will require material safety data sheets be maintained on the lease site at all times. No chemical storage is permitted within the 30' live stream setback areas along the Eagle River and/or Game Creek.
16. Emergency access of 20' through the Union Pacific railyard and at both access gates shall be maintained.
17. Off-season use will require site storage of snow and keeping emergency access cleared.
  - a. Maintain proper snow storage or sufficient snow removal.
18. Conditional Use Permit is granted conditional upon the applicant complying with these standards and so long as the grantee maintains a valid lease agreement with the owner of the property.
19. Town staff may inspect the site for compliance at any time.

**INTRODUCED, READ, APPROVED, ADOPTED AND RESOLVED this 16<sup>th</sup> day of SEPTEMBER, 2020**

By: \_\_\_\_\_  
John Widerman, Mayor

ATTEST:

\_\_\_\_\_  
Jay Brunvand, Town Clerk

Minturn Planning Department  
Minturn Town Center  
302 Pine Street  
Minturn, Colorado 81645



Minturn Planning Commission  
Chair – Lynn Teach  
Jeff Armistead  
Lauren Dickie  
Burke Harrington  
Christopher Manning  
Jena Skinner

## Town Council Public Hearing – **Continued from 9/2/20**

---

### Burke Harrington Construction and Darin Tucholke

### Conditional Use Permit for Contractor and Personal Storage

---

<b>Hearing Date:</b>	September 16, 2020 (continued from September 2, 2020)
<b>File Name and Process:</b>	Burke Harrington/Darin Tucholke Construction CUP
<b>Property Owner:</b>	Union Pacific Railroad (the “UP”)
<b>Applicant:</b>	Burke Harrington and Darin Tucholke
<b>Representative:</b>	Burke Harrington
<b>Legal Description:</b>	N/A
<b>Zoning:</b>	Game Creek Character Area PUD Holding Zone
<b>Staff:</b>	Scot Hunn, Planning Director Madison Harris, Planner I
<b>Recommendation:</b>	<b>Approval with Conditions</b>

---

### Staff Report

#### I. Summary of Request:

The Applicants, Burke Harrington Construction and Darin Tucholke, request review of a new Conditional Use Permit for leased portions of the Union Pacific Railroad (UP) property to allow for contractor and personal storage, as well as parking generally located approximately .2 miles north of the Turntable Restaurant, east of the Meadow Mountain Business Park and the Eagle River, and just west of the Union Pacific rail line. This is the second hearing with the Town

Council to consider this request, following a continuance by the Council at their regular meeting of September 2, 2020.

The purpose of the continuance was to provide Council, staff and the Applicants sufficient time to address and consider the following general issues and questions raised by the Council at their September 2<sup>nd</sup> hearing with regard to long-term viability of storage and light-industrial “yard” uses on UP property:

1. The balance between supporting local businesses using the Union Pacific Railroad property for storage needs against the Town’s operational and financial burdens to administer and enforce CUPs for contractor storage uses.
2. Lack of long-term vision for the UP property; what is the limit of potential lease area expansions by the UP and how long should lease holders expect to continue contractor storage uses in this area? Who decides how and when lease areas get expanded and how can UP and Town of Minturn work together more closely on this issue?
3. What triggers will the Town use to determine if an existing CUP must be amended or updated (e.g., when a lease area gets expanded; or an existing lessor abandons use of the lease and subleases to new business entity or individual)?
4. Ongoing concerns over condition of buildings and lease areas; can buildings be painted/improved and can screening options be improved?
5. Passive “storage” – whether inside a building or outside in screened area – or an active contractor “yard” where employees come and go; work during allowable hours, possibly using heavy equipment – what is intent of CUPs in this area?
6. Reevaluating the previously approved hours of construction – is 7am-7pm, Monday-Sunday too much for neighboring properties?
7. Parking – current CUP “criteria” or conditions state that all parking must be
8. Current “criteria” or condition language applicable to the CUPs approved in 2018; need to clean-up and clarify language.

More specific to the current request by BHC and Darin Tucholke for use of a new lease area for storage, the Council had the following questions and concerns:

1. Need to ensure that each person or entity listed on any application for Conditional Use Permit is listed on the official Town application form; that all lessors/applicants are held to the standards applicable for issuance of a CUP.
2. Concern regarding use of property for storage of towing business vehicles, junk cars, etc. related to Darin Tucholke’s business.
3. Ensuring that property is maintained and giving consideration to improvements to existing UP buildings (e.g., painting the exterior of buildings) as a means to increase conformance with the community plan goals as well as the standards for conditional use permits.

Staff has provided updated Conditional Use Permit criteria or “conditions” to address some of the more immediate concerns expressed by staff and the Town Council. Staff suggests that additional discussions regarding the larger issues of long-term master planning of the Union Pacific Railroad property; limiting the amount or area of the property devoted to lease areas;

limiting or prohibiting construction or contractor “yard” uses in favor of more passive storage uses should occur in October 2020 during a more general review of the existing CUPs.



Figure 1: Vicinity Map

### Application Background

BHC has leased different properties from UP over the past 20 years for contractor storage uses. The current location of BHC operations on UP property, which is located closer to the Minturn Municipal Parking Lot, includes several buildings or enclosures where the majority of equipment and materials associated with BHC business operation are stored. The new location is intended to allow additional storage for BHC, along with personal storage by both Burke Harrington and Darin Tucholke, mainly within an existing building.

While Burke Harrington Construction proposes to continue to use and maintain the lease area associated with his first CUP for the time being, the owner is now proposing to use another lease area located further north within the UP property for additional storage associated with the same business. The current proposal by the Applicant includes:

1. Use of an approximately 2,700 square foot building in a 15,400 square foot lease area for storage of construction related equipment and materials, household items (furniture, cabinetry and/or fixtures, and appliances) associated with remodel projects that BHC works on, as well as personal items owned by both Burke Harrington and Darin Tucholke.
2. Use of fenced area surrounding the building for parking of business-related and/or personal vehicles (but not recreational vehicles or trailers pursuant to the standards for contractor storage).



**Figure 2: Lease Area Boundary**

From the application, the following description is provided by the Applicant:

*“The building will be used for construction material, vehicle, and tool storage for or related to Burke Harrington Construction. The leased area will be fenced and screened. There is very little or no activity on a daily basis. We do not run our company from this property so there is no employee parking or worker impact. We also use the building storage for personal and household goods that change with the seasons and storage of client belongings when renovating properties. It is a big convenient indoor space that meets our needs.”*



## **Planning Commission Review**

At their regularly scheduled meeting of August 26, 2020, the Minturn Planning Commission reviewed the CUP request during a properly noticed public hearing. Following presentation by staff and the applicant, the Planning Commission deliberated and voted unanimously to recommend approval of the CUP request with conditions.

## **Staff Recommendation**

During the Planning Commission hearing process, Town staff had originally recommended tabling of this review until such time that the Town can complete annual compliance reviews for all existing CUPs on UP property in the fall of 2020.

However, prior to the start of the Planning Commission meeting staff determined that this CUP application should be judged on its own merits and not be dependent upon audits or annual reviews of existing CUPs located elsewhere on UP property; that, as presented and if properly conditioned, this CUP application could meet the necessary findings for approval of a CUP. Staff notified the Planning Commission of this change in position during the public hearing. The Planning Commission's feedback was in favor of recommending approval with only a couple of concerns.

Therefore, as outlined within this report, **staff is recommending approval with conditions** of this Conditional Use Permit for Burke Harrington Construction.

## **II. Summary of Process and Code Requirements:**

A Conditional Use Permit (CUP) requires review by the Town of Minturn Planning Commission, as well as the Town Council - acting as the Town of Minturn Zoning Board of Appeals. The Planning Commission is responsible for forwarding recommendations to the Town of Minturn Town Council for approval, for approval with conditions, or denial of CUP requests in accordance with the standards, criteria and findings outlined in Section 16-21-620 – *Conditional Use*, Minturn Municipal Code.

Specifically, the Planning Commission's recommendation and any action of the Town of Minturn Town Council should be based on the following standards and findings:

*(e) Conditions and procedure of issuance.*

*(1) The Town Council may approve the application as submitted or may approve the application subject to such modifications or conditions as it deems necessary to accomplish the purpose of this Article, or the Town Council may deny the application*

*(d) Administrative procedure.*

*(1) Upon receipt of a completed and proper application, the Planning Director shall set a public hearing for the Planning Commission and give public notice as required by this Chapter.*

- (2) *Criteria; findings. Before acting on a conditional use permit application, the Planning Commission and Town Council shall consider the following factors with respect to the proposed use:*
- a. *The relationship and impact of the use on the community development objectives of the Town.*
  - b. *The effect of the use on distribution of population, transportation, utilities, schools, parks and recreational facilities and other public facilities and public facility needs.*
  - c. *The effect upon traffic, with particular reference to congestion, automotive and pedestrian safety, traffic flow and control, access, maneuverability and snow removal.*
  - d. *The effect upon the character of the area in which the proposed use is to be located, including the scale and bulk of the proposed use in relation to surrounding uses, the amount of noise, lighting and glare, dust and compatibility of the use with the Character Area it is in and surrounding areas.*
  - e. *Necessary findings. The Planning Commission and Town Council shall make the following findings before making a recommendation or decision that a conditional use permit be granted:*
    1. *That the proposed location of the use is in accordance with the purposes of this Chapter, the Community Plan and the purposes of the zone in which the site is located.*
    2. *That the proposed location of the use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.*
    3. *That the proposed use will comply with each of the applicable provisions of this Chapter.”*

### **III. Chronology/Background:**

In 2017, the Minturn Town Council listed compliance and enforcement of the Minturn Municipal Code, as well as adherence to recommendations of the 2009 Community Plan, as a priority for the entire town. In doing so, the Council also focused on uses and, in certain instances, ongoing code enforcement and nuisance-related issues occurring at the UP properties located within the “Game Creek Character Area PUD Holding Zone District” which is generally situated north of the Eagle River Inn and Saloon buildings, west of Taylor Avenue, and east of the Eagle River.

In order to address such issues and concerns, the Town initiated outreach to existing leaseholders on UP property in 2017 with several existing lease holders operating contractor storage, as well as commercial uses (Turn Table Restaurant and lodging uses) on UP property with the goal to allow those uses to continue, but only via the approval of Conditional Use Permits (CUPs) as a means to regulate those uses more closely through the imposition and enforcement of “conditions” or standards for storage (fencing, screening, hours of operation, for instance).

According to the Minturn Municipal Code, any uses occurring on the UP properties – located within the “Game Creek Character Area PUD Holding Zone District” - require the approval of a Planned Unit Development (PUD), or, if master planning the UP property is not proposed, a Conditional Use Permit. Unfortunately, UP has been largely uninvolved in the CUP process; typically, UP executes leases for various lease areas within the railroad property without consultation with the Town, leaving the Town to discover 1) new leases and uses occurring in the railyard through code enforcement activity, and 2) changes in lessors (subleasing) making it difficult for the Town to determine who to contact as a matter of code compliance.

Conditional Use Permits were ultimately issued in late 2018 for the following business entities operating with leases on the UP property:

- Burke Harrington Construction (BHC)
- Happy Hammer Carpentry (Cozzens Construction)
- The Turntable Restaurant / Minturn Mountain Motel
- Minturn Builders Alliance Cooperative

The 2018 CUPs were approved with the following conditions or standards:

1. Request that only business- related items related to the expressed business be located on leased property. No vehicle shall exceed 40' 2" in length.
2. No recreational vehicles or ATV' s of any kind. Not limited to boats, snowmobiles, ATV' s. RV' s, campers, pop-ups, conversion vans, trailers, un-related work vehicles, etc.
3. No inoperable / unlicensed vehicles kept on property for longer than five (5) days. Sec. 7-2-70.
4. Leased lots to be maintained in a clean and orderly condition, permitting no deposit or accumulation of refuse or materials other than those ordinarily attendant upon the use for which such premises are legally intended. Sec. 7- 4- 50.
5. Lessees are to maintain business in contained areas only.
6. Annual report by the Code Compliance Officer to Council — re: Violations
  - a. 3 violations in 1 year
  - b. Recommendation to Council to revoke CUP
7. Lessees to meet with Town Council every 3 years for CUP review.
  - a. Report from Code Compliance Office
  - b. Report from Planning Director
8. Hours of operation: 7 days a week. 7:00 a.m. to 7:00 p.m.
9. Maintain noise and vibration standards. Sec. 16-18-30
10. All leased areas to be fenced and screened (Green covering) on all perimeter fencing of leased property

11. Supplies, parking, vehicles, and equipment within fenced area or designated leased area only
12. Proper fuel containment/inspected by Eagle River Fire Protection District for small volume (less than 100 gallons) in OSHA approved containers.
13. All parking must be done within the fenced yard and/or building
14. Any chemical storage will require material safety data sheets. No chemical storage within 30' river setback
15. Emergency access of 20' through the yard and at both access gates
16. Off-season use will require site storage of snow and keeping emergency access cleared.
  - a. Maintain proper snow storage or sufficient snow removal
17. Conditional use granted as long as the applicant complies with the conditions and has a valid lease agreement with the owner of the property.
18. Town staff inspects the site for compliance at any time.

***Note: Staff is recommending approval of this CUP request with the above conditions. However, staff has also made slight revisions to the above standards or conditions as part of Section VII - Planning Commission and Staff Recommendation of this report. The revisions shown in Section VII are intended to clarify language and, in one instance, add a condition that puts the Applicants on notice that any material representations made in their written application or during hearing testimony will become conditions of approval, enforceable by the Town.***

Following approval of the CUPs, no significant code enforcement investigations or actions (notices of violation) on UP property were necessary or taken in 2019, with business activities occurring on each lease site in general compliance with the approved CUP terms of use.

However, in Spring 2020 the Town began receiving complaints regarding the state of some of the lease areas. Complaints and investigations by the Town identified issues related to:

- A lack of 100% screening (or lack of maintenance of green mesh fabric on fencing) of lease area boundaries
- Noise and/or hours of operation
- Use of sites for operation contractor yards rather than for “contractor storage”
- Parking of unregistered/unlicensed vehicles
- Storage of non-business-related vehicles, trailers and equipment

Following investigations by the Town, two CUP holders – Burke Harrington Construction and Minturn Builders Alliance – were notified of violations of the terms of their respective Conditional Use Permits. Following such notifications, both CUP holders worked with the Town staff to address complaints and to rectify violations prior to the Town needing to take action (i.e. levying of fines or pursuing action in the courts). To staff’s knowledge, both CUPs are now in compliance with the terms of their 2018 CUP approvals.

**General Chronology:**

- **September 2018** – Business owners operating on UP property applied for Conditional Use Permits to continue contractor storage/light industrial uses.

- **November 2018** – Following public hearings before the Planning Commission and Town Council, the Council signed resolutions permitting these uses conditional on adherence with the approved contractor standards.
- **December 2019** – Burke Harrington Construction obtained a new lease for a new storage site through Union Pacific Railroad but failed to apply for a new Conditional Use Permit for the new location.
- **May 2020** – The Town received several complaints regarding the storage of non-work-related vehicles; the absence of fencing and/or green screening around lease area boundaries; and, the operation of machinery outside of specified operating hours 7am-7pm.
- **June 2020** – Site visits were conducted with Minturn Builders Alliance representative and Burke Harrington to discuss issues of non-compliance.
- **June 2020** – Letters were sent to these CUP holders (Minturn Builders Alliance and Burke Harrington Construction) detailing specific areas of non-compliance and providing a warning period to correct the potential violations before official violation notices were sent.
- **July 2020** – Two violation notices were sent to Burke Harrington Construction for failure to remove a non-work-related vehicle and for failure to erect screening fence.
- **August 2020** – Burke Harrington Construction installed fencing and mesh screening material around the existing Conditional Use and lease area boundaries for BHC while also removing the offending vehicle on the existing CUP lease area.
- **August 2020** – Burke Harrington Construction applied for a new Conditional Use Permit for contractor storage at the proposed lease site.

#### IV. Zoning Analysis:

##### **Zoning**

The subject property is located within the “Game Creek Character Area” PUD Holding Zone District. The description and purposes of the PUD Holding Zone District are as follows:

***Sec. 16-12-10. - Character Area characteristics.***

*The Game Creek Character Area is visually prominent from the north entryway into the Town. The area is predominantly devoted to railroad use and will require a comprehensive planning effort prior to redevelopment. In addition to the rail yard, the area contains the Taylor Avenue neighborhood, some commercial uses and a community parking lot. The area is bisected by the railroad right-of-way, which is intended to remain as a continuous transportation corridor. Most of the area lacks adequate street rights-of-way and utilities. The Community Plan has identified this area as an appropriate area for extension of the Old Town commercial core, mixed-use and residential development; however, high impact industrial uses are discouraged. Enhancement of the Eagle River corridor is a community priority.*

- Town of Minturn Municipal Code Section 16-12-10

**Sec. 16-12-30. - Game Creek PUD Holding Zone.**

- (a) *This area is currently owned by the Union Pacific Railroad; however, trains are no longer utilizing the corridor or the rail yard. **The historic industrial zoning is no longer appropriate due to the probable abandonment of the rail line and potential conflict with future commercial and residential development.** Redevelopment of this area will have a significant impact on the future character and size of the Town.*
  
- (b) *It is an objective of the Town to plan and redevelop the rail yard as a master planned development that is compatible with the existing Town character. Future development and land use decisions for this area need to incorporate community input and involve an open public process. The PUD Holding Zone and the PUD review process will provide for the flexibility, innovation and public input necessary to achieve the goals and objectives of the Community Plan and this Chapter. This area has been identified in the Community Plan as an area suitable for expansion of Old Town and as a "potential Town Center" site. Development in this area needs to incorporate appropriate residential and low-impact land uses along Taylor Avenue to minimize impacts to the existing neighborhood. The rail corridor should be maintained and improved access to and across the Eagle River should be incorporated into proposed development plans.*
  
- (c) *PUD or special review required: Planned Unit Development master development plan for the PUD Holding Zone is the preferred review process for future development of the Game Creek Holding Zone. **If circumstances arise that do not provide for the submittal of a PUD master development plan for the entire Game Creek PUD Holding Zone, the owners may apply to the Town for a Planned Unit Development on a portion of the property or may apply for a special review use permit for consideration of a temporary use.***

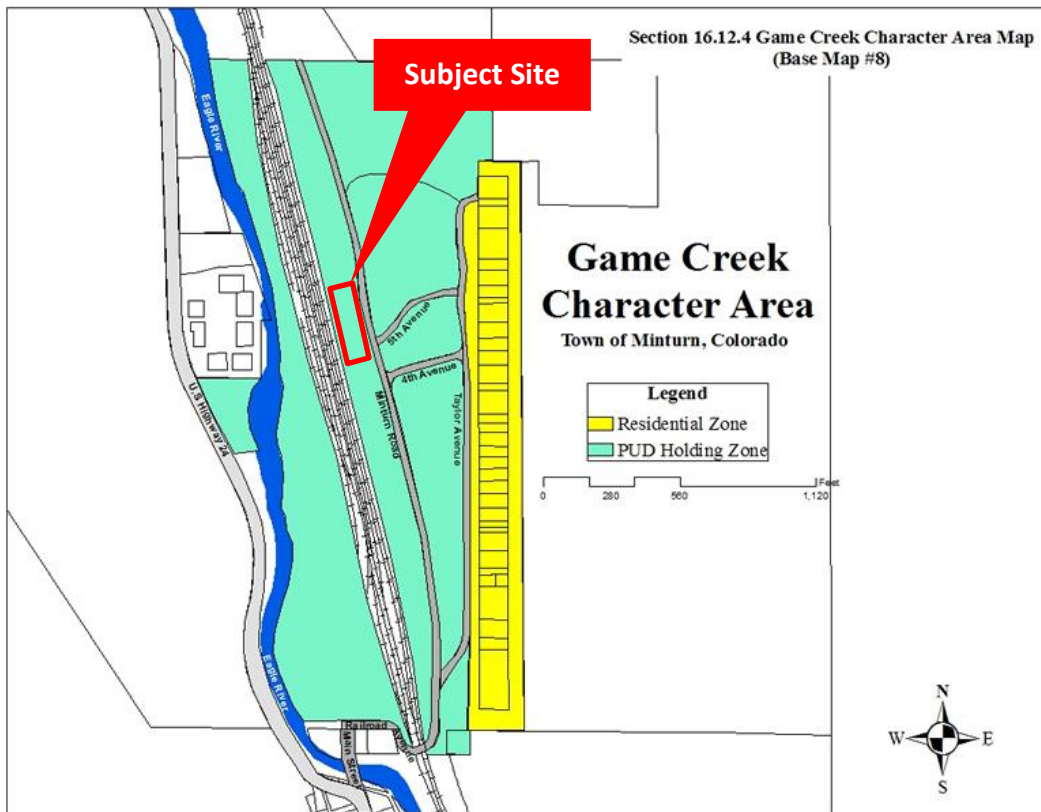


Figure 3: Game Creek Character Area Zoning Map

### Dimensional Limitations and Development Standards

The only applicable dimensional limitation and/or development standard for the PUD Holding Zone is the 30’ river setback to be measured from the mean highwater mark on the Eagle River. The lease area boundary for the proposed Burke Harrington Construction Conditional Use Permit is located approximately 50 feet from the Eagle River.

Because it is anticipated by the Town that any future development or redevelopment of the holding zone will be master planned and reviewed as part of a Planned Unit Development (PUD) or special use permit, dimensional limitations and other standards are also anticipated to be established as part of any such review.

The Town of Minturn Design Standards and Guidelines, under Section C – *Design Criteria*, subsection ‘c’ – *Materials and Screening*, offers the following guidance:

#### c. Screening

*Both residential and commercial areas within the Town shall be required to screen certain visually obtrusive areas, including, but not limited to, refuse storage, general storage, loading areas, mechanical equipment and parking areas.*

*“The screening may occur with landscaping, compliant with Sections 16-16-140, 16-16-150 and 16-16-160, or these uses may be screened with fencing or by*

*containing the uses within a structure or parapet walls. Fences shall not exceed 3-feet in height for opaque fences and 4 feet in height for fences with you can see through. Higher fences may be used to screen the sides and rear of the lot but should not exceed 6 feet in height. In no case shall a fence or screening structure obstruct a driver's view of an intersection.”*

## V. Issues and Discussion Topics:

### **Visibility / Unsightliness**

While a majority of equipment and/or personal items associated with this CUP request are to be stored within an existing building, areas outside the building and within the lease area will be used for storage and parking of occasional vehicles and trailers as well. This area is visible from certain vantage points from Taylor Avenue residential zone district and U.S. Highway 24. The site currently has fencing installed at the lease area boundary surrounding the building and green mesh screening will be installed in the event the CUP is approved by the Town (the applicant was instructed by Town staff to not install screening until such time that the CUP was acted upon).

As with CUPs approved in 2018, certain conditions and standards directed at ensuring that the site is maintained in an orderly fashion and also limiting the storage of certain equipment and/or vehicle types and sizes will apply to this CUP.

An advantage in this case – for the Applicant and the Town – is the fact that the existing building is fully enclosed, in relatively good condition and repair, and, if items are concentrated within the building, should serve to reduce any visual impacts from the storage of materials.

During the Town Council’s review of this request during their regularly scheduled public hearing of September 2, 2020, the Applicant was asked if he had any plans to paint or improve the existing building. This issue should be discussed further.

### **Contractor Storage vs. Active Contractor “Yard”**

During the Town Council’s review of this request, general questions arose regarding the definition of “Contractor Storage” and what types of activities should be expected or permitted on lease sites. The concern is that passive storage uses generally generate few or less impacts than an active contractor yard where machinery (some of it heavy machinery or equipment) is used to operate a landscaping operation, for instance.

For the Town’s purposes, the following definitions of “Contractor Storage Yard” are provided (source: American Planning Association’s “Planner’s Dictionary”):

“An unenclosed portion of the lot or parcel upon which a construction contractor maintains its principle office or a permanent business office. Designation of the lot or parcel as a contractor storage yard would allow this are to be used to store and maintain construction equipment and other materials customarily used in the trade on by the construction contractor. If permitted to be used in this manner, the entire lot or parcel would then be classified as a “contractor storage yard” and will be required to conform to all applicable zoning district standards and other legislative regulations.” (*Wheeling, Ill.*)



“Any land or building used primarily for the storage of equipment, vehicles, machinery (new or used), building materials, paints, pipe, or electrical components used by the owner or occupant of the premises in the conduct of any building trades or building craft.” (*Santa Rosa, Calif.*)

“Storage yards operated by, or on behalf of, a contractor for storage of large equipment, vehicles, or other materials commonly used in the individual contractor’s type of business; storage of scrap materials used for repair and maintenance of contractor’s own equipment; and buildings or structures for uses such as offices and repair facilities.” (*Truckee, Calif.*)

“An establishment used for the outdoor repair, maintenance, or storage of a contractor’s vehicles, equipment, or materials.” (*Milwaukee, Wis.*)

Staff suggests that, for the most part, the Town has considered and approved the existing Conditional Uses occurring on UP property as areas where equipment, materials and vehicles associated with contractor businesses is stored and or repaired on a temporary basis; not as areas for the conduct of contractor businesses or light-industrial activities involving the daily use of equipment and machinery.

#### **Annual Review vs. Review Every Three Years**

Another issue requiring clarification based on the 18 original criteria or “conditions” applied to the Union Pacific Railroad contractor storage CUPs was a requirement for regular review of the CUPs for compliance with the terms of approval. In one condition, Town staff is to notify CUP holders and the Council at any time that a CUP is cited for three (3) or more violations in one year; in another condition, the Town and CUP holder are to review the CUP for compliance every three (3) years regardless of any violations.

Staff suggests that the intent when these criteria or conditions were drafted in 2018 was to require annual review of each CUP (see attached Council meeting minutes from public hearing of November 7, 2018). Staff has suggested changes to the language to reflect this intent.

#### **Parking Outside Lease Area Boundaries**

During the course of responding to complaints regarding parking of vehicles outside of screened lease area boundaries in the spring of 2020, staff discovered inconsistencies in the way that parking is addressed in the 18 original criteria or “conditions” and the understanding that certain existing CUP holders may have based on their testimony at public approval hearings in 2018.

Condition No. 11 reads, “*Supplies, parking, vehicles, and equipment within fenced area or designated leased area only,*” while Condition No. 13 states, “*All parking must be done within the fenced yard and/or building.*”

In reviewing the minutes from the public hearing held November 7, 2018 (attached), it appears that parking/storage outside of lease area boundaries was addressed by one Council member, with the CUP applicant stating that fencing would be extended to include and screen such parking.

Staff is of the understanding that Union Pacific Railroad representatives have informed lease holders that “day parking” by the public (or employees of contractor businesses) can occur on the UP property, specifically outside of lease area boundaries; and, that UP prefers that lease holders using such day parking areas NOT fence and screen areas that are not included within lease area boundaries.

This leaves the Town in an awkward position. While there are, effectively, no permitted uses ‘by right’ on the UP property (unless approved via the PUD or CUP process), questions arise as to whether the Town has the resources to police and enforce day parking uses on the UP property, even if the vehicles parked on a daily basis are related to the business operations of CUP and lease holders.

That being said, the original intent of the conditions requiring parking to be within lease area boundaries (and screened from view) is clear.

### **Planning Commission Review**

During the Planning Commission’s review, the Commission confirmed that Darin Tucholke is a co-signer on the Union Pacific lease agreement. The Planning Commission asked that, for the record, Mr. Tucholke be listed as a co-applicant on the CUP application. The Commission also clarified, and Mr. Harrington confirmed, that Mr. Tucholke – owner of West Vail Shell station and Vail Valley Towing – would not be using the lease area for storage of business related vehicles (tow trucks, for instance) or towed or inoperable vehicles associated with his local business operations.

Another issue raised concerned fencing, with the Planning Commission confirming that the fencing erected around the lease area does not impact the adjacent gravel road. The Commission stated that there should be no fencing or gating installed across this access road.

## **VI. Staff Findings and Analysis:**

The following section provides staff responses to each of the applicable Conditional Use criteria.

### ***a. The relationship and impact of the use on the community development objectives of the Town.***

#### **Staff Response:**

Under “Community Character / Urban Design” of the 2009 Community Plan (the Town’s comprehensive plan), strategy number CCS 1.8 states – “*Enforce ordinances aimed at maintaining the health, safety, welfare and aesthetic of the town – snow, trash, nuisance abatement and zoning/land use.*”

Under “Economy” of the 2009 Plan, the Economy vision statement states, in part, that “*A diverse mix of businesses catering to the local community and tourist are necessary for a stable, year-round economy. Special efforts should be made to promote the existing businesses in town and to also facilitate new business development.*”

In 2018, the intent of the Town – working *with* existing lease holders to identify and propose solutions to existing conditions and issues – was to provide the CUP process so that existing uses could continue as a means to protect existing business operations in the Town while also allowing the Town to regulate such uses and enforce Town Code provisions for safety, nuisances, and general aesthetics. Ultimately, the goals of this process were to:

- Maintain the diversity and mix of businesses
- Contribute to the year-round economy
- Protect the health, safety, welfare, and the aesthetics of the town.

Testimony and participation at public hearings before approval of the CUPs led to the development of the contractor storage criteria and “conditions” - essentially terms of use that were attached to the CUPs as conditions of approval.

However, in the interim two years, compliance with those conditions – and maintenance of the sites - has waned or was never fully realized in some instances. In other instances, original lease and CUP holders have since sub-leased their areas to secondary users who may or may not have been aware of the terms of use.

In 2020, this has resulted in numerous complaints being received by the Town and has caused the Town to spend considerable time and resources responding to those complaints while increasing monitoring of business operations and existing conditions at all of the existing CUP lease areas.

The UP property – and the lease areas - is one of the first things people see when they enter Town from the North, and often it is not an aesthetically pleasing sight. While it is true that this is a unique piece of land which allows light industrial/contractor storage uses that are not permitted elsewhere in Town and thus adds to the diversity and mix of businesses, it has become apparent that more work is needed to ensure that such uses can remain in this area while not becoming a detriment to the image of the town, the enjoyment of adjacent or nearby properties, or the resources and efficacy of the Town government.

In accordance with the original intent of the CUP criteria and conditions, the Town will be conducting reviews of each existing CUP in fall 2020 primarily to re-examine the 18 conditions/terms of use to better understand which standards are “working” or enforceable, and which are not. Staff will likely recommend revisions to the list of eighteen standards for contractor storage at that time.

That being said, staff is reviewing the current CUP request for Burke Harrington Construction and Darin Tucholke on its own merits; staff’s position is that if the use is properly conditioned and if the Applicants maintain the use and the property as represented in the application and in testimony given during public hearings, the use can meet this criteria.

- b. *The effect of the use on distribution of population, transportation, utilities, schools, parks and recreational facilities and other public facilities and public facility needs.*

**Staff Response:**

The intended use of the lease area, inclusive of parking and requested storage uses within an existing building and within the lease boundaries, likely will have minimal material impact or effect on the distribution of population, transportation, utilities, schools, parks and recreational facilities and other public facilities and/or needs.

- c. *The effect upon traffic, with particular reference to congestion, automotive and pedestrian safety, traffic flow and control, access, maneuverability and snow removal.*

**Staff Response:**

Use of the proposed lease area for contractor storage associated with an existing business in close proximity to an existing storage site associated with the same business will likely not result in a material increase in local traffic, congestion, pedestrian safety, traffic flow and control, access, maneuverability and snow removal in the immediate vicinity of the subject property.

- d. *The effect upon the character of the area in which the proposed use is to be located, including the scale and bulk of the proposed use in relation to surrounding uses, the amount of noise, lighting and glare, dust and compatibility of the use with the Character Area it is in and surrounding areas.*

**Staff Response:**

Staff believes that the main factor impacting the character of the surrounding area or, importantly, the compatibility of the use within the Game Creek Character Area is the visual or aesthetic quality of the lease area. The Applicant has stated that his intent is to primarily utilize an existing building for storage of materials and equipment; and, to not use the lease area outside that building but for occasional parking of personal vehicles. Fencing has already been erected around the lease area boundaries and green mesh screening will be installed in the event that this CUP request is approved. No additional site (exterior) lighting is proposed with this CUP request and staff does not anticipate that the use of the building will generate noise, glare, or dust. The proposal does not include any activities outside the building other than parking of vehicles and/or trailers.

- e. *Necessary findings. The Planning Commission and Town Council shall make the following findings before making a recommendation or decision that a conditional use permit be granted:*

1. *That the proposed location of the use is in accordance with the purposes of this Chapter, the Community Plan and the purposes of the zone in which the site is located.*

**Staff Response:**

Generally, the subject site is located within a historically industrial and commercial area. Yet, the Town's master plan and guiding policy statements for the Game Creek

Character PUD Holding Zone anticipate the discontinuance of industrial uses in favor of commercial and residential re-development:

*“The Game Creek Character Area is visually prominent from the north entryway into the Town. The area is predominantly devoted to railroad use and will require a comprehensive planning effort prior to redevelopment. In addition to the rail yard, the area contains the Taylor Avenue neighborhood, some commercial uses and a community parking lot. The area is bisected by the railroad right-of-way, which is intended to remain as a continuous transportation corridor. Most of the area lacks adequate street rights-of-way and utilities. The Community Plan has identified this area as an appropriate area for extension of the Old Town commercial core, mixed-use and residential development; however, high impact industrial uses are discouraged. Enhancement of the Eagle River corridor is a community priority.”*

- Town of Minturn Municipal Code Section 16-12-10

It should be noted that the Community Plan does provide goals and strategies geared toward supporting existing businesses, and the uses proposed for this CUP primarily include storage within an existing building. As such, staff suggests that the use proposed does not constitute “high impact industrial uses.”

A primary purpose of the Conditional Use Permit review is to ensure that permitted uses are, in effect, temporary and inspected on some regular basis for compliance; that, any such approval granted by the Town is valid so long as the terms and conditions are adhered to which has been an issue with existing contractor storage CUPs in recent months requiring more staff time than originally anticipated.

For these reasons, Planning Commission is recommending that the Town Council *approve with conditions* the proposed Burke Harrington Construction/Darin Tucholke Conditional Use Permit application.

- 2. That the proposed location of the use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.*

**Staff Response:**

Generally, the location and uses proposed, if properly conditioned, should not be detrimental to the public health, safety or welfare, nor should they be materially injurious to the properties or improvements in the vicinity if the site is maintained in accordance with the standards of the Minturn Municipal Code and any conditions of approval.

- 3. That the proposed use will comply with each of the applicable provisions of this Chapter.*

**Staff Response:**

If appropriate conditions of approval are attached with any granting of a CUP in this instance, and if such conditions are adhered to by the Applicant and enforced by the Town, staff believes that this finding can be met.

**VII. Planning Commission and Staff Recommendation:      Approval with Conditions**

Staff and the Minturn Planning Commission are recommending approval with conditions of this CUP request. In the event the Town Council votes to approve this request, staff respectfully forwards the following suggested conditions (**bold** text represents suggested revisions to verbiage) or terms of use for the CUP:

1. **All material representations made by the Applicant as part of the application and during public hearings on the matter shall become conditions of approval and enforceable by the Town.**
2. Only business-related items related to the expressed business **activities approved with this CUP** shall be located on leased property. No vehicle shall exceed 40' 2" in length. **This restriction does not apply to storage containers that may be used for storage of materials and equipment associated with or incidental to the business operations approved under this CUP. Such container(s) must be maintained in an orderly manner; must be contained and screened to the greatest extent possible with fencing and green mesh screening materials; and, shall not be stacked.**
3. No recreational vehicles or ATVs of any kind are permitted **within lease areas. Such restriction includes but is not limited to boats, snowmobiles, ATVs, RV's, campers, pop-ups campers, conversion vans, as well as trailers, un-related work and/or vehicles unrelated to the permitted business activities etc.**
4. No inoperable ~~or~~ **unlicensed vehicles are to be kept on the property for longer than five (5) days (pursuant to Section 7-2-70 Minturn Municipal Code).**
5. Leased lots **associated with the CUP** are to be maintained in a clean and orderly condition, permitting no deposit or accumulation of refuse or materials other than those ordinarily attendant upon the use for which such premises are legally intended (**pursuant to Section 7-4-50 Minturn Municipal Code**).
6. Lessees-CUP holders are to maintain and conduct business ~~in-contained~~ **within the lease areas associated with the approved and valid CUP only.**
7. **Each CUP will be subject to Annual review by the Town staff with regard to compliance with the terms of use and conditions of approval associated with the CUP. The Town staff shall provide a report to the Town Council following such annual review. The report shall, in a general manner, provide updates on the following:** ~~report by the Code Compliance Officer to Council re: Violations w~~
  - a. ~~3 violations in 1 year~~ **Any violations or other incidences requiring staff response and Town resources out of the ordinary course of Town business and services.**
  - b. **Compliance with the overall terms of use permitted by the CUP as well as observations regarding the condition of the lease/CUP area.**
  - c. **Any changes in i) Lessee/Sub-Lessee; and, ii) uses within CUP area.**
  - d. **Any Recommendation to Council to amend, suspend or revoke the CUP.**

8. Lessees **are required** to meet with **the** Town Council every **three (3)** years for CUP review. **The review shall include but not be limited to inspections by Town staff and the following reporting:**
  - a. Report from Code Compliance Office
  - b. Report from Planning Director
9. Hours of operation: ~~7 days a week. 7:00 a.m. to 7:00 p.m.~~ **6 days per week (M-Sat); 7:00 a.m. to 7:00 p.m., unless otherwise approved by the Town Council as part of the CUP approval and terms of use on a case by case basis.**
10. **All uses and occupancy associated with activities approved for each individual CUP shall ~~Maintain~~ adhere at all times with the noise and vibration standards of the Town (pursuant to Section 16-18-30, Minturn Municipal Code).**
11. All leased areas **associated with the CUP must** ~~to~~ be fenced and screened (green mesh screening materials) **along ~~on all~~ the perimeter fencing** of leased property.
12. Supplies, parking, vehicles, and equipment **associated with the approved CUP and business activities therein** shall be located only within fenced **and screened** areas ~~or designated leased area only.~~
13. Proper fuel containment  ~~/~~ **(to be** inspected by Eagle River Fire Protection District for small volumes (less than 100 gallons) shall be required in OSHA approved containers.
14. All parking must be located within the fenced yard and/or building(s) associated with the approved CUP.
15. Any chemical storage will require material safety data sheets be maintained on the lease site at all times. No chemical storage is permitted within **the 30' ~~river~~ live stream** setback areas along the Eagle River **and/or Game Creek.**
16. Emergency access of 20' through the Union Pacific railyard and at both access gates shall be maintained.
17. Off-season use will require site storage of snow and keeping emergency access cleared.
  - a. Maintain proper snow storage or sufficient snow removal.
18. Conditional Use Permit is granted conditional upon the applicant complying with these standards and so long as the grantee maintains a valid lease agreement with the owner of the property.
19. Town staff may inspect the site for compliance at any time.

Michael S. updated that recent state legislation requires this adaptation to our municipal code. This Ordinance states that a first or second appearance would not request jail time. Further the code sites possible jail time in other areas of the municipal code and this is resolved to produce code uniformity.

Public Hearing opened

No comment

Public hearing closed

Motion by Chelsea W., second by Brian E., to approve Ordinance 07 – Series 2018 (First Reading) An Ordinance amending the Minturn Municipal Code to provide for a standardized general penalty and counsel for indigent defendants as presented. Motion passed 7-0.

*NOTE: At this time the Council sat as the Zoning Board of Appeals for the Town of Minturn.*

**11. Public Hearing/Action: Resolution 26 – Series 2018 a Resolution modifying a Conditional Use Permit in a PUD Holding Zone to Minturn Builders Alliance Cooperative for Contractor Storage – Hunn**

Matt S. asked if any Council Member had had any conversations. He did state that John and he had had a conversation, however, it was of a general nature and did not specifically related to any of the items scheduled to be heard tonight.

Scot H. updated the Council with the uses and issues of the CUP requests. He stated there is a general staff report on the process and code requirements and then there is a staff report for each request specifically. Matt S. stated the CUP is a process that we have been working on for some time and this is part of that cleanup process.

Scot H. presented a map of a section of the railyard property which is affected by the petitions. All CUP's are located on the UPRR parcel known as the Rail Yard. He stated this parcel is located in the Game Creek Character Area and is a PUD Holding Zone and requires either a complete PUD or a CUP for single leases. He noted none of the uses are allowed in the zone or the adjacent residential areas of Taylor St.

Scot H. noted necessary findings. The Planning Commission and Town Council shall make the following findings before making a recommendation or decision that a conditional use permit be granted:

1. That the proposed location of the use is in accordance with the purposes of this Chapter, the Community Plan and the purposes of the zone in which the site is located.
2. That the proposed location of the use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.



3. That the proposed use will comply with each of the applicable provisions of this Chapter.

Scot H. outlined the nineteen standard conditions developed by Staff which could be approved or denied on an individual basis as they pertain to the specific CUP. These conditions are part and parcel of each CUP as modified by the Planning Commission.

Scot H. read into the record public comments from Ms. Sue Williams who spoke in opposition to the CUP request.

Scot H. again noted the Planning Commission approved the CUP for the Minturn Building Alliance Cooperative as presented tonight.

Mr. Reid Phillips spoke as the applicant. He stated they have been on the land for years and have cleaned up the property continually at considerable cost. He noted all costs for conditions and cleanup fall to the lease holder, UPRR does not pay for any efforts nor provide any maintenance money. He stated this is CUP and the affected land lease is a significant asset to the individual businesses represented by the Cooperative. Mr. Reid stated they are in support of the CUP as presented.

Michael S. stated that there have been significant issues of occupied trailers used as living quarters in the overall area and felt it important that the condition of no camper trailers be added to the list of the conditions. It was noted this was Condition #2 which had been deleted by the Planning Commission in their review.

Chelsea W. asked regarding the campers; Mr. Phillips stated that they do store personal recreational equipment on the lot but it is kept within the confines of the leased lot area. He felt that because they are paying to lease the land that this should be allowed. He did understand the lodging concern and felt that was reasonable.

Brian E. said it appeared a portion of his leased area is not within the fence. Mr. Phillips confirmed this and with approval they would extend the fence to the lease lot line.

Terry A. asked regarding the personal subrental of ATV and personal storage. She asked if this would require a business license or sales tax; no this would not be taxable.

Public Hearing was opened,

Ms. Shelley Bellm, 470 Pine St, stated previous Councils have worked tirelessly to clean up the town and felt this was a blight on our town's front door. She stated storage such as this is not allowed in town, it is not an oversight in the code. Long-term storage of personal recreational and vehicular storage is not allowed and has never been the intention of the town. She stated she is required to have parking on her property and this should not be allowed as a business.

Mr. Sean Cozzen, applicant for Cozzens Construction, stated his leased property is private property and he should be allowed to park storage thereon.

Mr. Chuck Shaffley, 101 Lion's Ln, spoke that the condition of unlicensed vehicles should be extended to any vehicle. He felt some flexibility should be allowed to create a middle ground.

Mr. David Clapp, 392 Taylor St, spoke in opposition of allowing personal storage. He stated the entire railyard area is cluttered and unsightly. He stated the Depot has recently been torn down in an effort to clean up the site and as a safety concern. He felt the entire railyard should be converted to open space. He stated these leases generate zero money in taxes or revenue.

Mr. Darren Tacholke, 530 Taylor, spoke in opposition and cited the Minturn Community Plan and the Minturn Advisory Committee stating that it encouraged the character of Minturn. He stated the land was originally for railroad and industrial but over the years this has changed with trains no longer running and now includes adjacent areas of wildlife migration, residential housing, and the like. The Plans cite that other than railroad use it should be limited to low impact uses. He concurred with the Open Space concept and encouraged such use. He reminded the Council of the character areas throughout town and stated those are the foundations of our town.

Ms. Sidney Harrington, 532 Taylor St., noted the screened fencing becomes dilapidated quickly and felt the town should build a berm or plant trees. She stated that the residents of Taylor St look down on the railyard and since they are higher than the property, fencing does not help. She stated one of the lease holders, not requesting a CUP, has declared bankruptcy. She felt other areas such as the trailers at 545 Taylor should be included in the discussion in opposition of the leased use for the entire project.

Ms. Sage Pierson, 156 Lions Lane, spoke in opposition. She felt the reviews should be annual not every three years. She stated the town should look at other parcels that are ugly lease areas in town as well. She stated there is so many trailers and snowmobile storage that it is like looking at a giant parking lot.

Public Hearing was closed.

Chelsea W. supported the list of conditions and felt that all the conditions should apply.

Discussion ensued as to how these uses will affect the future uses of land and adjacent areas. To make exceptions in this area may lead to exceptions throughout town. It was noted that the cleanup is being addressed town wide and we have many successes. These successes have required citizens to address their property on a town wide basis.

Earle B. stated he did not condone living in campers and RV's. He also stated that simply because you hold a lease on a property does not give you the right to non-business-related storage.

John W. concurred with the nonbusiness related storage. He stated he supported the conditions and did not want to provide exceptions.

Chelsea W. empathized with the lease holders but supported upholding all the conditions.

Matt S. summarized that condition #2 should not be excluded. He noted that the enforcement would be an ongoing practice at Staff level and then they would be reviewed by Council every three years unless brought by Staff earlier due to violations. Michael S. stated the staff would review annually and if no violation concerns then the CUP would be council reviewed every three years.

Brian E. confirmed that the list of conditions is going to be used as a generic CUP application for the area; yes. He continued that if we approve the CUP's tonight then they would include these conditions; correct. Michelle M. stated the Planning Commission tasked Staff to create a template to streamline CUP's for this area, it is not necessarily a template for the entire town. Brian E. stated he has lived in the Taylor area. He felt a clean and uniform area is what we should strive for. He felt the conditions as proposed should be the template, he agreed with the three year, and he agreed with the three issues in one year.

Matt S. asked if a CUP is denied how would that affect their UPRR; Michael S. stated there is no use by right on the railyard so it would affect their lease and use.

Scot H. stated in response to a question from George B., the overall use and vision for the entire parcel is a PUD process with the intent to best compliment the proposed PUD use with the existing town. If a developer buys a section of the total property they should be able to rely on the PUD and that UPRR will maintain their remaining parcel.

Discussion ensued on the other conditions such as haz-mat storage; the applicant confirmed they only need some small containers and would not require on-site bulk storage. Scot H. stated the remaining conditions are easily enforced.

Motion by Earle B., second by Terry A., to approve Resolution 26 – Series 2018 a Resolution modifying a Conditional Use Permit in a PUD Holding Zone to Minturn Builders Alliance Cooperative for Contractor Storage as presented with the inclusion of condition #2. Motion passed 6-1. Chelsea W. voted nay.

Staff will work with the applicant to ensure a timely but fair compliance schedule.

**12. Public Hearing/Action: Resolution 27 – Series 2018 a Resolution granting a Conditional Use Permit in a PUD Holding Zone to Cozzens Construction for Contractor Storage – Hunn**

Public hearing opened

Scot H. stated their issues were similar and recommended the same standards be applied.

Sean Cozzen, 601 Main St, applicant, noted the resolution needed to be modified to reference his property correctly; this will be done. He stated there is zero subletting for storage, only he and his employees use the space. He will step up enforcement of his employee's utilization. He stated that the 2 RVs and the boat storage are owned by Cozzens's Construction. The RV's are used for

use on the various construction sites for break rooms, the boat is used for employee entertainment. Matt S. stated the storage should not be allowed. Michael S. stated many companies own buildings and that does not give them the right to store unsightly use at that building.

No public comment.

Public Hearing was closed.

Mr. Cozzen asked about the timeline of compliance. Staff is looking for a date and will work with that. Council directed 30 days which can be additionally considered by Staff based on need.

Motion by Terry A., second by Brian E., to approve Resolution 27 – Series 2018 a Resolution granting a Conditional Use Permit in a PUD Holding Zone to Cozzens Construction for Contractor Storage as presented with the addition of #2 and the correction to Cozzens's Construction typo as noted. Motion passed 7-0.

Staff will work with the applicant to ensure a timely but fair compliance schedule.

**13. Public Hearing/Action: Resolution 28 – Series 2018 a Resolution granting a Conditional Use Permit in a PUD Holding Zone to Burke Harrington Construction for Contractor Storage – Hunn**

Scot H. noted there were no notable differences and recommended the same considerations.

Ms. Sidney Harrington, applicant, stated she felt their application was different from the others as there is a need for long-term public storage such as they provide. She noted the cleanup that has been done on the property at the leasee's cost. She stated they live on Taylor and they drive by and maintain the property as needed. She felt consideration should be given that none of the other applicants live in the area. She stated the area is an industrial area and that is a consideration too. She asked about the Minturn Market and its overflow parking; Michelle M. stated the town will help to alleviate the issue and that Market parking will be addressed too in an effort to contain it within the public parking areas of town. Discussion ensued on the fencing, etc.

Public hearing was closed.

Motion by Earle B., second by George B., to approve Resolution 28 – Series 2018 a Resolution granting a Conditional Use Permit in a PUD Holding Zone to Burke Harrington Construction for Contractor Storage as presented with the inclusion of condition #2 and the correction of the typos. Motion passed 7-0.

Staff will work with the applicant to ensure a timely but fair compliance schedule.

**14. Public Hearing/Action: Resolution 29 – Series 2018 a Resolution modifying a Conditional Use Permit in a PUD Holding Zone to The Turntable Restaurant and Minturn Mountain Hotel – Hunn**

Scot H. stated the request is to change some of the uses. He noted they have an existing CUP and they are requesting modifications. The concern is that parking required for the operation of the hotel/restaurant is being used for leased purposes.

Mike Dennis, applicant, stated in light of the previous discussions they will pull their request. They stated they will comply with the existing CUP conditions. He reminded the council that this will be a loss of income and it will be costly for them to comply. He stated the entire project has cost \$500,000. They have made significant strides and will continue to make improvements.

Public Hearing opened.

Ms. Sidney Harrington, 532 Taylor St., stated they have good intentions but the good intentions are not working. She stated there is a petition which will go to UPRR requesting them to demolish the blighted hotel. She stated this is a nonconforming use which has been grandfathered in and that is unacceptable. She stated the long-term residency does not serve our community or economic viability. She included the trailers associated with the hotel in the area of 4<sup>th</sup> and Taylor in her comments. She asked the town to consider options to lessen the impact on the neighborhood.

Ms. Jill Koellhoffer, 532 Taylor St, addressed her comments to the condition of the property. She felt a screen fence should be erected to surround the sides and back of the property.

Mr. Garth Koellhoffer, 532 Taylor St, stated the property is a nuisance and a safety hazard that is not an asset to the town.

Matt S. stated although there have been concerns he appreciates the efforts they as owners have put in to the property.

Public hearing was closed.

Motion by Brian E., second by Terry A., to table to matter to the November 21 meeting. Motion failed 3-4. Nay: John W., Earle B., George B., and Matt S.

Motion by John W., second by Chelsea W., to approve Resolution 29 – Series 2018 a Resolution modifying a Conditional Use Permit in a PUD Holding Zone to The Turntable Restaurant and Minturn Mountain Hotel with existing conditions 1-11 plus new conditions #2, #3, #6 and #7. Motion passed 5-2. Nay: Terry A. and Brian E.

Glenwood Springs – Main Office

201 14<sup>th</sup> Street, Suite 200  
P. O. Drawer 2030  
Glenwood Springs, CO 81602

Aspen

323 W. Main Street  
Suite 301  
Aspen, CO 81611

Montrose

1544 Oxbow Drive  
Suite 224  
Montrose, CO 81402

Office: 970.945.2261

Fax: 970.945.7336

[\\*Direct Mail to Glenwood Springs](#)

DATE: September 10, 2020  
TO: Minturn Mayor and Council  
FROM: Karp Neu Hanlon, P.C.  
RE: Ordinance No. 10 – Food Vendors Amendments

---

At the first August meeting, Council approved on second reading an ordinance providing for the operation and regulation of food trucks, trailers, and carts (“Outdoor Food Vendor”) in the Town. At both readings there were several amendments offered to the ordinance. Despite our best efforts, we believe that one amendment to remove a four hour time limitation on the location of an Outdoor Food Vendor during a single day. The attached ordinance will repeal that time limit on operations.

**TOWN OF MINTURN, COLORADO  
ORDINANCE NO. 10 – SERIES 2020**

**AN ORDINANCE OF THE TOWN OF MINTURN,  
COLORADO PROVIDING FOR THE REGULATION OF  
OUTDOOR FOOD VENDORS.**

**WHEREAS**, the Town of Minturn (“Town”) is a Colorado home rule municipality organized pursuant to Article XX of the Colorado Constitution and with the authority of the Town of Minturn Home Rule Charter for which the Minturn Town Council (“Town Council”) is authorized to act; and

**WHEREAS**, on August 19, 2020 the Town Council approved Ordinance No. 09, Series 2020 providing for the operation and regulation of Food Trucks, Food Carts, and Food Trailers (together “Outdoor Food Vendors”) within the Town; and

**WHEREAS**, staff has determined that the restriction contained in the adopted ordinance prohibiting Outdoor Food Vendors from remaining in the same location for a period greater than four hours is unnecessary and contrary to the successful operation of such businesses; and

**WHEREAS**, the Minturn Town Council finds and believes that it is necessary and proper to amend the Minturn Municipal Code to repeal the restriction on Outdoor Food Vendors from operating at the same location for a period greater than four hours.

**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. Section 6-8-40 of the Minturn Municipal Code is hereby amended read as follows, with additions shown in double underlined text and ~~strike-through language is deleted~~. . Sections of Chapter 6 which are not expressly described in this Ordinance are deemed to continue to be in full effect without change.

**Sec. 6-8-40. – Outdoor food vendor regulations.**

Outdoor food vendors shall be subject to each of the following regulations:

- (a) Outdoor food vendors may only sell food and non-alcoholic beverages.
- (b) Outdoor food vendors may operate between 7:00 a.m. and 11:00 p.m. ~~for no more than four (4) total hours per day at any one location.~~
- (c) An outdoor food vendor is responsible for maintaining the area within and in proximity to the cart or truck, display apparatus or permitted vending location area in a neat, clean and hazard-free condition, including, without limitation, the disposal of all trash and the storage of all carts, trucks and display apparatus off public rights-of-way when not in operation. Vendors shall provide for

the disposal of trash by customers. No liquid wastes shall be discharged from the food truck onto the ground (with the exception of clean ice melt)

**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 16<sup>th</sup> DAY OF SEPTEMBER, 2020. 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 7<sup>TH</sup> DAY OF OCTOBER, 2020 AT 5:30p.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 7<sup>th</sup> DAY OF OCTOBER, 2020.**

**TOWN OF MINTURN, COLORADO**

\_\_\_\_\_  
**John Widerman IV, Mayor**

**ATTEST:**

By: \_\_\_\_\_  
**Jay Brunvand, Town Clerk**



Glenwood Springs – Main Office

201 14<sup>th</sup> Street, Suite 200  
P. O. Drawer 2030  
Glenwood Springs, CO 81602

Aspen

323 W. Main Street  
Suite 301  
Aspen, CO 81611

Montrose

1544 Oxbow Drive  
Suite 224  
Montrose, CO 81402

Office: 970.945.2261

Fax: 970.945.7336

[\\*Direct Mail to Glenwood Springs](#)

DATE: September 11, 2020  
TO: Minturn Mayor and Council  
FROM: Karp Neu Hanlon, P.C.  
RE: Ordinance No. 11 – Garbage and Refuse Containers

---

At the last meeting, Council directed staff to remove the requirement that garbage or refuse containers be kept in an enclosed or obscured location contained in Section 7-3-120 because there already exists a requirement for wildlife-resistant refuse containers elsewhere in the Code. Our review confirms that Section 7-9-310 provides more practical approach to garbage and refuse container storage. The relevant provisions of Section 7-9-310 are set forth below. We believe it is prudent to repeal the conflicting language in Section 7-3-120 relating to the storage and location of refuse containers while retaining the requirements that residents store junk and refuse not secured as required by Section 7-9-310 in an enclosed building.

**Sec. 7-9-310. - Protection of wildlife.**

*Wildlife-proof refuse container* means any refuse container which has been certified to be wildlife-proof by the Colorado Division of Wildlife, the U.S. Park Service or the U.S. Forest Service.

*Wildlife-resistant refuse container* means a fully enclosed metal or plastic container or Dumpster with a metal or plastic lid. The lid must have a latching mechanism which prevents access to the contents by wildlife.

(c) Residential refuse disposal.

- (1) All residential refuse containers that receive garbage and/or refuse edible by wildlife must either be wildlife-resistant or wildlife-proof or be kept within a fully enclosed and secured structure.
- (2) Residents with curbside pickup shall place their refuse containers at the curb, alley or public right-of-way at or after 6:00 a.m. of the morning of the pickup, provided that wildlife-proof containers may be placed curbside after 6:00 a.m. of the day before. After pickup, the containers must be resecured in an appropriate manner before the end of the same day.

**TOWN OF MINTURN, COLORADO  
ORDINANCE NO. 11 – SERIES 2020**

**AN ORDINANCE OF THE TOWN OF MINTURN,  
COLORADO AMENDING THE TOWN’S NUSIANCE CODE  
TO ALIGN WITH WILDLIFE PROTECTION MEASURES.**

**WHEREAS**, the Town of Minturn (“Town”) is a Colorado home rule municipality organized pursuant to Article XX of the Colorado Constitution and with the authority of the Town of Minturn Home Rule Charter for which the Minturn Town Council (“Town Council”) is authorized to act; and

**WHEREAS**, Minturn Municipal Code (the “Code”) Chapter 7 provides for the regulation of Health, Sanitation, and Animals; and

**WHEREAS**, Code Section 7-9-310 and 7-3-120 both provide for the regulation of garbage and refuse containers and conflict to some extent; and

**WHEREAS**, the Minturn Town Council finds and believes that it is necessary and proper to amend the Minturn Municipal Code to align provisions of the Code regulating garbage and refuse containers to better protect wildlife from harm.

**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. Section 7-3-120 of the Minturn Municipal Code is hereby amended read as follows, with additions shown in double underlined text and ~~strike through language is deleted~~. Sections of Chapter 7 which are not expressly described in this Ordinance are deemed to continue to be in full effect without change.

**Sec. 7-3-120. - Garbage containers and junk.**

The storing or keeping by any person within the Town of any old articles or materials which may be classified as junk, adjacent to or in close proximity to any public building, public park or grounds, business buildings or residences, without first providing fully enclosed buildings for storage of the same, shall be deemed a public nuisance. It is specifically provided that trash, garbage and refuse and trash, ~~garbage and refuse containers, barrels and cans~~ must be obscured from view and not accessible to scavenging animals. Refuse containers shall be kept and secured in accordance with Section 7-9-310 of this Code.

**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 16<sup>th</sup> DAY OF SEPTEMBER, 2020. 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 7<sup>TH</sup> DAY OF OCTOBER, 2020 AT 5:30p.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 7<sup>TH</sup> DAY OF OCTOBER, 2020.**

**TOWN OF MINTURN, COLORADO**

\_\_\_\_\_  
**John Widerman IV, Mayor**

**ATTEST:**

By: \_\_\_\_\_  
**Jay Brunvand, Town Clerk**

Michelle Metteer  
Town Manager  
P.O. Box 309 ♦ 302 Pine Street  
Minturn, CO 81645  
970-827-5645 x7  
[manager@minturn.org](mailto:manager@minturn.org)  
[www.minturn.org](http://www.minturn.org)



Town Council  
Mayor – John Widerman  
Mayor Pro Tem – Earle Bidez  
Council Members:  
Terry Armistead  
George Brodin  
Brian Eggleton  
Eric Gotthelf  
Gusty Kanakis

---

## TOWN MANAGER UPDATE

### **Minturn Bike Park**

The Minturn Bike Park is open and we're fortunate enough that a local apparel company, Ski Town All Stars, is putting on a fundraiser for the park by selling new bike park hats that include the park logo. Get yours today at [www.skitownallstars.com](http://www.skitownallstars.com).

### **Electric Vehicle Charging Station**

Xcel Energy met with staff to review potential EV charging station locations at the Minturn Town Hall. The north eastern corner of the building was chosen for its easy access from Main Street and ability to provide room for two parking stations and the charging port. Work will begin this fall for installation.

### **Memorial Bench Program**

Cindy is putting together a memorial bench program for those who wish to memorialize a loved one with a nice place to sit and plaque to commemorate those who have passed. Locations for bench placement will be available in select areas around town and total cost is expected to be around \$1000 which will include the bench, plaque, engraving, and bench placement.

### **Fishing is Fun Volunteer Opportunities**

The River Access Trail Committee (Jeff Armistead, Lauren Dickie and Greg Sparhawk) are moving forward with the GOCO Fishing is Fun grant that was awarded to Minturn last summer. Jeff Armistead is looking for interested volunteers to help with river access work. If you'd like to take part in a community-friendly event contact Jeff at [jafamilyman@gmail.com](mailto:jafamilyman@gmail.com)

### **Battle Mountain Listening Sessions**

Tim McGuire and the Battle Mountain development team are looking to connect with Minturn residents to solicit feedback for a potential development at the southern end of Minturn. Please contact Tim McGuire at 970-827-4609 to discuss aspects of the projects or amenities you would like to see as part of a PUD proposal.

### **Initial Strategic Plan Update**

Work is underway for updating the Minturn Strategic Plan. Items from the 2018/20 Strategic Plan which have been completed will be removed. Items which have not yet been completed from 2018/20 will be carried over to the 2021/23 Strategic Plan. Mostly, items will be added that continually reflect Minturn's Mission, Vision and True North statements. Here is a quick look at items being considered for addition:

**Practice fair, transparent and communicative local government**

- Semi-Annual door hanger notices
- Annual calendar of events
- Online payment options via Town website

**Long-term stewardship of the natural beauty and health of Minturn’s environment**

- Update Minturn Energy Action Plan
- Expand Minturn’s dog waste station program
- Zero-waste Minturn Market by 2023
- Double composting program membership

**Sustain and invest in the things that define Minturn as a proud, sturdy mountain town to “keep Minturn Minturn”**

- Reserve fund growth
- Diversify revenue stream
- Minturn Fitness Center
- Town-wide creative arts district

**Advance decisions/projects/initiatives that expand future opportunity and viability for Minturn**

- Dowd to Minturn trail
- Gallagher ballot question
- Little Beach Park upgrades



To: Mayor and Council  
From: Jay Brunvand  
Date: May 20, 2020  
Agenda Item: Revenue Collections

---

**REQUEST:**

This report is only for review. I am available for questions if necessary.

**INTRODUCTION:**

During the onset of the COVID-19 pandemic the Town Council formed an Emergency Funding Ad-hoc Committee to study the potential effects the Pandemic might have on fiscal year 2020 revenues. The charge was to identify potential issues and recommend to the full Council options to conservatively address those potential financial impacts. Beginning in April the Committee has presented a monthly update that tracks our sales tax numbers and how they relate to the adopted budget as well as track the revenue cuts to the budget. This tracking has identified that, although the Town sales tax did endure significant drops in revenue, they were not as significant nor as long term as originally estimated.

**ANALYSIS:**

Initial recommendations were to cut the sales tax budget by approximately 10.5% and additional expense cuts to offset the revenue reduction. During the period between March 18 and May 31 when the economy was virtually shut down this cut was very prudent. Since the initial stages of the shutdown the economy has been gradually reopened. As a result, sales tax reported as actual collections through July 31 register 14.31% year to date over 2019 at the same period and 16.89% year to date over 2018 at the same time period.

**COMMUNITY INPUT:**

Staff has spent significant time working with our retail outlets to ensure they have the tools and the backing to address their individual needs as best as possible. The town continues to strictly adhere to the county and statewide mandates which allow us to continue our positive recover.

**BUDGET / STAFF IMPACT:**

The sales tax collections through July 31 total \$427,877. This amounts to 74% of the revised budget and 66% of the original budget for 2019.

**STRATEGIC PLAN ALIGNMENT:**

In accordance with Strategy #1 to practice fair, transparent, and communicative local government.

**RECOMMENDED ACTION OR PROPOSED MOTION:**

No action is requested.

**ATTACHMENTS:** Year to date and annual sales tax report

TOWN OF MINTURN SALES TAX COMPARISON																		
MONTH	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	CHANGE	SAME MO 2019	ACCR YTD VAR TO '19	SAME MO 2018	ACCR YTD VAR TO '18
JANUARY	48,943	52,282	39,306	42,037	44,898	45,721	47,881	54,313	62,068	52,148	71,528	58,509	92,315	57.78%	33,806	33,806.01	20,787	20,787.03
FEBRUARY	50,563	45,235	38,781	38,147	43,993	46,028	43,246	59,868	57,178	51,785	31,263	52,232	64,708	23.89%	12,476	46,282.34	33,445	54,232.43
MARCH	46,789	41,718	43,231	49,085	49,922	51,708	54,423	52,142	40,835	52,249	53,561	60,705	45,220	-25.51%	-15,485	30,797.25	-8,341	45,890.98
APRIL	42,756	28,637	29,168	33,779	27,176	30,328	30,568	37,398	41,478	40,395	42,743	44,115	38,337	-13.10%	-5,778	25,019.39	-4,407	41,484.47
MAY	30,862	27,084	29,341	22,115	31,209	36,473	27,758	42,569	32,926	39,471	38,977	33,722	35,077	4.02%	1,355	26,374.20	-3,900	37,584.15
JUNE	47,797	40,924	34,289	40,990	31,800	41,560	54,001	39,765	46,832	55,131	57,776	55,473	58,096	4.73%	2,623	28,997.23	320	37,904.21
JULY	47,763	44,134	42,602	49,410	48,715	49,680	52,732	67,899	61,541	69,902	59,770	69,560	94,124	35.31%	24,565	53,561.90	34,354	72,258.21
AUGUST	43,290	37,513	38,450	45,002	42,791	59,605	49,406	55,724	66,318	59,838	55,132	65,306		-100.00%	-65,306	-11,744.02	-55,132	17,126.01
SEPTEMBER	37,780	36,925	36,039	42,748	36,965	43,370	62,771	43,550	51,788	47,013	59,679	80,605		-100.00%	-80,605	-92,348.81	-59,679	-42,553.48
OCTOBER	33,933	27,176	23,333	25,686	32,804	33,504	26,151	33,116	37,233	43,535	40,602	47,347		-100.00%	-47,347	-139,695.58	-40,602	-83,155.04
NOVEMBER	28,753	23,559	24,685	29,076	29,689	28,425	29,736	32,090	28,247	63,238	41,793	60,807		-100.00%	-60,807	-200,502.72	-41,793	-124,948.25
DECEMBER	45,870	47,143	44,840	45,959	47,370	55,171	58,060	65,694	57,520	61,371	67,719	90,821		-100.00%	-90,821	-291,323.64	-67,719	-192,667.18
YTD TOTAL	505,101	452,327	424,064	464,033	467,311	521,573	536,735	584,128	583,964	636,074	620,544	719,201	427,877	-40.51%				
EXTRAORDINARY																		
TOTAL	505,101	452,327	424,064	464,033	467,311	521,573	536,735	584,128	583,964	636,074	620,544	719,201	427,877	-40.51%				
	HISTORICAL AVERAGE BY MO	29Yr Avg	5yr Avg	FY2020		VARIANCE FROM 5YR			07/01/20	CURRENT MONTH	YTD 2020	% OF TOTAL			YTD 2019	% OF TOTAL		
								RETAIL	151,254	68,108	219,362	51%			180,401	48%		
								LODGE	12,421	2,391	14,812	3%			21,720	6%		
								F & B	61,410	6,095	67,505	16%			97,528	26%		
								UTIL	38,844	4,446	43,290	10%			44,370	12%		
								ON-LINE	69,824	13,085	82,909	19%	(a)		30,296	8%		
								TOTAL	333,753	94,124	427,877				374,315			
																	YTD 2019	YTD 2018
																	14.31%	16.89%
	TOTALS	451,105	628,782	427,877		-200,905												

(a) This sales tax was not required until April 30, 2019 so is not compared to last year.

Jay Brunvand  
 Clerk/Treasurer  
 301 Pine St #309 ♦ 302 Pine St  
 Minturn, CO 81645  
 970-827-5645 x1  
[treasurer@minturn.org](mailto:treasurer@minturn.org)  
[www.minturn.org](http://www.minturn.org)



Town Council  
 Mayor – John Widerman  
 Mayor Pro Tem – Earle Bidez  
 Council Members:  
 Terry Armistead  
 George Brodin  
 Brian Eggleton  
 Eric Gotthelf  
 Gusty Kanakis

Below reflects proposed topics to be scheduled at future Town Council meetings and is informational only. Dates and topics are subject to change.

<b>REGULAR TOWN COUNCIL MEETINGS</b>
<b>September 16, 2020</b>
Ord __- Series 2020 an Ordinance eliminating the requirement for trash enclosures (wildlife-proof containers still required if outside)
Strategic Plan Update
Resolution 24 - 2020 CUP for Burk Harrington
Ord. __ -Series 2020 (First Reading) An Ordinance amending the Food Truck code to allow for over four hours of service.
<b>October 7, 2020</b>
Action Item: Acceptance of the 2021 Fiscal Budget (Draft)
Ord __- Series 2020 (Second Reading) an Ordinance eliminating the requirement for trash enclosures (wildlife-proof containers still required if outside)
Ord. __ -Series 2020 (Second Reading) An Ordinance amending the Food Truck code to allow for over four hours of service.
Ordinance __- Series 2020 an Ordinance adopting Specified Sustainability Building Codes
<b>October 21, 2020</b>
Shooting Range update and discussion
Parking Plan discussion
Colorado Land Trust-Update on the Conservation Easement at the Boneyard – Nancy Glass